

THIS DEED is made the 5th day of August Two Thousand and Twenty
BY:

- (1) **SHANE JOHN LEACH** of 18 Fairfield Gardens Colchester Essex CO4 3WP and
CLARE BRAITHWAITE of The Dairy White Farm Elmstead Market CO7 7DB
("the Owners")
- (2) **JONATHAN ALAN HILLS** of Grange Farm Heckford Road Great Bentley
Colchester Essex CO7 8RR ("the Developer")

and creates planning obligations which are enforceable by

- (3) **TENDRING DISTRICT COUNCIL** of Council Offices, Thorpe Road, Weeley,
Clacton-on-Sea, Essex CO16 9AJ ("the Council") and
- (4) **ESSEX COUNTY COUNCIL** of County Hall 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 authority for statutory age education for the County
of Essex and in whose administrative area the Site is located
- C. The Owners are the owners of the freehold interest in the Site that is registered at
HM Land Registry under title numbers EX738276
- D. The Developer has the benefit of an option over the Site
- E. Outline planning permission was granted on appeal on 6 April 2017 by the
Secretary of State under reference number appeal reference number
APP/P1560/W/16/3160793 (Council reference 16/00219/OUT) (the "Outline
Permission") in relation to the Site
- F. A unilateral undertaking dated 6 February 2017 was given to the Council and the
County Council by the Owners and the Developer (the "2017 Unilateral
Undertaking") in relation to the Outline Permission
- G. Reserved matters approval was granted on 6 December 2019 by the Council
under reference number 19/01179/DETAIL (the "2019 RMA")
- H. A unilateral undertaking dated 30 July 2019 was given to the Council by the
Owners and the Developer in relation to the 2019 RMA (the "2019 Unilateral
Undertaking")
- I. A planning application reference 20/00534/FUL ("the Planning Application") has
been made for permission to develop that part of the Site shown edged red on
Plan 1 as an amendment to north east and south east corners of the planning
permission granted under 16/00219/OUT with 19/01179/DETAIL by removing
plots 11, 25 and 26 to introduce 11 new homes. Providing a net increase of 8
dwellings 2 of which are affordable homes

WE CERTIFY THIS TO
BE A TRUE COPY OF
THE ORIGINAL

BRACKETT STREET
22 STATION ROAD
CAMBRIDGE CB2 2JD
5/8/2020

- J. The number of Residential Dwellings to be provided as part of the Planning Application increases the number of Affordable Housing Dwellings to be provided across the Site as a whole and the Owners and the Developer have entered into this Deed to covenant that two additional Affordable Housing Dwellings will be provided on the Site in addition to those to be provided under the 2017 Unilateral Undertaking and to covenant to pay a financial sum for the purpose of mitigating harm arising from the development at the Site to the Special Protection Area, Special Areas of Conservation and Ramsar site designated primarily to protect waders & wildfowl specified in the Fifth Schedule
- K. The Owners require the Council to use the sum paid in accordance with the Fourth Schedule for the purpose of mitigating harm arising from the Development at the Special Protection Area, Special Areas of Conservation and Ramsar site designated primarily to protect waders & wildfowl specified in the Fifth Schedule
- L. The Council has not determined the Planning Application and considers the Owners should enter into this obligation to the intent that any objections relating to RAMS and Affordable Housing to the grant of planning permission are overcome.
- M. This Deed is enforceable in accordance with of section 106 of the Town and Country Planning Act 1990 if permission granted pursuant to the Planning Application
- N. This planning obligation is independent and separate from the 2017 Unilateral Undertaking and the 2019 Unilateral Undertaking and the Owners and the Developer have agreed to enter into this Deed to regulate the development of the Site as a whole and on the condition that upon Commencement of the 2020 Development the terms of this Deed will bind all of the Site and the 2017 Unilateral Undertaking and the 2019 Unilateral Undertaking will cease to have any effect

