

Dated 20<sup>th</sup> March 2020

- (1) CHARLES ROBERT SMITH
- (2) JOHN ANTHONY STROVER & RICHARD GUY  
STROVER
- (3) JONATHAN GEOFFREY MARTINDALE STROVER,  
MELANIE JANE OUTRAM & KATHRYN ANN  
BIRCH
- (4) CALA MANAGEMENT LIMITED
- (5) TENDRING DISTRICT COUNCIL
- and -
- (6) ESSEX COUNTY COUNCIL

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**Planning Obligation by way of Unilateral  
Undertaking Under Section 106 Of the Town and  
Country Planning Act 1990**

of

land to the rear of New Road Mistley Essex CO11 2AG

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THIS DEED is made the 20<sup>th</sup> day of March 2020

**BETWEEN:**

- (1) **CHARLES ROBERT SMITH** of Weavers, 10 New Road, Mistley, Manningtree CO11 2AG ("**First Owner**"); and
- (2) **JOHN ANTHONY STROVER** of Devon House, High Street, Yetminster, Sherborne, DT9 6LF and **RICHARD GUY STROVER** of 6 Church Lane, Nayland, Colchester C06 4JH ("**Second Owner**");
- (3) **JONATHAN GEOFFREY MARTINDALE STROVER** of Maltings Malting Lane Kirby-le-socken Frinton-on-sea Essex CO13 0EH, **MELANIE JANE OUTRAM** of Dovecote House Westmill Nr Buntingford Hertfordshire SG9 9LS and **KATHRYN ANN BIRCH** of Hare Wood House Martins Lane Kirstead Norwich NR15 1ED ("**The Executors**"); and
- (4) **CALA MANAGEMENT LIMITED** (company registration number SC013655 whose registered office is at Adam House, 5 Mid New Cultins, Edinburgh, EH11 4DU ("**Developer**")

**AND GIVEN TO:**

- (5) **TENDRING DISTRICT COUNCIL** of Council Offices, Thorpe Road, Weeley, Clacton-on-Sea, Essex C016 9AJ ("**Council**"); and
- (6) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex CM1 1QH ("**County Council**").

**RECITALS:**

- (A) The Council and the County Council are local planning authorities for the purposes of the Town and Country Planning Act 1990 for the area within which the Site is situated.
- (B) The County Council is the local highway authority and the local authority for statutory age education and pre-school age education and childcare in the area within which the Site is situated.
- (C) The First Owner is the freehold owner of the First Property being part of the Site registered at HM Land Registry with freehold title absolute under title number EX648256 and has an interest in the Site within the meaning of Section 106(9)(b) of the Act.
- (D) The Second Owner is the freehold owner of the Second Property being part of the Site registered at HM Land Registry with freehold title absolute under title numbers EX525748 and EX922163 and has an interest in the Site within the meaning of Section 106(9)(b) of the Act.
- (E) The Executors are the executors of the late Paul Strover who was a joint freehold owner of the Second Property.
- (F) The Developer has an interest in the Site.

**NOW IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS**

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

"**Act**" means the Town and Country Planning Act 1990 (as amended);

"**Affordable Housing**" means housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers) as defined in the National Planning Policy Framework February 2019 provided to eligible households and determined with regard to local incomes and local house prices, and which includes provision for the housing to be retained at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing



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provision;

**"Affordable Housing Scheme(s)"** means a scheme to be submitted to the Council as part of any Reserved Matters Application which specifies in relation to that part of the Site the subject of the Reserved Matters Application:

- (a) The number of Dwellings to be Affordable Housing Units such number to be 30% of the number of Dwellings in that Reserved Matters Application;
- (b) the location, layout, size, type and tenure of the Affordable Housing Units;
- (c) how the Affordable Housing Units are to be transferred to a Registered Provider for subsequent allocation to Persons in Housing Need (including the order of priority in which persons will be allocated the Affordable Housing Units);
- (d) the method of calculating the sale or rental price of each Affordable Housing Unit;
- (e) how the Owner will ensure that the Affordable Housing Units will remain as Affordable Housing in perpetuity for future owners, occupiers or tenants,

and which may be amended from time to time with the written approval of the Council or such other scheme for the Affordable Housing Units as may be approved by the Council as part of a Reserved Matters Approval;

