

DATED

20<sup>th</sup> March

2020

- (1) GARY CLIFTON HUBERT
- (2) GO HOMES FAMILY LIMITED
- to
- (3) TENDRING DISTRICT COUNCIL
- (4) ESSEX COUNTY COUNCIL

SECTION 106 UNILATERAL UNDERTAKING

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under section 106 Town and Country Planning Act 1990 as amended  
relating to land on the south-west side of Colchester main road Alresford Colchester

THIS UNILATERAL UNDERTAKING is a DEED and is made on

2020

BY:

- (1) **Gary Clifton Hubert** of Grove Farm, School Road, Elmstead, Colchester, Essex ("the Owner")
- (2) **Go Homes Family Limited** (Company registration number 6281086) of Bonks Hill House, Bonks Hill, High Wych Road, Sawbridgeworth, Hertfordshire as the proposed successor in title to the Owner ("the Developer")

TO:

- (3) **TENDRING DISTRICT COUNCIL** of Council Offices, Thorpe Road, Weeley, CO16 9AJ ("the Council")
- (4) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex, CM1 1QH ("the County Council")

WHEREAS:

- (A) For the purposes of the Act, the Council and the County Council are both local planning authorities for the area within which the Site is located and the authorities by whom the obligations in this Deed are enforceable.
- (B) The County Council is the local highway authority and the local authority for statutory age education and pre statutory age education and childcare for the County of Essex and in whose administrative area the Site is located.
- (C) The Owner is the owner of the freehold interest in the Site registered at the Land Registry under title number EX691802
- (D) The Developer has an interest in the Site within the meaning of Section 106 of the 1990 Act by virtue of an option agreement dated 13 February 2017 and which option agreement is recorded in the Charges Register to the title number EX691802.
- (E) The Developer has submitted a planning application under reference number 19/0074/OUT to the Council for planning permission for the Development and the Council has refused to grant planning permission.
- (F) The Appeal has been lodged with the Secretary of State for Housing, Communities and Local Government ("the Secretary of State") against the Council's refusal to grant planning permission for the Development pursuant to Section 78 of the 1990 Act.

(G) The Appeal will be considered by an Inspector appointed by the Secretary of State and in the event that the said Inspector proposes to uphold the Appeal and grant the Planning Permission the Owner and the Developer agree that the said Planning Permission should be granted subject to the planning obligations set out herein.

(H) This Deed is entered into for the purposes of providing planning obligations binding the estate and interest of the Owner in the Site under Section 106 of the 1990 Act in the event that the Planning Permission is issued.

(I) The Developer intends to develop the Site pursuant to the Planning Permission and is entering into this Deed by way of consent to it and intends to discharge and carry out the obligations imposed on the Owner herein, as successor in title.

#### OPERATIVE PROVISIONS

### 1. INTERPRETATION

1.1 In this Agreement, the following words and expressions have the following meanings:  
"1990 Act" the Town and Country Planning Act 1990 as amended;

"the Appeal" the appeal lodged with the Secretary of State pursuant to Section 78 of the 1990 Act under reference number APP/P1560/W/19/3239006 against the refusal of the Council to grant planning permission for the Development;

"Commencement Date" subject to clause 3.3, the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act;

"Commencement of Development" subject to clause 3.3, the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and "Commence the Development" and "Commenced" and "Commencement" shall be construed accordingly;

**"Development"**

the development proposed in the planning application submitted to the Council (and which application the Council gave the reference 19/00474/OUT) for outline planning permission with all matters reserved (except for principal means of access) for a residential development comprising up to 40 dwellings incorporating affordable housing, infrastructure, public open space and vehicular access;

**"Dwelling"**

a house or self contained flat or bungalow constructed as part of the Development;

**"Index"**

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 the Council reasonably requires;

**"Index Linked"**

increased 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 of the contribution to which it relates;