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

- 1.1 In this Deed where the context so admits the following words and expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990, as amended;
"2020 Development"	means the development authorised by the Planning Application;
"Commencement of the 2020 Development"	means the implementation of the 2020 Planning Permission by the carrying out of a material operation described in Section 56 of the Act and "Commence the 2020 Development" shall <i>mutatis mutandis</i> be construed accordingly PROVIDED THAT (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, enabling works, 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 shall not be a material operation and "Commence" and "Commence 2020 Development" shall be construed accordingly;
"Development"	means the development authorised by the Outline Permission and the 2019 RMA as amended by the 2020 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 the Council reasonably requires;
"Market Dwellings"	means all Residential Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings as defined in the Second Schedule;
"Notice of Commencement"	means notice in writing to advise the Council of the expected date of Commencement of the 2020 Development;
"Occupation"	means occupation of a building constructed as part of the Development and shall not include day time 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 the storage of plant and materials and "Occupy" and "Occupied" shall mutatis mutandis be construed accordingly;
"Plan 1"	means the drawing annexed hereto and marked "Plan 1";
"2020 Planning Permission"	means conditional planning permission for that part of the Development at the Site comprised in the Planning Application;
"Planning Permission"	means the Outline Permission and the 2019 RMA as amended by the 2020 Planning Permission;
"Residential Dwellings"	means the residential dwellings permitted by the Planning Permission;
"Site"	means land east of Tye Road Elmstead Colchester Essex CO7 7BB shown for identification edged red on the Site Plan;



EXTERNAL WORKS LEGEND

EXTERNAL WORKS FINISHES

- Roads
To Civil Engineers details
- Driveways + Raised Tackles
As per To Civil Engineers details
- Parking Courts
To Civil Engineers details
- Public Footpaths
To Civil Engineers details
- Proposed Grassed Area
To Landscaped Architect details
- Public Open Space
To Landscaped Architect details
- Private Footpaths + Paths Areas
To Landscaped Architect details
- Private Gardens
- Existing Trees
- Affordable Housing

Note:
Drawing to be used in conjunction with
Any existing Landscaping proposals and
Civil Engineers drawing

TYE ROAD HOUSING MIX		
TYPE	DESCRIPTION	SIZE
HT-24	3 Bedroom House	100 sqm (1075 sq ft)
HT-25	3 Bedroom House	85 sqm (915 sq ft)
HT-26	3 Bedroom House	105 sqm (1130 sq ft)



House Type 5



House Type 24



House Type 25



SITE PLAN - SCALE 1:500

hillsbuilding group

Bridge Mill House, Brook Street, Business Centre, Colchester, Essex, CO1 2UZ, 01206 795 998

Project Tye Road, Residential Development, Essex Road, Colchester, Essex	
Drawing Title PROPOSED SITE PLAN	
Project Ref / Drawing No.	170118/P/02/SP
Date 2/11/2020	Scale 1:500-200 @ A2

"Site Plan"

means the drawing annexed hereto marked 'Proposed Site Plan';

1.2 Where the context so requires:

- (a) A reference in this Deed to an Act of Parliament or any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same.
- (b) Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.
- (c) Any headings or side notes are for ease of reference only and shall not affect the construction of this Deed.
- (d) Where a party includes more than one person any obligations of that party shall be joint and several.

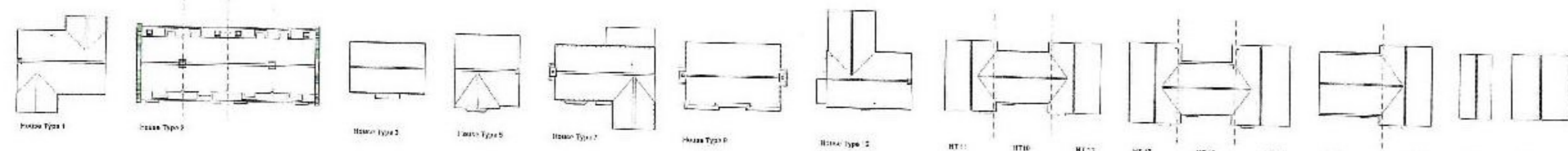
2. INTERPRETATION AND LEGAL EFFECT

2.1 This Deed is made pursuant to Section 106 of the Act and the covenants contained herein are planning obligations for the purposes of Section 106 of the Act in respect of which:

