

DATED 13th February

2020

**PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING UNDER
SECTION 106 OF THE TOWN & COUNTRY PLANNING ACT 1990 RELATING TO
LAND AT FOOTS FARM, THORPE ROAD, CLACTON-ON-SEA, ESSEX CO16
9RY**

MANNINGTREE FARMS LIMITED (1)

AND

LLOYDS BANK PLC (2)

TO

TENDRING DISTRICT COUNCIL(1)

AND

ESSEX COUNTY COUNCIL (2)

AND

RICHARD ARTHUR SARGEANT, TIMOTHY ROBERT SARGEANT, DAVID RICHARD SARGEANT

AND ANDREW IAN SARGEANT

PINS REFERENCE: APP/P1560/W/19/3239002

Foskett Marr Gadsby & Head LLP
181 High Street
Epping
Essex
CM16 4BQ
01992 578642
Howardparkinson@foskettmarr.co.uk

THIS DEED is dated

2020

and this Undertaking is given by:

- (1) **MANNINGTREE FARMS LIMITED** (Company Number 07274100) whose registered office is at Bentfield Place, Bentfield Road, Stansted, Essex, CM24 8HL ("**the Owner**");
- (2) **LLOYDS BANK PLC** incorporated and registered in England and Wales with company number 2065 whose registered office is at Secured Assets, Barnett Way, Gloucester GL4 3RL ("**the Mortgagee**")
- (3) **RICHARD ARTHUR SARGEANT, TIMOTHY ROBERT SARGEANT, DAVID RICHARD SARGEANT AND ANDREW IAN SARGEANT** all of The Priory, St Osyth, Clacton-on-Sea, Essex CO16 8NY ("**the Priory Precinct Owners**")

TO

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE ("**the Council**")
- (2) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex CM1 1QH ("**the County Council**")

BACKGROUND

- (A) For the purposes of the 1990 Act (as defined herein), the Council and the County Council are the local planning authorities for the area within which the Site (as defined herein) is located and the authorities who are entitled to enforce the obligations contained in this Agreement.
- (B) The Owner is the freehold owner of the Site title to which is registered at the Land Registry with the Title Number EX970548.
- (C) The Mortgagee is the registered proprietor of the Charge dated the 29th July 2002 referred to in entries numbered 6, 7 and 8 of the register of title number EX688873 ("**the Priory Precinct**") which property comprises St Osyth Priory Estate and has agreed to enter into this Deed to give its consent to the terms of the Unilateral

Undertaking insofar only as consenting to the arrangement in the Deed for access to the Priory Precinct to carry out the obligations but not further or otherwise.

- (D) The Priory Precinct Owners are the owners of the Priory Precinct and have agreed to enter into this Deed to give their consent to access and other arrangements to the Priory Precinct as hereinafter particularised.
- (E) The Owner has made the Planning Appeal and is proposing to carry out the development.
- (F) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development (as defined herein) in the manner hereinafter appearing.
- (G) The Owner is satisfied that the planning obligations contained in this Agreement comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that they are:
 - (i) necessary to make the Development acceptable in planning terms;
 - (ii) directly related to the Development; and
 - (iii) fairly and reasonably related in scale and kind to the Development.
- (H) The Owner gives this undertaking to perform the obligations set out in this deed subject to the grant of Planning Permission and subject to (but not by way of limitation) the provisions of clauses 4.1 and 5.3.
- (I) For the avoidance of doubt no planning or other obligation within this Agreement will be duplicated by performance of any planning or other obligation in any other Agreement.

OPERATIVE PROVISIONS

1. **INTERPRETATION**

- 1.1 In this Agreement, the following words and expressions have the following meanings:
 - “Appeal”** Means the appeal currently under consideration under PINS reference APP/P1560/W/19/3239002;

"1990 Act"	means the Town and Country Planning Act 1990 as amended;
"Commencement Date"	means, subject to clause 3.2, the date on which the Development commences by the carrying out on the Site pursuant to the grant of the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act;
"Commencement of Development"	means, subject to clause 3.2, 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" shall be construed accordingly;
"Community Infrastructure Levy"	means the Community Infrastructure Levy introduced by the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended or any successor levy or charge which triggers payments towards Infrastructure;
"Conservation Deficit"	The amount by which the cost of repair (and conversion to optimum beneficial use if appropriate) of a significant place exceeds its market value on completion of repair and conversion, allowing for all appropriate development costs in accordance with the Restoration Scheme and relevant practice and guidance;
"Contributions"	means together the Education Contribution, the Healthcare Contribution and the Open Space Maintenance Contribution (all as defined in the Schedules);