**"Market Dwellings"**

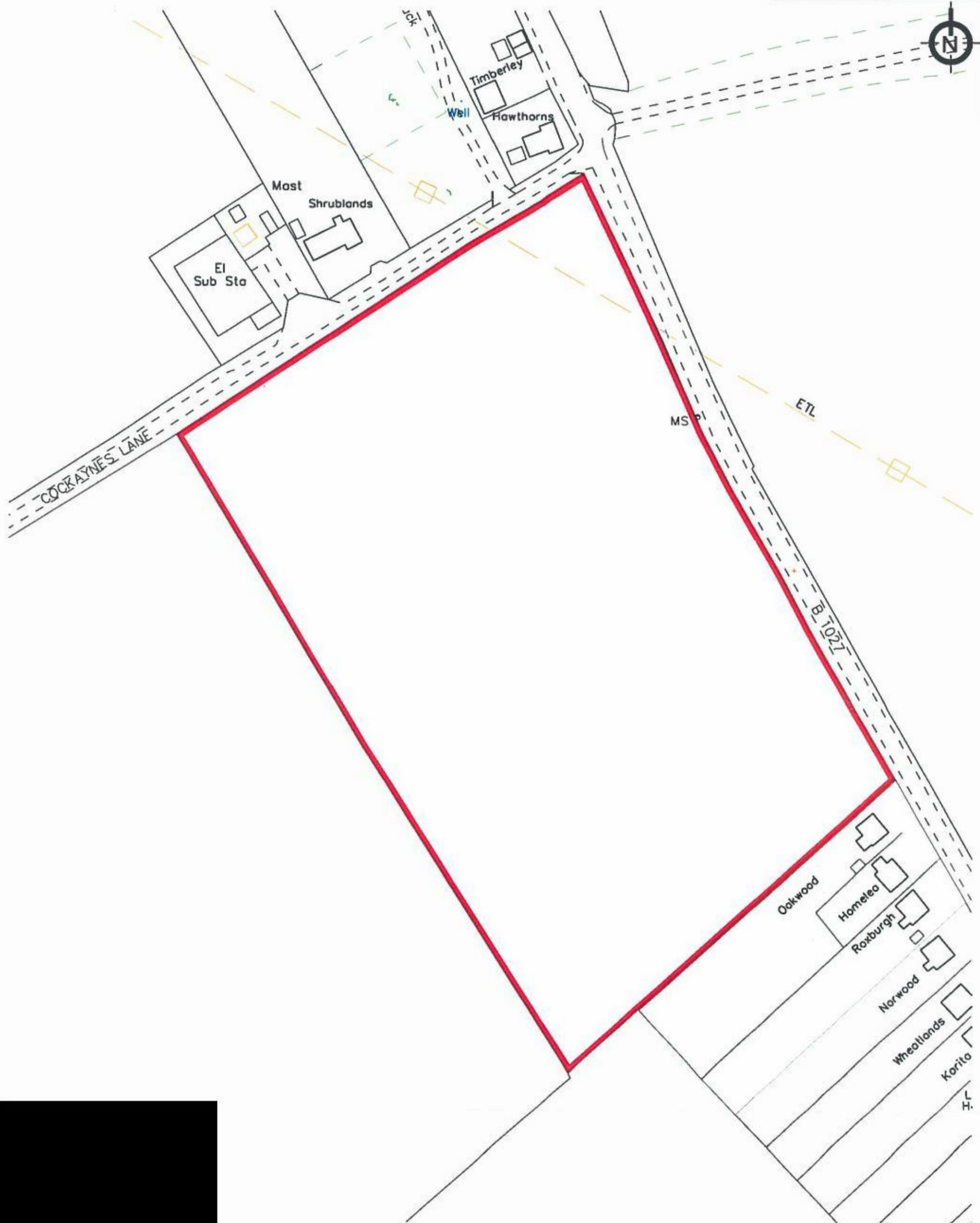
all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings;


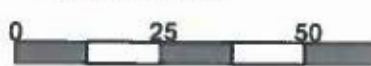
**"Notice of Commencement"**

the written notice advising of the proposed Commencement Date;

**"Occupation"**

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



<p>Go Planning Unit 5, Bolding Hatch Business Centre Bishops Stortford Road Roxwell Chelmsford Essex CM1 4LF</p>  <p>T: 01245 230712 - 01245 230666 E: Planning@goholdings.co.uk</p>	Client :	Go Homes	Scale : 1:1250 @ A3
	Project :	Cockaynes Lane, Alresford	
	Drawing :	PLAN 1	Status : Planning
	<p>© THIS DRAWING IS THE COPYRIGHT OF GO PLANNING LTD. It shall not be in any way used or reproduced without their prior written consent. All dimensions are to be checked on site or in the workshop prior to commencing any work. Work only to figured dimensions. Any discrepancies are to be reported to the Architect.</p>		Rev. -
		Dwg No :	2016-847-S106