- (a) The Owners own the freehold title to the Site;
- (b) The Developer holds an option over the Site;
- (c) The Council and the County Council are the Local Planning Authorities entitled to enforce the provisions of this Deed and the covenants contained in this Deed shall be so enforceable;
- (d) This Deed is entered into in respect of the Site with the intent that it shall bind the Owners' freehold interest in the Site;
- (e) This Deed shall be binding on all successors and assigns in title of the Owners and any persons claiming under or through them;
- (e) This Deed has been executed as a Deed and the Owners shall supply a copy of it to the Council so that it may be registered by the Council against the Site as a Local Land Charge and entered into the planning register maintained by the Council under the Act;

2.2 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval;

2.3 Save in respect of the obligations in this Deed expressly requiring compliance prior to Commencement of the 2020 Development and which shall become operative on the issue of the 2020 Planning Permission this Deed shall thereafter come into effect on the Commencement of the 2020 Development PROVIDED ALWAYS THAT the obligations contained in this Deed are given by the Owners on the condition that following Commencement of the 2020 Development the terms of the



HOUSE TYPES		
House Type	Area (sqm)	Area (sqft)
1	117	1258
2	117	1258
3	117	1258
4	117	1258
5	117	1258
6	117	1258
7	117	1258
8	117	1258
9	117	1258
10	117	1258
11	117	1258
12	117	1258
13	117	1258
14	117	1258
15	117	1258
16	117	1258
17	117	1258
18	117	1258
19	117	1258
20	117	1258
21	117	1258
22	117	1258
23	117	1258
24	117	1258
25	117	1258
26	117	1258
27	117	1258
28	117	1258
29	117	1258
30	117	1258
31	117	1258
32	117	1258

TERRACING POLICY	
Grade	Area (sqm)
1	117
2	117
3	117



House Type	Quantity	No. of Beds	No. of Baths
1	1	2	1
2	1	2	1
3	1	2	1
4	1	2	1
5	1	2	1
6	1	2	1
7	1	2	1
8	1	2	1
9	1	2	1
10	1	2	1
11	1	2	1
12	1	2	1
13	1	2	1
14	1	2	1
15	1	2	1
16	1	2	1
17	1	2	1
18	1	2	1
19	1	2	1
20	1	2	1
21	1	2	1
22	1	2	1
23	1	2	1
24	1	2	1
25	1	2	1
26	1	2	1
27	1	2	1
28	1	2	1
29	1	2	1
30	1	2	1
31	1	2	1
32	1	2	1

Single Garage	0
Double Garage	0
Shared Garage	0
Total	0

Total Plot Area	2452
Total Green	2452
Plot % Green	100%

- ★ DETAILS ATTACHED TO HOUSES
- SCP FUTURE COLLECTION POINT
- RED LINE ROAD LAYOUT

NO DIMENSIONS TO BE SCALE FROM THIS DRAWING

The Client: [Name]
 Date: [Date]
 Project: [Project Name]

Item	Description	Quantity	Unit
1	Plot 1	1	sqm
2	Plot 2	1	sqm
3	Plot 3	1	sqm
4	Plot 4	1	sqm
5	Plot 5	1	sqm
6	Plot 6	1	sqm
7	Plot 7	1	sqm
8	Plot 8	1	sqm
9	Plot 9	1	sqm
10	Plot 10	1	sqm
11	Plot 11	1	sqm
12	Plot 12	1	sqm
13	Plot 13	1	sqm
14	Plot 14	1	sqm
15	Plot 15	1	sqm
16	Plot 16	1	sqm
17	Plot 17	1	sqm
18	Plot 18	1	sqm
19	Plot 19	1	sqm
20	Plot 20	1	sqm
21	Plot 21	1	sqm
22	Plot 22	1	sqm
23	Plot 23	1	sqm
24	Plot 24	1	sqm
25	Plot 25	1	sqm
26	Plot 26	1	sqm
27	Plot 27	1	sqm
28	Plot 28	1	sqm
29	Plot 29	1	sqm
30	Plot 30	1	sqm
31	Plot 31	1	sqm
32	Plot 32	1	sqm