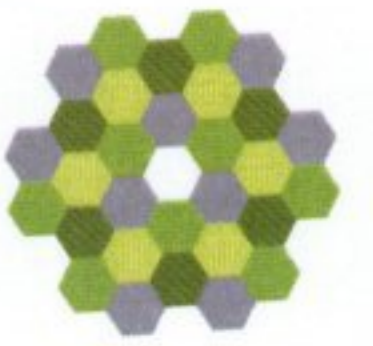
“Decision Letter”	means the notification of the outcome of the Appeal issued by the Inspector;
“Development”	means the development permitted by the Planning Permission;
“Dwelling”	means a house or self-contained flat or bungalow constructed as part of the Development;
“Faith in Maintenance Calendar”	The maintenance regime as produced by The Society for the Protection of Ancient Building and provided in Appendix 2;
“Index”	All Items Index of Retail Prices issued by the Office for National Statistics or all All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation as is appropriate;
“Index Linked”	means increased to reflect any increase in the appropriate 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;
“Infrastructure”	means the list of infrastructure projects or types of infrastructure intended to be funded by the Community Infrastructure Levy published by the Council in accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) or where no such list has been published means "infrastructure" as defined in section 216 of the Planning Act 2008 BUT FOR THE AVOIDANCE OF DOUBT this shall not

“Inspector”	include infrastructure required directly as a result of the Development;
“Listed Buildings”	the Planning Inspector appointed by The Secretary of State to determine the Appeal; the buildings in the Priory Precinct which are entered on the Secretary of State for Culture Media and Sport’s list of buildings of special architectural or historic interest and more particularly identified in Schedule 3;
“Market Dwellings”	means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings (as defined in Schedule 1);
“Notice of Commencement”	means notice in writing to advise of the proposed Commencement Date;
“Occupation”	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include occupation for the construction of the Development and shall not include 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;
“Phase”	means the phases of restoration identified in Schedule 2 and Appendix 1;