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 or 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" and "Occupancy" shall mutatis mutandis be construed accordingly;

"Plan 1" the plan attached to this Agreement and marked Plan 1;

"Planning Permission" the planning permission for the Development at the Site granted pursuant to the Appeal shall include any application(s) to vary a condition on the Planning Permission or any application(s) for reserved matters approval provided that such application(s) shall not change the Unit Mix if stated in the Appeal where the Inspector appointed by the Secretary of State upholds the Appeal and grants the Planning Permission and shall relate substantially to the same development of the Site as is proposed under the aforementioned Appeal reference number;

"Site" the land on the south-west side of Colchester main road Alresford Colchester Essex and shown for identification purposes only edged red on Plan 1;

"Working Days" any day(s) upon which banks in the City of London are open to the general public.

1.2 In this Deed:

1.2.1 the clause or Schedule headings do not affect its interpretation;

- 1.2.2 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;
- 1.2.3 references to any statute or statutory provision include references to:
- 1.2.3.1 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
- 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Deed shall include the successors in title of that party. In addition, references to the Council shall include any successor local planning authority exercising planning powers under the 1990 Act and references to the County Council shall include any successor to its functions;
- 1.2.6 "including" means "including, without limitation";
- 1.2.7 any covenant by the Owner or the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 words importing the singular meaning where the context so admits shall include the plural meaning and vice versa;
- 1.2.9 words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner;
- 1.2.10 words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to cause permit or allow infringement of the restriction;
- 1.3 The parties to this Deed 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 DEED

2.1 This Deed 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 Deed are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council.

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

2.3 Nothing in this Deed 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 Deed 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) by the Owner to that statutory undertaker.

2.5 Nothing in this Deed 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

2.6 Subject to the provisions of Schedule 2 and Schedule 3, the obligations in this Deed will not be enforceable against the individual owner, lessees or occupiers of any Dwellings constructed on the Site pursuant to the Planning Permission or any mortgagee or chargee of such owner, lessee or occupier nor any receiver appointed by a mortgagee or chargee or any person deriving title from them.

3. COMMENCEMENT DATE

3.1. Save in respect of Clause 7 and this clause 3.1 which will become operative on the date of this Deed and in respect of obligations expressly in this Deed requiring compliance prior to Commencement Date and which will become operative on the issue of the Planning Permission this Deed, subject to clause 3.2 and 3.3 below, will come into effect on the Commencement Date.

3.2 If the Planning Inspector in the Decision Letter concludes that any of the planning obligations set out in this Deed are incompatible with any one of the tests set out at Regulation 122 and/or Regulation 123 of the Community Infrastructure Regulations 2010 (as amended) and

accordingly attaches no weight to that obligation or obligations in determining the Appeal then the relevant obligation or obligations shall, from the date of the Decision Letter, cease to have effect and the Owner shall be under no obligation to comply with the relevant obligation or obligations

3.3 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:

3.3.1 archaeological or site investigations or surveys;

3.3.2 site or soil surveys or site decontamination;

3.3.3 the clearance or demolition of the Site;

3.3.4 works connected with groundworks;

3.3.5 works for the provision of drainage or mains services to prepare the Site for development;

3.3.6 erection of fencing or boarding;

3.3.7 erection of boards advertising the Development (including the erection of advertising hoardings);

3.3.8 the construction of a temporary site compound or 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; and

3.3.9 works to the existing public highways and the provision of site access and temporary internal roads.

3.3.10 the laying out and construction of internal estate roads

#### 4. OBLIGATIONS OF THE PARTIES

4.1 The Owner so as to bind the Site covenants with the Council and the County Council to comply with the obligations set out in the Schedules to this Deed.

4.2 The Owner and the Developer covenants with the Council and the County Council to provide Notice of Commencement to the Council and the County Council no later than 20 Working Days prior to the Commencement Date.