Client: Hills Building
 Project: Tye Road, Residential Development, Elmstead Market
 Title: Proposed Site Plan

Project ID: 4115 - 0001
 Scale: 1:1000
 Date: 01/11/2023
 Drawing No: P30



2017 Unilateral Undertaking and the 2019 Unilateral Undertaking shall cease to have effect and shall not be enforceable against the Site;

- 2.4 The provisions of this Deed shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999;

3. MISCELLANEOUS

- 3.1 Nothing in this deed shall prohibit the rights to develop any part of the Site in accordance with a grant of further planning permission issued after the completion of this Deed;
- 3.2 No person shall be liable for any breach of this Deed unless they hold an interest in that part of the Site in respect of which such breach occurs or held such an interest at the date of the breach neither the reservation of 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;
- 3.3 The Owners shall save for liability in respect of any antecedent breach upon parting with their respective interests in the Site or part thereof be released from all obligations rights and duties under the terms of this Deed and all outstanding obligations rights and duties shall pass to the Owners' successors in title to the Site;
- 3.4 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 Owners to that statutory undertaker;
- 3.5 The obligations in this Deed will not be enforceable against a purchaser an occupier or tenant or mortgagee of any completed Market Dwelling or against any successor in title or against anyone deriving title from any of them;
- 3.6 The provisions and obligations set out in the First Schedule and the Third Schedule and the Fourth Schedule of this Deed shall not be enforceable against any Approved Body or any owner or occupier or tenant or mortgagee of any Affordable Housing Dwelling or any mortgagee of an Approved Body or against anyone deriving title from any of them;
- 3.7 Subject to the provisions of the Second Schedule in relation to a Chargee (as defined in the Second Schedule) a mortgagee of the Site will not incur any liability for any breach of the obligations contained in this Deed unless and until it becomes a mortgagee in possession of the Site;
- 3.8 The provisions of this Deed will come to an end if the 2020 Planning Permission is quashed revoked or otherwise withdrawn or modified without the consent of the Owners before the Commencement of the 2020 Development or the 2020 Planning Permission expires;
- 3.9 Where the provisions of this Deed come to an end under Clause 3.8 the Owners may request that the Council vacate or cancel the entry made in the Local Land Charges register in relation to this Deed or otherwise to record the fact that it has come to an end and no longer affects the Site.

4. NOTICES

- 4.1 All notices given or served or required to be given or served under this Deed shall be given or served as follows:
- (a) by personal delivery by hand (in which case service is immediately effected).
 - (b) by first class post (in which case service is effected on the second day after posting).
- 4.2 The address for service of notices:
- 4.2.1. for the Council shall be at the Council's address at the head of this Deed and notices shall be marked for the attention of the Council's Head of Planning ref 20/00534/FUL.
 - 4.2.2 for the County Council shall be at the County Council's address at the head of this Deed and notices shall be marked for the attention of S106 Officer Strategic Development (EGD).
 - 4.2.3 to the Owners as aforesaid.
 - 4.2.4 to the Developer as aforesaid.

5. THE OWNERS COVENANTS

5. The Owners HEREBY COVENANT with the Council and the County Council;
- 5.1. To serve on the Council and the County Council a Notice of Commencement not less than four weeks before the expected date of Commencement of the 2020 Development;
 - 5.2. To serve on the Council and the County Council a notice in writing not less than four weeks before the expected date of first Occupation of a Residential Dwelling
 - 5.3 To observe the planning obligations contained in the Schedules to this Deed;

6. DEVELOPER'S CONSENT AND ACKNOWLEDGEMENT

- 6.1 The Developer hereby agrees and acknowledges that its interest in the Site is bound by the planning obligations contained in this Deed PROVIDED THAT the said consent agreement and acknowledgement is given on the condition that the Developer shall not be required to observe or perform the restrictions and obligations contained in this Deed unless the Developer becomes the freehold owner of the Site and the Developer shall not be liable for any pre-existing breach.