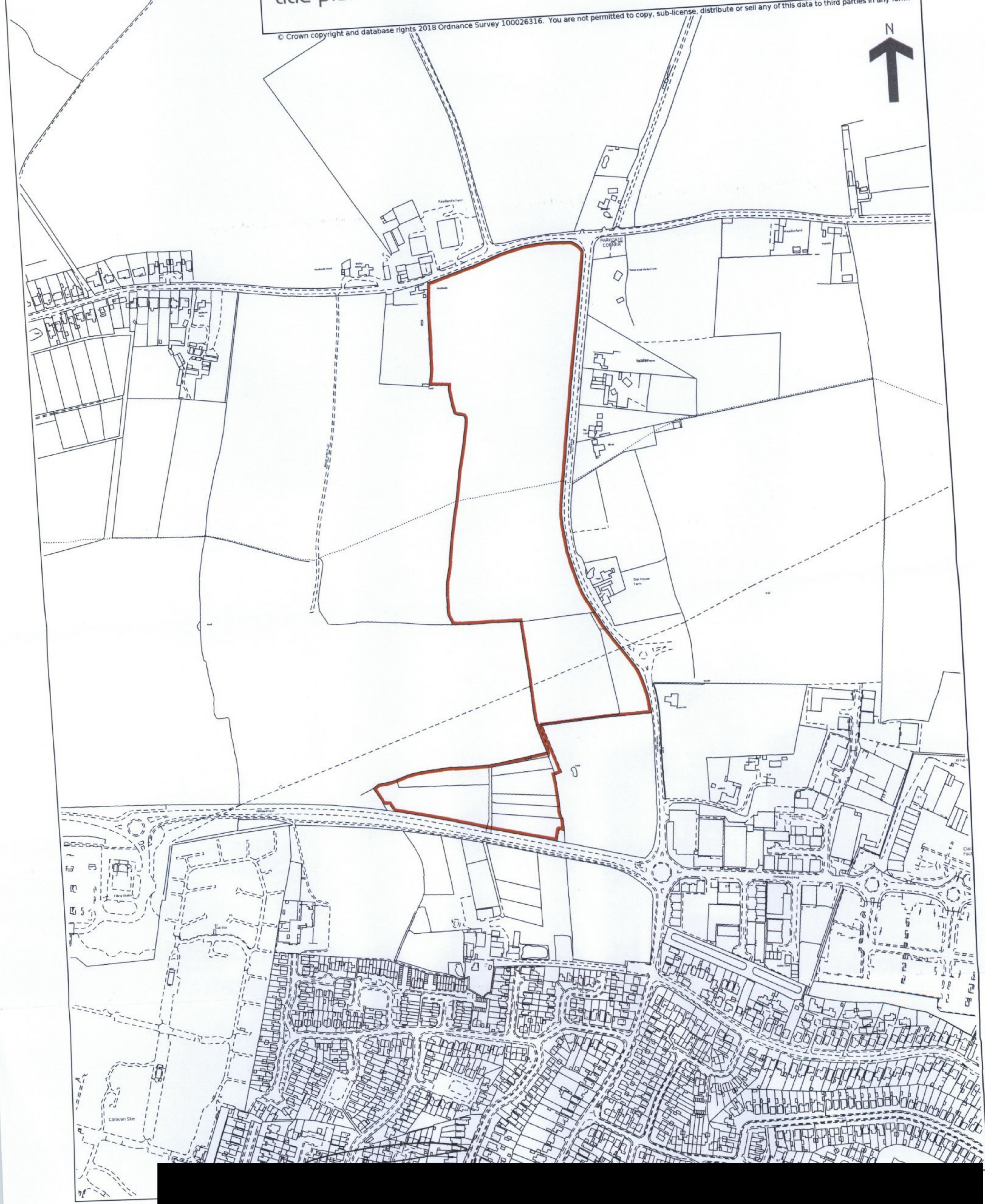
“Plan”	means the title plan for EX970548a copy of which is attached to this Agreement;
“Planning Application”	means the application which the Council has given reference TEN/18/01499 requesting outline planning permission (with all matters reserved other than strategic access points onto the public highway) for the erection of up to 245 dwellings, with associated public open space and infrastructure AND FOR THE AVOIDANCE OF ANY DOUBT for the purposes of this Agreement the term “Planning Application” shall (subject to the written confirmation of the Council to be given prior to the determination of any planning applications that may follow) include any application(s) for reserved matters approval or to vary a condition on the Planning Permission provided that such application(s) shall not increase the number of Dwellings and shall relate substantially to the same development of the Site as is proposed under the aforementioned application reference number;
“Planning Obligations”	means the obligations, conditions and stipulations set out in the Schedules to this agreement;
“Planning Permission”	means the planning permission granted in pursuance of the Planning Appeal or such other permission as may be granted by the Council in respect of the Site pursuant to an application for planning permission to amend such planning permission made pursuant to Section 73 of the Act provided that such permission does not materially alter the number of residential dwellings and / or the gross internal area of the commercial element of Development and the obligations

HM Land Registry
Official copy of
title plan

Title number **EX970548**
Ordnance Survey map reference **TM1718NE**
Scale **1:5000 reduced from 1:2500**
Administrative area **Essex : Tendring**



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contained in this Agreement;

“Priory Precinct”

means the land and buildings shown edged red on Plan 1 only and contained within registered under title number EX688873;

“Restoration Scheme”

those parts of the written scheme of works and specifications for the restoration of the Listed Buildings prepared by Carden & Godfrey and entitled Survey of Condition with Historical Notes and Repair Recommendations dated 2009 updated by site review of current condition May/June 2010 and as altered at the request of English Heritage to lessen the amount of work so as to better accord with good conservation practice and to reduce the Conservation Deficit as set out in Appendix 1 or 2 but not further or otherwise save as amended pursuant to paragraph 2.5 of the First Schedule together with the McBains Cooper Cost Plan dated March 2012 as amended by the BNP Paribas Report November 2014;

“Restoration Works”

The works of maintenance only identified in Appendix 2;

“St Osyth Priory”

Means the land and premises comprised as to part in title number EX688873

“Schedules”

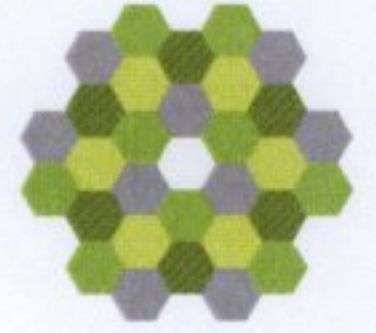
Means the Schedules 1, 2, 3, 4 and 5 of this Agreement;