**"Affordable Housing Units"** means the 30% of the total Dwellings to be constructed on the Site pursuant to the S73 Permission as part of the Development which shall be provided in accordance with the Affordable Housing Scheme;

**"Appeal"** means the planning appeal allowed by the Secretary of State against the refusal of the OPP Application by the Council under Section 78(2) of the Act and given reference ref: APP/P1560/W/17/3176089;

**"Base Rate"** means the base rate from time to time of the Co-Operative Bank;

**"Chargee"** means any mortgagee or chargee of the Registered Provider or a security trustee or receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

**"Chargee's Duty"** means the tasks and duties set out in paragraphs 7.6 to 7.9 of Schedule 2 hereto;

**"CIL Regulations"** means the Community Infrastructure Regulations 2010;

**"Commencement of Development"** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;

**"Contributions"** means the financial contributions made by the Owners to the Council and/or the County Council in pursuance to the Owners' obligations under Schedule 2 of this Deed;

**"Default Interest Rate"** means 2% per annum above the Base Rate;

**"Development"** means the development of the Site permitted by the S73 Permission and comprising the erection of 67 dwellings together with formation of access;

**"Dwelling"** means a unit of residential accommodation to be constructed as part of the Development pursuant to the S73 Permission and "Dwellings" shall be construed accordingly;



**"Early Years and Childcare Contribution"** means the Early Years and Childcare Pupil Product multiplied by the cost generator of £13,930;

**"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 education and/or care of children between the ages of 0 to 5 (both inclusive) including those with special educational needs to expand an educational facility within the Manningtree, Mistley, Little Bentley and Tendring Wards including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Early Years and Childcare Contribution;

**"Education Contribution"** means the sum of the Early Years and Childcare Contribution and the Primary Education Contribution and the Secondary Education Contribution to which sums 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 Purposes"** means Early Years and Childcare Purposes and the Primary Education Purposes and the Secondary Education Purposes;

**"First Property"** means that part of the Property being the whole of the freehold land registered at the Land Registry under title number EX648256, the freehold owner of which is the First Owner;

**"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"** 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;

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

**"Notice"** means a notice of an event as set out in the Second Schedule to be given in writing to the Council by addressing it to the Head of Planning at the address herein and to the County Council at its address given herein or such other address notified in writing to the Owners by the Council or County Council from time to time;

**"Occupation"** and **"Occupied"** means first occupation for the purposes permitted by the S73 Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly;

**"Open Market Dwellings"** means Dwellings constructed on the Site pursuant to the S73 Permission which are not identified as Affordable Housing Units in the Affordable Housing Scheme;

**"Owner"** means the First Owner the Second Owner and The Executors;

**"Person in Housing Need"** means a person who does not have available to him or her and

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 2016 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 4.4 and/or paragraph 4.6 of Schedule 2 to this Agreement 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 2018 and the date payment is made to the County Council;

**"Reserved Matters"** means matters reserved by the Council for future determination and to be satisfied by the Owner submitting a Reserved Matters Application;

**"Reserved Matters Application"** means an application for Reserved Matters for the Development pursuant to the S73 Permission and shall include any amendment to it or fresh application for Reserved Matters made in substitution therefore or an alternative application for Reserved Matters;

**"Reserved Matters Approval"** means an approval by the Council pursuant to a Reserved Matters Application;

**"S73 Application"** means the application to vary the Outline Planning Permission under section 73 of the Act for variation of Condition 4 approved plans 0964-F01 rev D, and 1628 URB XX XX GA 90 001 Rev H) of APP/P1560/W/17/3176089, to improve the proposed road network, thereby allowing sufficient access to the Site for all emergency vehicles and servicing vehicles and to amend the layout, dated 23 December 2019 submitted to the Council and allocated reference number 19/01956/OUT;

**"S73 Permission"** means the planning permission to be granted by the Council pursuant to the S73 Application;

**"Secondary Education Contribution"** means the Secondary Pupil Product multiplied by the cost generator of £18,561;

**"Secondary Education Purposes"** means the education and/or care of children between the ages of 11 to 19 (both inclusive) including those with special educational needs at Manningtree High School or successor education facility including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Secondary Education Contribution;