7. JURISDICTION

- 7.1 This Deed is to be governed by and interpreted in accordance with the law of England 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.

IN WITNESS WHEREOF this Deed has been executed as a Doed the day and year first
before written

FIRST SCHEDULE

EDUCATION

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

"Education Contribution" means the Primary Education Contribution

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

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

"Education Purposes" means the Primary Education Purposes;

"Flat" means a Residential 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;

"House" means a Residential 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 two hundred and eighteen pounds (£12,218.00) to which the Relevant Education Indexation shall be added;

"Primary Education Purposes" means the use of the Primary Education Contribution towards the provision and/or improvement of facilities for the education and/or care of children between the ages of 4 to 12 (both inclusive) including those with special educational needs in the Tendring group 3 (Brightlingsea and Elmstead) primary forecast planning group area as specified in the County Council's document commissioning school places in Essex 2014-2019 including the reimbursement of capital funding for such provision (and/or improvement) made by the County Council in anticipation of the Primary Education Contribution;

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

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

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

"Qualifying Housing Units" means the Qualifying Flats and the Qualifying Houses;

"Relevant General Indexation" means the amounts that the Owners shall pay with and/or agree in addition to each part of the fee or sum set out under paragraphs 3.2.2 and 3.7 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 made to the County Council;

“Relevant Education Indexation” means the amount that the Owners 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 Index Point pertaining to April 2015 and the Education Index Point pertaining to the date the payment is due to be made to the County Council;

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

2. The Owners hereby covenant with the Council and the County Council as follows:
 - 2.1 to serve on the Council and the County Council prior to Commencement of the 2020 Development a notice stating the expected date Commencement will take place and the Unit Mix of the Development and in the event that the Unit Mix constructed or to be constructed as the Development should at any time differ from the Unit Mix notified to the County Council then the Owners shall serve on the Council and County Council a further notice stating the revised Unit Mix within twenty (20) Working Days of the revised Unit Mix being decided;
 - 2.2 not to Occupy any Residential Dwelling unless and until fifty percent (50%) of the Education Contribution has been paid to the County Council;
 - 2.3 to pay fifty percent (50%) of the Education Contribution to the County Council prior to the Occupation of any Residential Dwelling;
 - 2.4 not to Occupy (or allow, cause or permit the Occupation of) more than fifteen (15) of the Residential Dwellings unless and until a further (and final) fifty percent (50%) of the Education Contribution has been paid to the County Council;
 - 2.5 to pay a further (and final) fifty percent (50%) of the Education Contribution to the County Council before any more than fifteen (15) of the Residential Dwellings are Occupied ;
 - 2.6 The payments made under paragraphs 2.2 to 2.5 above are made strictly on the basis that:
 - 2.6.1 the Education Contribution when received shall be placed into an interest bearing account and utilised solely for the Primary Education Purposes;
 - 2.6.2 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 a Residential Dwelling 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) shall be returned to the party that made the payment 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 a Residential Dwelling the unexpended part of the Education Contribution that relates to that legally binding contract or obligation 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;
 - 2.6.3 that upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the first Occupation of a Residential Dwelling the County Council

shall provide the Owners 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;