“Seven Day LIBID Rate”

means an assessment of the rate of interest the Council and/or 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 eurocurrency

HM Land Registry
Official copy of
title plan

Title number **EX688873**
Ordnance Survey map reference **TM1215NW**
Scale **1:2500 reduced from 1:1250**
Administrative area **Essex : Tendring**



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deposits or such other rate as approved by the Council as appropriate;

“Site” means the land at Foots Farm, Thorpe Road, Clacton-on-Sea, Essex CO15 4DQ, and which land is shown for identification purposes only edged red on the Plan;

“Use Classes Order” means the Town and Country Planning (Use Classes) Order 1987, as amended;

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

1.2 In this Agreement:

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 Subject to the provisions of clause 2.7 post references to any party in this Agreement 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 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 Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and any such rights that arise under that Act are hereby excluded.

2. **EFFECT OF THIS AGREEMENT**

- 2.1 This Agreement is made pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and as the case may be by the County Council.
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972, Section 1 Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council and the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 The obligations in this Agreement will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.

- 2.5 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal and whether or not granted retrospectively.
- 2.6 Subject always to paragraph 5 of Part One of Schedule 1 a mortgagee of all or any of the Site will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under a security.
- 2.7 The obligations in this Agreement will not be enforceable against the individual owners, lessees or occupiers of any dwelling 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. This Agreement will come into effect on the Commencement Date following the grant of the Planning Permission.
- 3.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:
- 3.2.1 archaeological or site investigations or surveys;
 - 3.2.2 site or soil surveys or site decontamination;
 - 3.2.3 the clearance or demolition of the Site;
 - 3.2.4 works connected with groundworks;
 - 3.2.5 works for the provision of drainage or mains services to prepare the Site for development;
 - 3.2.6 erection of fencing or boarding;
 - 3.2.7 erection of boards advertising the Development (including the erection of advertising hoardings);
 - 3.2.8 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

3.2.9 works to the existing public highways and the provision of site access and temporary internal roads; and

3.2.10 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 Unilateral Undertaking following the grant of the Planning Permission and Commencement on the basis that they comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and subject to the provisions of this clause 4.1 and 5.3 post. Provided that and for the avoidance of doubt the obligations in Schedule 1 (Affordable Housing) and Schedule 2 (Heritage) are offered in the alternative and in no circumstances shall both apply and the preferred obligation as expressly identified in the Inspector's Decision Letter shall be the obligation to prevail and to be performed the other obligation being automatically cancelled and at an end. For the avoidance of doubt, if following the grant of planning permission the Inspector expresses no preference the owner shall be free to elect which of the obligations shall prevail, giving the Council written Notice of its election within 28 days of that election.
- 4.2 The Owner covenants with the Council and the County Council to provide a Notice of Commencement to the Council and the County Council not less than 3 Working Days prior to the Commencement Date.
- 4.3 The Owner covenants with the Council and the County Council to provide not less than 3 Working Days notice in writing of the intended first Occupation of the first Dwelling on the Site and thereafter to provide a Notice of occupation in respect of the various trigger points identified in Schedule 1 – Schedule 2.
- 4.4 The obligations of the Owner herein are given subject to and conditional upon compliance by the Council and the County Council of their respective obligations and continuing performance of the same as identified in the Schedules and otherwise as provided for in this Agreement.
- 4.5 The Council and the County Council are to act reasonably, promptly, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement,

the Council and the County Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation Provided Always that such notice, consent, approval, authorisation, agreement or other similar affirmation may only be given in writing and only prior to the act or event to which it applies (unless agreed otherwise by the Council Provided further that where the Council and the County Council reject any application for approval authorisation, agreement or similar affirmation required under the terms of this Agreement they shall give clear reasons for such decision and the steps that would be required to overcome such rejection. The Council and the County Council shall provide its detailed responses as above to any such application within 21 days of receipt of such application.

- 4.6 Any covenant by the Owner 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.
- 4.7 Any obligation that prohibits the Owner from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owner to positively carry out those certain events by no later than the number of occupations set out therein unless the context otherwise requires. If the Council or the County Council is responsible for delay then the Owner in order to mitigate its losses shall be able to serve notice on the Council or the County Council as the case may be of the details of such delay and the Owner may proceed with the Development on the basis that any Contributions due are held by their solicitor to the order of both the Owner, and the Council or the County Council as the case may be, which ever party is relevant pending resolution of such issue pursuant to Clause 7 post.
- 4.8 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the Priory Precinct or the part of the Site or the Priory Precinct in respect of which such breach occurs but they will remain liable for any breaches of this Agreement 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 or part of the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.8.
- 4.9 No compensation shall be payable by the Council or the County Council to any party to this Agreement or their successors in title and assigns arising from the terms of

this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council or the County Council. Provided that and for the avoidance of doubt nothing herein shall lessen or limit the duties of the Council or the County Council pursuant to clause 4.7 ante.