- 4.3 The Owner and the Developer covenants with the Council and the County Council to provide:  
(a) not less than 10 Working Days notice in writing of the Intended first Occupation of the first Dwelling on the Site; and (b) covenants with the Council to provide not less than 10 Working Days notice in writing after seventy percent (70%) of the Market Dwellings have been Occupied.
- 4.4 Any covenant by the Owner and the Developer not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 4.5 Any obligation that prohibits the Owner and the Developer from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owner and the Developer to positively carry out those certain events by no later than the number of occupations set out therein unless the context otherwise requires.
- 4.6 No person will be liable for any breach of the terms of this Deed 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 but they will remain liable for any breaches of this Deed occurring before that date. For the further avoidance of doubt neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of Section 106 of the Act.
- 4.7 Representatives of the Council and the County Council may enter upon the Site at any reasonable time on reasonable prior written notice (and immediately in the event of an emergency provided that the County and County Council will give as much notice as they reasonably can) to ascertain whether the terms of this Deed and/or of the Planning Permission are or have been complied with subject to complying with all health and safety and security requirements required by the Owner or the Developer provided that this right shall cease and determine as follows:
- 4.7.1 in relation to any Dwelling, on first Occupation of that Dwelling; and
- 4.7.2 in relation to all other parts of the Site, on the first Occupation of the last Dwelling on the Site to be Occupied.
- 4.8 Any agreement obligation or covenant 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

or covenant 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.

4.9 If any provision of this Deed is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Deed shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Deed without illegality provided that any party may seek the consent of the other or others to the termination of this Deed 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 Deed

4.10 No variation to this Deed shall be effective unless made by deed and for the avoidance of doubt the consent, seal, signature, execution or approval of the owner, lessee or occupier of any Dwelling or their mortgagees or chargees or any receiver appointed by a mortgagee or chargee or any person deriving title from them shall not be required to vary any part of this Deed.

4.11 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 Deed shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Deed.

4.12 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 Deed then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

4.13 This Deed shall be enforceable as a local land charge and shall be registerable by the Council

4.14 That in the event that the Owner or the Developer fails to serve any of the notices that they are required by the provisions of this Deed to serve then the Council and/or the County Council shall be entitled to payment of the various contributions contained in this Deed at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of a contribution and the time period for the return of a contribution shall be extended accordingly.

#### 5. TERMINATION OF THIS DEED

5.1 This Deed will come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner and/or the Developer

before the Commencement Date or the time for implementation of the Planning Permission expires without the Commencement Date having occurred so as to render this Deed or any part of it irrelevant, impractical or unviable; or the Planning Permission expires.

6. NOTICES

6.1 Any notice, demand or any other communication served under this Deed will be effective only if in writing and 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 Developer as set out above;

6.1.3 for the Council it shall be marked to the attention of the Head of Planning at the Council address previously stated Ref 19/00474/OUT;

6.1.4 for the County Council relating to the Primary and Secondary Education Contribution it shall be marked for Infrastructure Planning, Planning Services, Place & Public Health, 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 on the next Working Day.

6.4 Otherwise than in relation to individual purchasers, occupiers and mortgagees of Dwellings and their successors in title the Owner shall give to the County Council within one month of the Owner disposing of any part of the Site written notice of the name and address of the person or persons to whom the Site or part thereof has been transferred provided that this obligation shall cease and determine on the first Occupation of the last Dwelling at the Site.

**7. COSTS OF THIS DEED**

Upon completion of this Deed the Developer covenants to pay:-

7.1 to the Council its reasonable and proper legal costs in a sum of One Thousand Two Hundred Pounds (£1,200.00) (plus VAT) and the County Council its reasonable and proper legal costs in the sum of £500.00 (no VAT) in connection with the preparation, negotiation and completion of this Agreement;

Prior to Commencement of Development to pay:

7.2 to the Council a contribution of £600.00 towards the Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner are required to observe and perform pursuant to the terms of this Deed; and

**8. JURISDICTION**

This Deed is to be governed by and interpreted in accordance with the law of England and Wales; and the courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

**9. EXECUTION**

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

## SCHEDULE 1

### The Primary Education Contribution and the Secondary Education Contribution

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

**"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 the Primary Education Purposes and Secondary Education Purposes;

**"Contributions"** means the Primary Education Contribution and the Secondary Education Contribution;

**"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 Prices Index (CPI) or in the event that 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;

**"Primary Education Contribution"** means the Primary Pupil Product multiplied by the cost generator of Fifteen Thousand Two Hundred and Eighty One pounds (£15,281.00) to which the Relevant Education Indexation shall be added;