**"Secondary Pupil Product"** means the sum of the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2;

**"Second Property"** means that part of the Property being the whole of the freehold land registered at the Land Registry under title numbers EX525748 and EX922163 the freehold owner of which is the Second Owner and in their capacity the Executors;

**"Secretary of State"** means the Secretary of State responsible for determining the Appeal;

**"Seven Day LIBID Rate"** shall mean an assessment of the rate of interest the County 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 euro currency deposits or such other rate as the County Council considers appropriate;

**"Site"** means the land against which this Deed may be enforced as shown for identification purposes only edged red on the Plan and described in Schedule 1;

**"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 Houses or Qualifying Flats; and



**"Working Days"** means Monday to Friday in any week excluding any public, bank or any other statutory holidays.

## **2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed (unless the context otherwise requires).
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly, or against each of them individually unless there is express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 2.7 The headings and contents list are for reference only and shall not affect construction.
- 2.8 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.
- 2.9 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.

## **3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all powers so enabling.
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and County Council against the Owners as set out in this Deed.
- 3.3 This Deed shall come into effect on the date hereof.

## **4. CONDITIONALITY**

- 4.1 This Deed is conditional upon:
  - 4.1.1 the grant of the S73 Permission; and
  - 4.1.2 Commencement of Development with the exception of clauses 12, 14, 16, 19 and 20 which shall come into effect immediately upon completion of this Deed and clause 7 and paragraph 5 of Schedule 2 which shall come into effect upon grant of the S73 Permission.
- 4.2 In the event that the Council or the County Council adopt a charging schedule under the CIL Regulations prior to the S73 Permission being granted, the Owners shall be



released from any of the obligations in this Deed that relate to an item or project included on the Council and/or County Council's regulation list of infrastructure.

**5. THE OWNER'S COVENANTS**

The Owner undertakes (so as to bind the Site) to fully observe and perform the obligations in this Deed and to carry out the Development in accordance with the obligations and restrictions set out in Schedule 2.

**6. LOCAL LAND CHARGE**

6.1 This Deed may be registrable as a local land charge by the Council.

6.2 Following the performance and satisfaction of all the obligations contained in this Deed or where the obligations under this Deed are no longer enforceable the Council may effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed against the Site (or relevant part).

**7. TERMINATION OF THIS DEED**

This Deed shall cease to have effect (insofar only as it has not already been complied with) if the S73 Permission shall be quashed, revoked or otherwise withdrawn (without the consent of the Owner) or it is modified by any statutory procedure or expires prior to the Commencement of Development

**8. THE CONTRACTS ACT**

Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council or County Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and no third party shall acquire any benefit, rights or claims whatsoever thereto.

**9. LIABILITIES**

9.1 No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed after it shall have parted with all or part of its interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

9.2 No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed in respect of any part of the Site in which they do not have a legal interest.

9.3 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the S73 Permission nor against those deriving title from them, save (in relation only to the provisions of paragraph 7 of Schedule 2) for the Affordable Housing Units.

9.4 The obligations in this Deed shall not bind or be enforceable against any statutory undertaker who has or takes in future an interest in the Site for the purpose of providing apparatus pursuant to its statutory undertaking for the Development.

9.5 Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the S73 Permission) granted (whether or not on appeal) after the date of this Deed.

**10. COUNCIL'S POWERS**

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

**11. 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 covenants 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 terms or conditions or from acting upon any subsequent breach or default.

**12. DEVELOPER'S CONSENT**

12.1 The Developer consents to this Deed being entered into with the intention that its interest in the Site will be bound by the terms of this Deed provided always that such consent is given on the basis that the Developer will not incur any liability for any breach of the obligations contained in this deed unless and until it becomes the freehold owner of the Site (or any part thereof) or obtains a long leasehold interest in the Site (or any part thereof).

12.2 The Developer hereby indemnifies the First Owner against all expenses and liabilities arising out of this Deed save that the indemnity shall not apply in respect of any liability arising out of or incidental to any negligent act, default or omission of or on behalf of the First Owner or his representatives (and for the purposes of this clause only, references "First Owner" shall mean Charles Robert Smith and not his successors in title).