3. The Owners confirm and acknowledge:
 - 3.1 In the event that the Owners fail to serve notice as set out in Paragraph 2.1 of this Schedule 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 after the date that the Education Contribution becomes payable under this Deed;
 - 3.2 In the event that the Unit Mix to be constructed as the Development does not match the Unit Mix on which the Education Contribution paid was based the Owners shall pay to the County Council within 30 working days of the change in Unit Mix becoming apparent any 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 amount shall from the date payment is received by the County Council form part of the Education Contribution;
 - 3.2.1 In the event that the parts of the Education Contribution are paid later than the dates they are due then the amount of the Education Contribution (or relevant part thereof) payable by the Owners 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 the 2020 Development and the Education Index Point prevailing at the date of payment multiplied by the Education Contribution (or relevant part thereof) due or if greater an amount pertaining to interest on the Education Contribution (or relevant 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;
 - 3.2.2 In addition to the requirement of 3.2.1 above in the event that any sum due to be paid by the Owners 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 Owners hereby covenants to pay to County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) plus Relevant General Indexation for each and every letter sent to the Owners pursuant to the debt;
 - 3.3 In the event that the Education Contribution is overpaid by the Owners then the County Council shall be under no obligation to return any such overpaid sum or sums in whole or in part if in good faith the County Council has spent the Education Contribution or has entered into a legally binding contract(s) or obligation(s) to spend the Education Contribution PROVIDED THAT the County Council shall otherwise be under an obligation to return any such overpaid sum or sums in whole or in part if the Owners notifies the County Council of such overpayment within 10 working days of such overpayment having been made to the County Council;
 - 3.4 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owners and received by the County Council within two months of receipt by the Owners of the County Council's statement referred to in Paragraph 2.6.3 of this Schedule and shall clearly state the grounds on which the expenditure is disputed;

- 3.5 In the event that no written request is received by the County Council from the Owners pursuant to Paragraph 2.6.2 or no valid dispute is raised by the Owners pursuant to Paragraph 3.4 above the Owners shall accept that the Education Contribution has been spent in full on the Primary Education Purposes;
- 3.6 The County Council may utilise up to two percent (2%) of the total amount of the Education Contribution received under this Deed to a maximum of two thousand pounds sterling (£2,000) to which the Relevant General Indexation shall be added 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 Owners to form part of the definitions for the use of the Education Contribution.

SECOND SCHEDULE

AFFORDABLE HOUSING

Part One

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 a Person 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 National Planning Policy Framework ("NPPF");
"Affordable Housing Dwellings"	means either (a) the Residential Dwellings to be provided as Affordable Housing pursuant to the Affordable Housing Scheme or (b) the two (2) Residential Dwellings to be transferred to the Council pursuant to the Affordable Housing Option;
"Affordable Housing Option"	means the option to accept two (2) of the Residential Dwellings being transferred to the Council at the Affordable Housing Price in lieu of the delivery of the Affordable Housing Scheme and which Residential Dwellings when transferred to the Council are to be used solely as Social Rented Housing;
"Affordable Housing Price"	means the sum of One Pound (£1.00) for each Affordable Housing Dwelling transferred to the Council pursuant to the Affordable Housing Option;
"Affordable Housing Plan"	means the plan to show the size and the location within the Site of the Affordable Housing Dwellings to be transferred to the Council pursuant to the Affordable Housing Option;
"Affordable Housing Scheme"	means the scheme to provide for not less than twenty five percent (25%) of the Residential Dwellings to be constructed, transferred (to an Approved Body) and used as Affordable Housing and which scheme shall include: (a) a plan that shows the location and size of the said Affordable Housing; and (b) the tenure split between social rented housing, affordable rented housing and intermediate housing (all as defined in Annex 2 of the NPPF); and (c) the identity of the Approved Provider;
"Approved Body"	means a private registered provider as defined in Section 80 of the Housing and Regeneration Act 2008 and which private registered provider is: (a)

"Chargee"	approved by the Council; and (b) regulated by the Homes England;
"Homes England"	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;
"Housing Administrator"	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body;
"Housing Needs Register"	has the meaning ascribed to it in the Housing and Planning Act 2016;
"Persons In Housing Need"	means the register maintained by the Council or its nominee or an Approved Body for Persons in Housing Need;
"Protected Tenant"	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;
"Social Rented Housing"	<p>means any tenant who:</p> <ul style="list-style-type: none"> (a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 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 in exercise of that person's statutory right in respect of a particular Affordable Housing Dwelling; <p>means housing which is owned by local authorities and/or private registered providers (as defined in Section 80 of the Housing and Regeneration Act 2008), for which guideline</p>

target rents are determined through the national rent regime;

"Specification"

means a specification for the design and construction of the Affordable Housing Dwellings to be transferred to the Council pursuant to the Affordable Housing Option and which specification shall include the fixtures and fittings to be used.