**"Primary Purposes"** means the provision of and/or improvement of facilities for the education of children between the ages of 4 to 11 (both inclusive) including those with special educational needs within Tendring Group 3 as defined in Essex County Council's 10 Year Plan for School Places 2019-2028 including the reimbursement of capital funding for such

provision made by the County Council following Commencement of Development in anticipation of the Primary Education Contribution;

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

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

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

**“Qualifying Housing Units”** means the Qualifying Houses and Qualifying Flats;

**“Relevant 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 in paragraphs 3.2 and 3.3 of this Schedule 1 that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change in the General Index between the General Index point pertaining to April 2018 and the date payment is made to the County Council;

**“Relevant Education Indexation”** means the amounts that the Owner shall pay with and/or agree in addition to each part of the Contribution paid that shall in each case equal a sum calculated by taking the amount of the Contribution being paid and multiplying this amount by the percentage change in the Education Index between the Education Index point pertaining to April 2018 and Index point pertaining to the date payment is made to the County Council;

**“Secondary Education Contribution”** means the Secondary Pupil Product multiplied by the cost generator of Twenty Three Thousand Two Hundred and Fourteen pounds (£23,214.00 to which the Relevant Education Indexation shall be added;

**“Secondary Pupil Product”** means the number of Qualifying Flats multiplied by 0.1 plus the number of Qualifying Houses multiplied by 0.2;

**“Secondary Education Purposes”** means the provision of and/or improvement of facilities for the education of children (or young adults) between the ages of 11 to 19 (both inclusive) including those with special educational needs at the Secondary School including the reimbursement of capital funding for such provision made by the County Council following Commencement of Development in anticipation of the Secondary Education Contribution;

**“Secondary School”** means Colne Community School of Church Rd, Brightlingsea, Colchester, CO7 0QL or such successor education facility;



"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;

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

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

2.1 not less than three (3) months prior to Commencement to serve on the County Council notice stating the expected date Commencement will take place and state the Unit Mix and in the event that the Unit Mix constructed or to be constructed should at any time differ from the Unit Mix notified to the County Council then the Developer shall serve on the County Council a further notice stating the revised Unit Mix within ten (10) Working Days of the revised Unit Mix being decided and in the further event that the Developer fails to serve any notice set out in this Paragraph 2.1 the County Council may estimate and determine the Unit Mix as it sees fit acting reasonably.

2.2 to serve on the County Council a notice not less than eight (8) weeks prior to the first Occupation of the first Dwelling to be Occupied on the Site stating the expected date that such Occupation will take place.

2.3.1 to pay fifty percent (50%) of the Contributions to the County Council prior to Commencement of Development and not to Commence the Development until fifty percent (50%) of the education Contributions have been received by the County Council

2.3.2 to pay the remaining fifty percent (50%) of the Education Contributions to the County Council prior to the first Occupation of a Dwelling and not to Occupy any Dwelling (or cause or allow any Dwelling to be Occupied) until the County Council has received payment of the remaining fifty (50%) percent of the Education Contributions and 100% of the Education Contributions has thereby been paid

3. It is hereby agreed and declared:

3.1 In the event that the Education Contributions are paid later than dates set out in clause 2.3.1 and 2.3.2 then the amount of the Education Contributions or part thereof payable by the Owner and/or the Developer shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education

Index Point prevailing at the date of Commencement and the Education Index Point prevailing at the date of actual payment multiplied by the Education Contributions due or if greater an amount pertaining to interest on the Education Contributions or part thereof due calculated at the Seven Day LIBID Rate from the date of Commencement until the date payment of the Education Contributions is received by the County Council

3.2 In addition to the requirement of 3.1 above in the event that any sum due to be paid by the Owner and/or the Developer to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owner and the Developer hereby covenant to pay to County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) plus the Relevant General Indexation for each and every letter sent to the Owner pursuant to the debt

3.3 The County Council may utilise up to two percent (2%) of the total amount of the Education Contributions to a maximum of two thousand pounds sterling (£2,000) to which the Relevant General Indexations shall be added for the purposes of monitoring and managing the administration of the Education Contributions and for the avoidance of doubt such purposes are agreed by the Owner to form part of the definition of use of the Education Contributions