**13. MORTGAGEE LIABILITY**

Any legal charge taken over the Site in the future shall take effect subject to this deed PROVIDED THAT any new mortgagee shall have no liability under this deed unless it becomes a mortgagee in possession in which case it too will be bound by the planning obligations in this Deed as if it were a person deriving title from the Owner.

**14. CHANGE IN OWNERSHIP**

The Owner undertakes to give the Council and County Council immediate 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 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 purchased by reference to a plan (save that this clause shall not relate to the sale of a Dwelling constructed pursuant to the S73 Permission).

**15. VAT**

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

**16. DISPUTE PROVISIONS**

16.1 In the event of any dispute or difference arising between the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) 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 such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

16.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 16.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in



such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

16.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 28 Working Days after the conclusion of any hearing that takes place or 28 Working Days after he has received any file or written representation.

16.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within 10 Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further 10 Working Days.

## **17. INTEREST**

If any payment due under this Deed is paid late interest at the Default Interest Rate will be payable from the date payment is due to the date of payment.

## **18. COMMUNITY INFRASTRUCTURE LEVY**

18.1 For the purposes of this clause, "CIL" means a tax, tariff or charge introduced by the Council pursuant to regulations enabled by the Planning Act 2008 or any subsequent proposed legislation to fund the delivery of infrastructure known as the "community infrastructure levy" or known by any other name.

18.2 If, after the date of this Deed, a CIL is introduced that is applicable to the Development then the Owner shall seek to agree variations to this Deed with the intent that:

18.2.1 the planning benefits secured by this Deed should continue to be secured and delivered; and

18.2.2 the Owner should not be in a position where the Owner is in a financially worse position because of CIL in respect of the obligations contained in Schedule 2 than if the Owner performed the obligations in this Deed and no CIL had been introduced.

## **19. JURISDICTION**

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

## **20. 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.

## **21. NOTICES**

21.1 All notices, demands or other written communications to or from the Owner, the Developer, the Council and the County Council in relation to this Deed shall be deemed to have been properly given or made if sent by first class recorded delivery letter to the Owner, Developer, the Council or County Council, as appropriate, at the address specified at the beginning of this Deed or such address as the relevant party may notify to the other parties from time to time.

21.2 Any notices, demands or other written communication in relation to this Deed shall be deemed to have been served:

21.2.1 if by hand, upon delivery;

21.2.2 if by first class recorded delivery, 48 hours after delivery of the notice, request, demand or other written communication in to the postal system,

provided that if a notice, demand or other written communication is served after 4 pm on a Working Day or on a day that is not a Working Day, needs to be treated as having been served on the next Working Day.

**22. COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

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



**SCHEDULE 1**  
**Description of the Site**

The land to the rear of New Road Mistley Essex C011 2AG as shown for identification purposes only edged red on the Plan.

**SCHEDULE 2**  
**The Owner's Covenants**

The Owner undertakes as follows:

**1. EARLY YEARS AND CHILDCARE CONTRIBUTION**

- 1.1 To pay the Early Years and Childcare Contribution to the County Council in the following instalments:
  - 1.1.1 50% prior to the first Occupation of the Dwellings on the Site; and
  - 1.1.2 50% prior to the Occupation of 50% of the Dwellings on the Site.

**2. PRIMARY SCHOOL CONTRIBUTION**

- 2.1 To pay the Primary Education Contribution to the County Council in the following instalments:
  - 2.1.1 50% prior to the first Occupation of the Dwellings on the Site; and
  - 2.1.2 50% prior to the Occupation of 50% of the Dwellings on the Site.

**3. SECONDARY SCHOOL CONTRIBUTION**

- 3.1 To pay the Secondary Education Contribution to the County Council in the following instalments:
  - 3.1.1 50% prior to the first Occupation of the Dwellings on the Site; and
  - 3.1.2 50% prior to the Occupation of 50% of the Dwellings on the Site.