The Owners hereby covenants with the Council as follows:

1. Not to Commence the 2020 Development unless and until the Council has provided the Owners with notice in writing to confirm that the Council is exercising the Affordable Housing Option (in which case paragraphs 2, 3, 6 and 7 of this Schedule shall apply) or the Council requires the Owners to submit and implement the Affordable Housing Scheme (in which case paragraphs 4, 5, 6 and 7 of this Schedule shall apply) and in the event such notice is not served within 20 Working Days of the date of a request in writing to be served on the Council by the Owners for said notice to be served the Owners shall implement the Affordable Housing Scheme.
2. Not to Commence the 2020 Development unless and until the Affordable Housing Plan and the Specification have been submitted to the Council and the Council has approved the said Affordable Housing Plan and the Specification in writing PROVIDED THAT each of the said documents shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Owners within 12 weeks of the date on which each said document is submitted to the Council.
3. Not to Occupy (or allow, cause or permit the Occupation of) more than twenty five (25) Market Dwellings unless and until the two (2) Affordable Housing Dwellings have been:
 - 3.1 constructed in accordance with the Specification and are capable of being Occupied for their intended purpose; and
 - 3.2 transferred (freehold) to the Council for the Affordable Housing Price and for the purposes of this Schedule only the expression "transferred" shall mean a transfer of the freehold interest (of any house or block of flats) that comprises the Affordable Housing Dwellings or an agreement for sale agreed with the Council that has been unconditionally released for completion by the Owners Provided Always that the transfer of the Affordable Housing Dwellings to the Council shall be subject to the provisions contained in Part Two of this Schedule
4. Not to Commence the 2020 Development unless and until the Affordable Housing Scheme has been submitted to the Council for approval and the Council has approved the said Affordable Housing Scheme in writing PROVIDED THAT the said document shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Owners within 12 weeks of the date on which each said document is submitted to the Council.

5. Not to Occupy (or allow, cause or permit the Occupation of) more than twenty (20) Market Dwellings unless and until the Affordable Housing Dwellings referred to in the Affordable Housing Scheme have been:
 - 5.1 constructed and are available to be Occupied for their intended purpose; and
 - 5.2 transferred to the Approved Body and for the purposes of this Schedule only the expression "transferred" shall mean a transfer of the freehold interest (of any house or block of flats) or leasehold interest (of any flat in a block that also contains one or more Market Dwellings) that comprises 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 Owners Provided Always that any transfer of the Affordable Housing Dwellings to the Approved Body shall be subject to the provisions contained in Part Two of this Schedule.
6. (Subject always to paragraph 7 of this Schedule) the Affordable Housing Dwellings shall be Occupied for no purpose other than as Affordable Housing.
7. The Owners confirm and acknowledge that without prejudice to paragraph 6 the obligations and restrictions contained in this Schedule shall not bind:
 - 7.1. a Protected Tenant;
 - 7.2 any person or body deriving title through or from a Protected Tenant;
 - 7.3 a Chargee of the Approved Body of the whole of any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such Chargee PROVIDED THAT:
 - 7.3.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable housing Dwellings; and
 - 7.3.2 such Chargee shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Dwelling to another Approved Body or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 7.3.3 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

Part Two

- A. The transfer of the Affordable Housing Dwellings to the Council or the Approved Body (as appropriate) shall be with vacant possession.
- B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Council or the Approved Body shall be prepared by the Owners and the Owners shall pay the Council's or the Approved Body's reasonable costs of transferring the Affordable Housing Dwellings up to a total aggregate limit of £1,500 (One Thousand Five Hundred Pounds) on completion of the transfer deed.
- C. The transfer deed shall contain:
 - 1. a grant by the Owners 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
 - 3. such other covenants and reservations as the Owners may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