3.4 In the event that the Unit Mix to be constructed on the Development does not match the Unit Mix on which the Educations Contributions or part thereof paid was based the Owner and the Developer hereby covenant to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Education Contributions paid and the amount of the Education Contributions that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Education Contributions

4. the Owner and the Developer shall be entitled to request in writing that the County Council returns to the Owner and/or the Developer any unused part or parts of the Education Contributions (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the County Council received the Education Contributions in full PROVIDED THAT where a legally binding contract or contracts has been entered into in respect of the Education Contributions the Council shall be entitled to spend the Education Contributions under such a contract or contracts

5. In the event that no written request is received by the County Council from the Owner pursuant to paragraph 4 above the Owner shall accept the Education Contributions has been spent in full on the Education Purposes as appropriate

6. In the event that the Education Contributions are 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 any part of the Education Contributions or has entered into a legally binding contract or obligation to spend any part of the Education Contribution

## SCHEDULE 2

### OPEN SPACE

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

**"Council's Nominee"**

means Alresford Parish Council (of The Pavilion Ford Lane Alresford Essex CO7 8AT) or such other body as the Council shall nominate and advise the Owner of prior to any transaction that concerns the Council's Nominee;

**"the Open Space Specification"**

the specification for: (a) the laying out, profiling, clearing, planting, and landscaping the Open Space Land and generally for ensuring that the said land is fit for its intended purpose as recreational and amenity land to be enjoyed by members of the public as such; and (b) the provision of an equipped play area to be located within the Open Space Land

**"Open Space Land"**

the land identified on the Open Space Plan which is to be used for no purpose other than for public open space to provide a recreational and amenity facility for members of the public in perpetuity

**"Open Space Plan"**

the Land Registry compliant plan identifying the Open Space Land

**"Open Space Completion Certificate"**

a certificate or certificates in writing issued by a Chartered Landscape Architect that confirms that the Open Space Land has been laid out in accordance with the Open Space Specification

**"Open Space Management Plan"**

a management plan prepared by the Owner to include details of funding for the maintenance of the Open Space Land and the equipped play area and to be approved in writing by the Council for the ongoing management and maintenance of the Open Space Land and the equipped play area

"Management Company" means a private limited company established for inter alia the purpose of managing the Open Space Land and funded for that purpose by the Owner and its successors in title and by the Affordable Housing Provider (as defined in Schedule 4) and its successors in title or other owner of the Affordable Housing Dwellings and the Occupiers of the Market Dwellings

1. The Owner hereby covenants with the Council:-
  - 1.1 At the time of submission of the first application for reserved matters to submit the Open Space Plan, the Open Space Specification, the Open Space Management Plan, and details of the Management Company to the Council for approval
  - 1.2 Not to Occupy any Dwelling on the Site (or allow cause or permit any Dwelling on the Site to be Occupied) unless and until the Council has approved the Open Space Plan, the Open Space Specification, the Open Space Management Plan and the Management Company in writing such approval not to be unreasonably withheld or delayed
  - 1.3 Not to Occupy or allow cause or permit to be Occupied any more than seventy five percent (75%) of the Dwellings unless and until:
    - 1.3.1 the Open Space Land (including the equipped play area) has been physically set out on the Site in accordance with the Open Space Plan and the Open Space Specification and the Council has received the Open Space Completion Certificate; and
    - 1.3.2 the Owner has offered to transfer the Open Space to the Council's Nominee for the sum of £1.00 (One Pound) and if the Council's Nominee agrees to accept a transfer of the Open Space within 2 months of the date of the offer referred to above the Owner shall transfer the Open Space to the Council's Nominee in the event that the Council's Nominee does not agree to accept a transfer of the Open Space within 2 months of the date of the offer referred to above the Owner shall transfer the Open Space to the Management Company