**4. PROVISIONS RELATING TO EDUCATION**

It is hereby agreed and declared:

- 4.1 In the event that the Owner fails to serve notice as set out in Paragraph 5 of this Schedule 2 below 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 and demand and enforce payment of the Education Contribution at any time thereafter.
- 4.2 In the event that the Unit Mix to be constructed at the Development does not match the Unit Mix on which the Education Contribution paid was based the Owner shall pay to the County Council as soon as the change in Unit Mix becomes apparent any additional amount pertaining to the difference between the Education Contribution paid and the Education Contribution pertaining to the Unit Mix to be constructed as part of the Development and any such additional amount shall from the date payment is received by the County Council form part of the Education Contribution.
- 4.3 In the event that the Education Contribution or part thereof is paid later than the date of Commencement of Development then the amount of the Education Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the date of Commencement of Development and the Education Index Point prevailing at the date of payment multiplied by the Education Contribution or part thereof due or if greater an amount pertaining to interest on the Education Contribution or part thereof due calculated at the Seven Day LIBID Rate from the date of Commencement of Development until the date payment of the amount due is received by the County Council.
- 4.4 In addition to the requirement of 4.3 above in the event that any sum due to be paid by the Owner to the County Council pursuant to this Deed should not be received by the



County Council by the date that the sum is due then the Owner hereby undertakes to pay to the County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of £50 plus Relevant General Indexation for each and every letter sent to the Owner pursuant to the debt.

- 4.5 In the event that the Education Contribution is overpaid by the Owner the Owner accepts that 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.
- 4.6 The Owner accepts that the County Council may utilise up to 2% of the total amount of the Education Contribution received under this Agreement to a maximum of £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.
- 4.7 The Owner agrees to pay the Education Contribution to the County Council strictly on the basis that the County Council utilises the Education Contribution solely for the Education Purposes as described in this Deed and for no other purposes whatsoever.

## **5. RAM CONTRIBUTION**

- 5.1 To pay to the Council the Recreational Disturbance, Avoidance & Mitigation Contribution before Commencement of the Development and not to Commence the Development unless and until the said Recreational Disturbance, Avoidance & Mitigation Contribution has been paid to the Council.

## **6. NOTICES**

To give Notice in writing to the Council and County Council within 20 Working Days of:

- 6.1 Commencement of Development;
- 6.2 Occupation of the first Dwelling comprised within the Development;
- 6.3 Occupation of 50% of the Dwellings comprised within the Development;
- 6.4 Occupation of 90% of the Dwellings comprised within the Development.

## **7. AFFORDABLE HOUSING PROVISIONS**

### **Affordable Housing Scheme**

- 7.1 Not to Commence Development until the Affordable Housing Scheme has been approved in writing by the Council;
- 7.2 To carry out the Development in accordance with the approved Affordable Housing Scheme;

### **Trigger Points for Delivery of Affordable Housing**

- 7.3 Not to allow more than 60% of the Open Market Dwellings to be Occupied until the Affordable Housing Units have been constructed and are available for occupation and contract(s) for the transfer of the Affordable Housing Units have been exchanged with a Registered Provider on the terms set out in the Affordable Housing Scheme PROVIDED THAT in the event that, despite using reasonable endeavours to do so, the Owner has been unable to exchange contracts for the transfer of Affordable Housing Units within 6 months from Practical Completion of the last Affordable Housing Unit then, subject to the Owner providing written evidence to the Council of the negotiations with the Registered Provider and reasons why contract(s) has/have not been

exchanged with the Registered Provider, the Owner may propose to the Council an alternative mix or tenure for the Affordable Housing Units or an alternative way to dispose of the Affordable Housing Units for its consideration and approval;

- 7.4 Not to allow to be Occupied more than 85% of the Open Market Dwellings until all of the Affordable Housing Units have been constructed to Practical Completion and disposed of either to a Registered Provider or under such alternative arrangement that applies pursuant to paragraph 7.3;
- 7.5 Subject to clause 9.3 of this Deed, not to permit the Affordable Housing Units to be used or occupied other than as Affordable Housing in accordance with the terms of this Deed.

#### **The Chargee's Duty**

- 7.6 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than 1 months' prior written notice to the Council and addressed to the Director of Development Services of its intention to dispose ("**Chargee's Notice**"); and
- 7.7 In the event that the Council responds in writing within 3 months from receipt of the Chargee's Notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to satisfy the terms of the mortgage or charge and to safeguard them as Affordable Housing then the chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer;
- 7.8 If the Council does not serve its response to the Chargee's Notice served under paragraph 7.6 within 3 months then the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule 2 relating to Affordable Housing;
- 7.9 If the Council or any other person nominated by the Council cannot within 2 months of the date of service of its response under paragraph 7.7 secure such transfer (so for the avoidance of doubt there shall be a total period of only 3 months from the Chargee's Notice to completion of such transfer) then provided that the Chargee shall have complied with its obligations under paragraph 7.6 the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Schedule 2.