4.10 Representatives of the Council and the County Council may enter upon the Site and the Priory Precinct at any reasonable time on reasonable prior written notice giving at least 3 clear days before such entry is required (unless otherwise agreed with the Owner) (and immediately in the event of an emergency provided that the Council and the County Council will give as much notice as they reasonably can) to ascertain whether the terms of this Agreement are or have been complied with subject to complying with all health and safety and security requirements required by the Owner provided that this right shall cease and determine as follows:

4.10.1 in relation to any Dwelling on first Occupation of that Dwelling; and

4.10.2 in relation to all other parts of the Site, on the first Occupation of the last Dwelling on the Site to be Occupied

4.10.3 In relation to the Priory Precinct on the completion of the Restoration Scheme.

4.11 Any agreement obligation covenant or Agreement contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or Agreement is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.

4.12 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.

- 4.13 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent, seal, signature, execution or approval of the 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 Agreement.
- 4.14 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.15 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT 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.
- 4.16 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the Council as such and the Council and the County Council shall following the performance of all of the obligations contained in the Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 4.17 In the event that the Owner fails to serve any of the notices that they are required by the provisions of this Agreement to serve then the Council and/or the County Council shall be entitled to payment of the various Contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of a Contribution and the time period for the return of a Contribution shall be extended accordingly.
- 4.18 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts shall together constitute the one Agreement.

5. **TERMINATION OF THIS AGREEMENT**

- 5.1 This Agreement will come to an end if the Planning Permission is refused, quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner 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 Agreement or any part of it irrelevant, impractical or unviable; or the Planning Permission expires.

- 5.2 Where the Agreement comes to an end under clause 5.1 the Council shall, on the written request of the Owner, vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise record the fact that it has come to an end and no longer affects the Site.
- 5.3 In the event that the Secretary of State or an Inspector acting on her behalf states in her decision letter that any individual obligation within this Agreement is not compliant with the CIL Regulations or is otherwise not required or are otherwise not expressly identified by the Secretary of State or the Inspector acting on his behalf as being a requirement of the grant of Planning Permission then that planning obligation or those planning obligations will cease to have affect and will not be enforceable against the Owner by the Council or the County Council it being acknowledged that the obligations in Schedule 1 and Schedule 2 are offered in the alternative and that in no circumstances shall both apply.
- 5.4 The obligations shall be limited in accordance with any limitation as to amount or otherwise specified by the Inspector or Secretary of State; and
- 5.5 Where the Inspector or Secretary of State specifies that any or all of the obligations is not or are not required, then such obligation or obligations as shall be so specified shall be severed from this Deed and shall not be enforceable.

6. **NOTICES**

- 6.1 Any notice, demand or any other communication served under this Agreement 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 Council it shall be marked to the attention of the Head of Planning at the Council address Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE stated Ref 18/01499/OUT;

6.1.3 for the County Council relating to the Education Contribution it shall be marked for the Infrastructure Planning Officer, Planning Services, Place and Public Health, Essex County Council, 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 Council and 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. DETERMINATION OF DISPUTES

- 7.1 Subject to clause 7.7, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this clause 7. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 7.2 For the purposes of this clause 7 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 7.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 7.4.

- 7.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute).
- 7.5 The Specialist is to act as an independent expert and:
- 7.5.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
- 7.5.2 each party is to have a further ten Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 7.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 7.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
- 7.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 7.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.
- 7.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 7, including costs connected with the appointment of the Specialist and the Specialist's own costs will be decided by the Specialist.

- 7.7 This clause 7 ultimately does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England but the Owner may, and for the avoidance of doubt, refer such matters to a Specialist in order to mitigate delays and in order to obtain an opinion for the parties on any such issue.