- 1.4 To maintain the Open Space Land in accordance with the Open Space Management Plan for one year following the issue of the Open Space Completion Certificate or until such time as the transfer described in paragraph 1.3.2 has been completed
2. The Owner shall include in the transfer of the Open Space Land to the Council's Nominee or the Management Company:
  - 2.1 a covenant only to permit the Open Space Land to be utilised solely as recreation and amenity land by the general public
  - 2.2 a covenant to maintain the Open Space Land in perpetuity in accordance with the Open Space Management Plan
  - 2.3 a covenant not to transfer the Open Space Land into the individual ownership of the owner of the Dwellings and
  - 2.4 an obligation 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 this Paragraph 2 of this Schedule
- 3 The Owner shall furnish a copy of the transfer referred to in paragraph 1.3.2 above to the Council and shall inform the Council in writing of the contact details of the Management Company
4. The Owner shall either on transfer to the Council's Nominee pay a commuted maintenance sum of an amount previously agreed with the Council or include in the transfer or lease to the purchasers or lessees of the whole or any part of the Site an obligation to contribute an annual amount to the Council's Nominee or Management Company as appropriate which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Council's Nominee or the Management Company to discharge its obligations under this Schedule

### SCHEDULE 3

#### AFFORDABLE HOUSING

##### Part One

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

"Affordable Housing" means Affordable Rented Housing and Shared Ownership Housing;

"Affordable Housing Dwellings" means the Affordable Rented Dwellings and the Shared Ownership Dwellings to be constructed in accordance with the Affordable Housing Plan (to be agreed with the Council) and used for Affordable Housing in accordance with the design and quality standards required by Homes England applicable at the date of the Commencement of Development and all Affordable Housing Dwellings shall be designed to meet Lifetime Homes Standard (as in force at 5 July 2010) provided that if there is any conflict between such Lifetime Homes Standard requirements and the detailed design of the Development then the latter shall prevail;

"Affordable Housing Plan" means a plan showing the location, size, tenure (i.e. Affordable Rented Housing or Shared Ownership Housing) and type (i.e. 2 Bedroom or 3 Bedroom) of the Affordable Housing Dwellings PROVIDED THAT for the avoidance of any doubt the number of Affordable Housing Dwellings shall not be less than forty percent (40%) of the total number of Dwellings

comprised in the Development (as approved by the reserved matters);

**"Affordable Housing Provider"**

means a private registered provider as defined in Section 80 of the 2008 Act and which private registered provider is: (a) approved by the Council; and (b) regulated by the Homes and Communities Agency;

**"Affordable Rented Housing"**

means housing let to Persons in Housing Need for a rent that is at least twenty percent (20%) below the market rent for the relevant type of property within Alresford;

**"Affordable Rented Dwelling"**

means a Dwelling used for Affordable Rented Housing and the use in this Deed of the term "Affordable Rented Dwellings" shall be construed accordingly;

**"Homes England"**

means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body;

**"Housing Needs Register"**

means the register maintained by the Council or its nominee for Persons in Housing Need;

**Market Value**

means the relevant price at which the entire legal estate and equitable interest in the Affordable Housing Dwellings would be attributed on a freehold sale or leasehold disposal with vacant



possession at "market value" as defined within the Royal Institute of Chartered Surveyors' Appraisal and Valuation Manual (as amended or replaced thereof from time to time) and the avoidance of doubt the mechanism for the calculation of the "market value" for any Affordable Housing Dwellings shall exclude any reference to the Affordable Housing obligations as detailed in Schedule 3 of this agreement

**"Mortgagee"**

means a mortgagee or charge (or any receiver or administrative receiver appointed by such mortgagee or charges or any person appointed under any security documentation to enable such mortgagee or charge to realise its security or any administrator (each a receiver)) of the Affordable Housing Provider who holds the whole or any part of the Affordable Housing Dwellings

**"Persons In Housing Need"**

means a person or persons registered on the Council's Housing Needs Register

**"Protected Tenant"**

means a tenant of an Affordable Housing Dwelling 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 and is a 100% Staircaser;

(d) has purchased a one hundred percent (100%) interest in a particular Affordable Housing Dwelling with an equity loan

**"Shared Ownership Housing"** means housing whereby the Affordable Housing Provider grants a lease in a relevant dwelling for up to eighty percent (80%) of the equity in the said dwelling and retains an interest in the remainder for which it may charge a rent;

**"Shared Ownership Dwelling"** means a Dwelling used for Shared Ownership Housing and the use in this Deed of the term "Shared Ownership Dwellings" shall be construed accordingly;

**"2008 Act"** means the Housing and Regeneration Act 2008;

**"100% Staircaser"** means a lessee of a Shared Ownership Dwelling who has acquired one hundred percent (100%) of the equity in the said dwelling.