SIGNED by .....

.....  
(Signature)

for and on behalf of **Charles Robert Smith**

.....  
(Date)

**WITNESS:**

**Signature** .....

**Name** .....

**Address** .....

.....  
.....  
.....

**Occupation** .....

**(PLEASE COMPLETE IN CAPITALS)**

SIGNED by .....

.....  
(Signature)

for and on behalf of **John Anthony Strover**

.....  
(Date)

**WITNESS:**

**Signature** .....

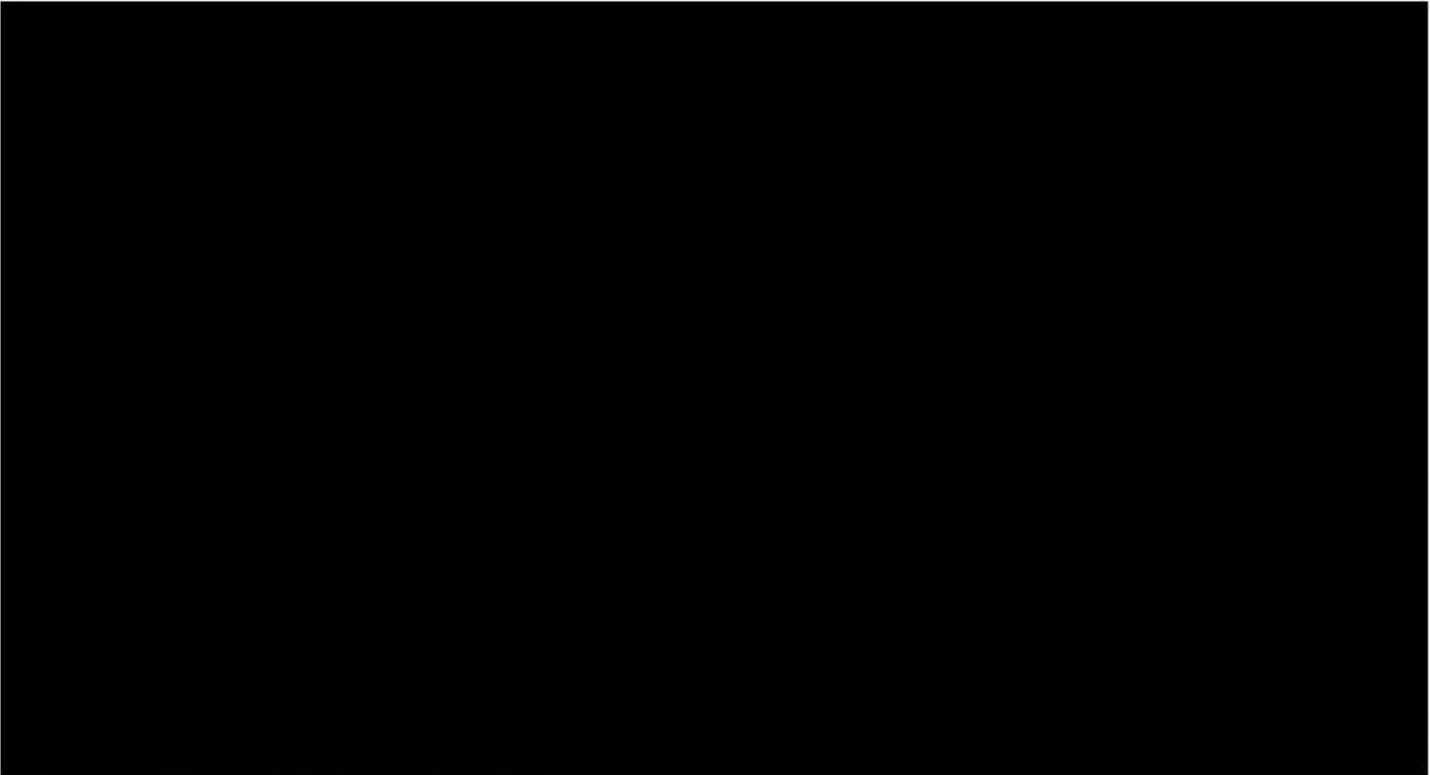
**Name** .....