8. COMMUNITY INFRASTRUCTURE LEVY

In the event that the Council adopts a charging schedule for the purposes of the Community Infrastructure Levy Regulations 2010 and such charging schedule takes effect prior to the date of Planning Permission (or following the grant of Planning Permission a related planning permission is granted pursuant to section 73 of the Act) the obligations contained in this Agreement which relate to Infrastructure covered by the charging schedule shall cease and no longer be of any effect where Community Infrastructure Levy is paid in relation to that Infrastructure.

9. JURISDICTION

This Agreement 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 Agreement.

10. MORTGAGEES CONSENT

- 10.1 The Mortgagee consents to the completion of this Agreement and declares that its interest in the Priory Precinct shall be bound by the terms of this Agreement as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Site.
- 10.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Agreement unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Site.
- 10.3 The Mortgagee consents to the completion of this deed and declares that its interest in that part of the Priory Precinct registered under title number EX688873 shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in that part of the Property.

11. OWNERSHIP

11.1 The Owner and the Priory Precinct Owners hereby warrants that no person other than the Mortgagee and the Priory Precinct owners have any material legal or equitable interest in the Site or the Priory Precinct.

11.2 The Priory Precinct Owners covenant as follows:

(a) Prior to parting with any or all of their interest in the Priory Precinct the Priory Precinct Owners shall reserve and secure the right for the Owners to carry out the Restoration Scheme to the Priory Precinct as set out in this Deed and this right shall be noted on the title to the Priory Precinct Land; and

(b) To notify the Council of any transfer of the Priory Precinct or part thereof and to provide copies of the updated title information to the Council once available

12. PRIORY PRECINCT

12.1 The Priory Precinct Owners agree with the Council to:

(a) give consent to the Owner or those appointed by the Owner to have access to the Priory Precinct for the sole purpose of performing its obligations under this Deed and pursuant to such reasonable and proper regulations (including but not by way of limitation hours of work and duration) as they shall impose in their sole discretion acting reasonably and with the agreement of the Council acting reasonably; and

(b) to allow the Council or those reasonably appointed by the Council and in connection with the obligations in the Deed access during normal working hours to the Priory Precinct by such route/s as agreed between the parties in order to inspect and monitor the maintenance of the Restoration Works PROVIDED ALWAYS THAT the Council shall give the Priory Precinct Owners, otherwise than in the case of an emergency, not less than 2 days' notice of any such visit.

13. EXECUTION

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

SCHEDULE 1

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 housing available 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 the dwellings to be provided as Affordable Housing pursuant to the Affordable Housing Scheme comprising 46% one bed Dwellings; 26% two bed Dwellings; 19% three bed Dwellings and 9% four bed Dwellings. 70% of which shall be provided at Affordable Rent and 30% of which shall be provided as Shared Ownership.
“Affordable Housing Scheme”	Means the scheme to provide for not more than seventy four of the Dwellings to be constructed, transferred (to an Approved Body) and used only as Affordable Housing and which scheme shall include; (a) a plan that shows the location of the said Affordable Housing; and (b) the tenure split between Social rented housing, Affordable rented housing and Intermediate housing (as defined in Annexe 2 of the National Planning Policy Framework); and (c) the Specification. The actual total requirement

will be to provide 30% of the number of units developed ("Example" number of units developed 200 Affordable Housing units = 60).

"Affordable Rent"

Means a rent chargeable up to 80% of open market rent levels, including service charges, for rental housing let by an Approved Body.

"Approved Body"

Means a private registered provider as defined in Section 80 of the Housing and Regeneration Act 2008.

"Housing Needs Register"

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

"Persons In Housing Need"

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

"Protected Tenant"

Means any tenant who:

(a) Has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling;

(b)

(c) Has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling; Has been granted a shared ownership lease in exercise of that persons' statutory right in respect of a particular Affordable Housing Dwelling;

“Shared Ownership”

means a Dwelling in respect of which a Person in Housing Need purchases from an Approved Body a percentage share of an Affordable Dwelling pursuant to the following arrangements:-

(i) the Approved Body grants to the Person in Housing Need a lease in respect of of the share purchased and retains the remaining percentage of equity;

(ii) the price paid by the by the Person in Housing Need for the shared purchased in the Open Market Value;

(iii) the Leaseholder pays to the Approved Body an Affordable Rent on the share of equity retained by the Approved Body;

(iv) the initial percentage of the equity of the Affordable Dwelling which can be purchased by the Person in Housing Need is between 25% and 75%; and

(v) further shares can be purchased by the Leaseholder at Open Market Value (“Staircasing”)

“Social Rented Housing”

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

“Specification”

means a specification for the design and construction of the Affordable Housing Dwellings to be transferred to the Approved Body and which specification shall include the fixtures and fittings to be used;

“Staircased Unit”

means a Shared Ownership Dwelling in respect of which a Leaseholder has purchased the whole of the equity (including the freehold) of an Affordable Dwelling (but

which shall exclude the freehold in the case of a flat).