The Owner hereby covenants with the Council as follows:

1. To provide forty percent (40%) of the Dwellings as Affordable Housing Dwellings
2. Not to Commence the Development unless and until the Affordable Housing Plan has been submitted to and approved by the Council
3. Not to Occupy more than seventy five percent (75%) of the Market Dwellings until such time as all Affordable Housing Dwellings have been:
  - 3.1 constructed and are available for Occupation
  - 3.2 transferred to an Affordable Housing Provider and for the purposes of this Schedule only the expression "transfer" or "transferred" shall mean a transfer of the freehold (of any house or houses) or agreement for leasehold (of any flats) of the Affordable Housing Dwellings or an agreement for sale or lease with the Affordable Housing Provider that has been unconditionally released for completion by the Owner
4. Any transfer of Affordable Housing Dwelling to the Affordable Housing Provider or the Council shall include the provisions contained in Part Two of this Schedule

5. Subject to paragraph 7 of this Schedule the Affordable Housing Dwellings shall by Occupied for no purpose other than Affordable Housing

6. To serve on the Council notice in writing not less than 10 Working Days after seventy five percent (75%) of the Market Dwellings have been Occupied

7. Without prejudice to paragraph 5 the obligations and restrictions contained in this Schedule shall not bind:

7.1.1 a Protected Tenant or its mortgagee;

7.1.2 any 100% Staircaser or its mortgagee;

7.1.3 a Mortgagee may exercise its power of sale or other right of disposal of the Affordable Housing Dwellings (or part thereof) provided that a Mortgagee shall first give the opportunity for:-

7.1.3(a) an Approved Housing Provider to complete the purchase and transfer of the Affordable Housing Dwellings or any part thereof, erected thereon for a consideration of no less than Market Value of the Affordable Housing Dwellings (but for the avoidance of doubt the Mortgagee shall not be required to accept any consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses) and have given written notice to the Council at the start of the said period of the name and address of the Approved Housing Provider that has been given the opportunity (such purchase and transfer to be subject to the provisions of Schedule 3 of this agreement) for the period of one month; and

7.1.3(b) the Council complete the purchase and transfer of the Affordable Housing Dwellings erected thereon for a further period of one month for a consideration of on less than the Market Value of the Affordable Housing Dwellings (but for the avoidance of doubt the Mortgagee shall not be required to accept any consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses);

then on the expiry of both periods referred to above (namely two months) the Mortgagee may dispose of the Affordable Housing Dwellings or part thereof, free from the provisions of Schedule 3 of this agreement which shall cease to apply to the Affordable Housing Dwellings, the Mortgagee and any successors in title of the Mortgagee absolutely .

**Part Two**

- A. The transfer of the Affordable Housing Dwellings to the Affordable Housing Provider shall be with vacant possession
- B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Affordable Housing Provider shall be prepared by the Owner at no cost to the Affordable Housing Provider and shall contain:
  - 1. a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;
  - 2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and
  - 4. such other covenants and reservations as the Owner may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

## SCHEDULE 4

### Recreational Disturbance, Avoidance & Mitigation (RAMS)

#### 1. Defined Terms

In this Schedule, in addition to the words and expressions in clause 1 of this Undertaking the following words and expressions have the following meanings:

**"Relevant Designated European Wildlife Site(s)"** means Special Protection Areas, Special Areas of Conservation and Ramsar site(s) at Colne Estuary SPA and RAMSAR designated primarily to protect waders & wildfowl

**"Recreational Disturbance, Avoidance & Mitigation Contribution"**

means the sum of **£4,892.00 (Four Thousand, Eight Hundred and Ninety Two Pounds)** (Index Linked) calculated using the Recreational Disturbance, Avoidance & Mitigation Contribution Calculation to be paid by the Landowner as a contribution towards the impact of development on the Relevant Designated European Wildlife Sites such sum on money to be Index Linked.

**"Recreational Disturbance, Avoidance & Mitigation Contribution Calculation"**

means the sum of **£122.30 x (multiplied)** by the total number of new Dwellings proposed pursuant to the Planning Permission to calculate the Recreational Disturbance, Avoidance & Mitigation Contribution.

#### 2. Payment of the Contribution

2.1 The Landowner covenants and undertakes with the Council:

2.1.1 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.