THIRD SCHEDULE

OPEN SPACE

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

"Open Space Specification"	the specification and layout plan and timing for the laying out, profiling, clearing, planting, landscaping the Open Space Land and setting out of the Play Area and generally for ensuring that the said land is fit for its intended purpose as recreational land to be enjoyed by members of the public as such;
"Open Space Land"	areas of land not to be less than 0.0235 hectares including the Play Area as shown on the Open Space Plan to be used for no purposes other than as public open space to provide a recreational facility for members of the public in perpetuity and as sustainable drainage;
"Open Space Completion Certificate"	means 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"	means a management plan prepared by the Owners to include levels of maintenance and details of funding for the maintenance of the Open Space Land and to be approved in writing by the Council for the ongoing management and maintenance of the Open Space Land;
"Open Space Plan"	a plan identifying the Open Space Land and the Play Area;
"Management Company"	means a management entity established for inter alia the purpose of managing and maintaining the Open Space Land and funded for that purpose by the Owners and their successors in title and the Occupiers of the Market Dwellings and if relevant the Approved Body as defined in the Second Schedule;
"Play Area"	An area of space within the Open Space Land that shall be laid out for children's play;

2. The Owners hereby covenant with the Council:-
- 2.1 At the time of submission of the first application for reserved matters approval 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;
- 2.2 Not to Commence the 2020 Development unless and until the Council has approved the Open Space Plan, the Open Space Specification and the Open

Space Management Plan in writing PROVIDED THAT each of the said documents shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Owners within 12 weeks of the date on which each said document is submitted to the Council;

- 2.3 To physically set out the Open Space Land in accordance with the Open Space Plan and the Open Space Specification and the timing contained therein;
- 2.4 Not to Occupy or allow cause or permit to be Occupied any more than 80% of the Residential Dwellings unless and until all of the Open Space Land has been physically set out on the Site in accordance with the Open Space Specification and the Council has received the relevant Open Space Completion Certificate;
- 2.5 To maintain the Open Space Land in accordance with the Open Space Management Plan for 1 year following the issue of the relevant Open Space Completion Certificate as appropriate or until such time as the transfer described in paragraph 2.6 has been completed;
- 2.6 To transfer the Open Space Land to the Management Company with all necessary easements and vacant possession who shall from that date manage and maintain the Open Space Land in perpetuity.
3. The Owners shall include in the transfer to the Management Company:
 - 3.1 a covenant only to permit the Open Space Land to be utilised solely as recreation land by the general public;
 - 3.2 a covenant to maintain the Open Space Land in perpetuity in accordance with the Open Space Management Plan; and
 - 3.3 a covenant not to transfer the Open Space Land into the individual ownership of the owners of the Dwellings.
4. The Owners shall furnish a copy of the transfers referred to in paragraph 2.6 above to the Council within 6 months of the completion of the transfer and shall inform the Council in writing of the contact details of the Management Company.
5. The Owners shall include in the transfer or lease to the purchasers or lessees of the whole or any part of the Site (other than the Council in relation to the Affordable Housing Dwellings under the Affordable Housing Option) an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Management Company to discharge its obligations under paragraph 3 of this Schedule.

FOURTH SCHEDULE

Recreational Disturbance, Avoidance & Mitigation Contribution (RAMS)

1. To notify the Council before Commencement of the 2020 Development to allow the calculation of the **RAMS** contribution (being £125.58 x (multiplied) by the number of Residential Dwellings) using the Index from April 2020 as the base index and the latest published Index to calculate the percentage change.
2. Not to Commence the 2020 Development unless and until the said **RAMS** contribution has been paid.
3. Notifications and payments shall be marked for the attention of the Section 106 Officer, Tendring District Council, Council Offices, Weeley, Clacton-on-Sea, Essex, CO16 9AJ or via email at obligations@tendringdc.gov.uk

FIFTH SCHEDULE

Relevant Designated European Wildlife Site

Special Areas of Conservation and Ramsar site(s) at Hamford Water SAC designated primarily to protect waders & wildfowl.

SIGNED as a **DEED** by
SHANE JOHN LEACH
in the presence of:-

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED as a **DEED** by
CLARE BRAITHWAITE
in the presence of:-

Witness Signature

Witness Name

Witness Address

Witness Occupation

SIGNED as a **DEED** by
JONATHAN ALAN HILLS
in the presence of:-

Witness Signature

Witness Name

Witness Address

Witness Occupation