**Address** .....

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**Occupation** .....

**(PLEASE COMPLETE IN CAPITALS)**



SIGNED by .....  
for and on behalf of **Jonathan Geoffrey Martindale**  
**Strover**

.....  
(Signature)  
.....  
(Date)

**WITNESS:**

**Signature** .....  
**Name** .....  
**Address** .....  
.....  
.....  
.....  
**Occupation** .....

(PLEASE COMPLETE IN CAPITALS)



SIGNED by .....

for and on behalf of **Melanie Jane Outram**

.....  
(Signature)

.....  
(Date)

**WITNESS:**

**Signature** .....

**Name** .....

**Address** .....

.....

.....

.....

**Occupation** .....

**(PLEASE COMPLETE IN CAPITALS)**

SIGNED by .....

for and on behalf of **Kathryn Ann Birch**

.....  
(Signature)

.....  
(Date)

**WITNESS:**

**Signature** .....

**Name** .....

**Address** .....

.....

.....

.....

**Occupation** .....

**(PLEASE COMPLETE IN CAPITALS)**

EXECUTED as a DEED by  
**CALA MANAGEMENT LIMITED**  
acting by:

and by:

as Attorney for CALA MANAGEMENT LIMITED

Attorney:

Attorney:



**APPENDIX 1**  
**Plan**



1:500



Prepared by: [Name]  
 Checked by: [Name]  
 Date: [Date]

Project: [Project Name]  
 Location: [Location]

Area	Area (sq ft)	Area (sq ft)	Area (sq ft)
Lot 1	1000	1000	1000
Lot 2	1000	1000	1000
Lot 3	1000	1000	1000
Lot 4	1000	1000	1000
Lot 5	1000	1000	1000
Lot 6	1000	1000	1000
Lot 7	1000	1000	1000
Lot 8	1000	1000	1000
Lot 9	1000	1000	1000
Lot 10	1000	1000	1000
Lot 11	1000	1000	1000
Lot 12	1000	1000	1000
Lot 13	1000	1000	1000
Lot 14	1000	1000	1000
Lot 15	1000	1000	1000
Lot 16	1000	1000	1000
Lot 17	1000	1000	1000
Lot 18	1000	1000	1000
Lot 19	1000	1000	1000
Lot 20	1000	1000	1000
Lot 21	1000	1000	1000
Lot 22	1000	1000	1000
Lot 23	1000	1000	1000
Lot 24	1000	1000	1000
Lot 25	1000	1000	1000
Lot 26	1000	1000	1000
Lot 27	1000	1000	1000
Lot 28	1000	1000	1000
Lot 29	1000	1000	1000
Lot 30	1000	1000	1000
Lot 31	1000	1000	1000
Lot 32	1000	1000	1000
Lot 33	1000	1000	1000
Lot 34	1000	1000	1000
Lot 35	1000	1000	1000
Lot 36	1000	1000	1000
Lot 37	1000	1000	1000
Lot 38	1000	1000	1000
Lot 39	1000	1000	1000
Lot 40	1000	1000	1000
Lot 41	1000	1000	1000
Lot 42	1000	1000	1000
Lot 43	1000	1000	1000
Lot 44	1000	1000	1000
Lot 45	1000	1000	1000
Lot 46	1000	1000	1000
Lot 47	1000	1000	1000
Lot 48	1000	1000	1000
Lot 49	1000	1000	1000
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Lot 85	1000	1000	1000
Lot 86	1000	1000	1000
Lot 87	1000	1000	1000
Lot 88	1000	1000	1000
Lot 89	1000	1000	1000
Lot 90	1000	1000	1000
Lot 91	1000	1000	1000
Lot 92	1000	1000	1000
Lot 93	1000	1000	1000
Lot 94	1000	1000	1000
Lot 95	1000	1000	1000
Lot 96	1000	1000	1000
Lot 97	1000	1000	1000
Lot 98	1000	1000	1000
Lot 99	1000	1000	1000
Lot 100	1000	1000	1000

Project: [Project Name]  
 Location: [Location]  
 Date: [Date]

New Road, Maitrey  
 Site Plan  
 Ground Plan

PRP