The Owner hereby covenant with the Council as follows:

1. Not to Occupy a Market Dwelling unless and until:
 - a. The Affordable Housing Scheme has been submitted to the Council for approval and the Council has approved the said Affordable Housing Scheme in writing, such approval to not be unreasonably withheld or delayed ; and
 - b. The identity of the Approved Body (to whom the Affordable Housing Dwellings will be transferred) has been submitted to the Council for approval and the Council has approved the Approved Body in writing, such approval to not be unreasonably withheld or delayed.
2. Not to Occupy (or allow, cause or permit the Occupation of) more than sixty percent (60%) of the Market Dwellings unless and until all of the Affordable Housing Dwellings in the Affordable Housing Scheme have been:
 - a. Constructed and are available for occupation
 - b. Transferred to the Approved Body and for the purposes of this Schedule 2 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 of lease agreed with the Approved Body that has been unconditionally released for completion by the Owner Provided Always that any transfer of the Affordable Housing Dwellings to the Approved Body shall include the provisions contained in paragraphs A and C at part Two of this Schedule 2.
3. (subject always to paragraph 6 of this Schedule 1) the Affordable Housing Dwellings shall be Occupied for no purpose other than as Affordable Housing, subject always to the ability of the Owner to vary such restriction at their absolute discretion.

4. It is Hereby Agreed and Declared:

- a. Without prejudice to paragraph 3 the obligations and restrictions contained in this Schedule 1 shall not bind:
- b. A Protected Tenant;
- c. Any such person or body deriving title through or from a Protected Tenant;
- d. A mortgagee of the Approved Body who has become a mortgagee in possession PROVIDED THAT the mortgagee in possession has first provided the Council with notice in writing that they have taken possession of the Affordable Housing Dwelling (or Affordable Housing Dwellings) and have given the Council eight (8) weeks from the date of that notice to put forward a proposal to purchase the Affordable Housing Dwelling (or Affordable Housing Dwellings) at a fair price which at least covers the financial extent of the mortgagee in possession's charge

Part Four

- A. The transfer of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession.
- B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Approved Body shall be prepared by the Owners.
- 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, obligations 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.

SCHEDULE 2

HERITAGE ASSETS

The Owner and the Priory Precinct Owners hereby covenant with the Council as follows:

1. Notification

To give written notice to the Council of the Operative Date not less than 14 days before such date (the "Commencement Notice") and to notify the Council in writing prior to Completion of the first (1st) Dwelling Unit, the 73th Dwelling Unit, the 122nd Dwelling Unit and the 237th Dwelling Unit.

2. Restoration Scheme

2.1. The Owner will following Commencement of the Development undertake the repair of those Listed Buildings particularised in Schedule 3 ahead of the completion of the Phases of the Dwelling Units set out herein. The repairs are those particularised in Appendix 1 as aforesaid.

2.2. The Owner covenants that save as agreed with the Council pursuant to the provisions within paragraph 2.3 of this Schedule 2:

2.2.1. No more than 80 Dwellings shall be Completed prior to the completion of the works at (a) of Appendix 1; and

2.2.2. No more than 120 Dwellings shall be Completed prior to the completion of the works at (b) of Appendix 1; and

No more than 240 Dwellings shall be Completed prior to the completion of the works at (c) of Appendix 1;

2.3. Without prejudice to paragraph 2.4 below to implement the Restoration Scheme generally in accordance with the sequencing of the works as particularised in Appendix 1 as aforesaid subject to such alterations and amendments (being such as by their nature and extent do not require the submission of a formal planning application) as may be agreed in writing with the Council (such agreement not to be unreasonably withheld or delayed) in the sequencing of the Restoration Scheme and the Dwellings so

as to better restore and secure the future of the identified Listed Buildings and (without limitation to the aforesaid) to such reasonable delays or amendments necessitated that are approved by the Council, acting reasonably and that may arise or result due to:

- a. Working construction or building conditions or any other material factor that may arise during the carrying out of the works
- b. The condition or state of any part of the identified Listed Buildings necessitating urgent works or so as to prioritise works otherwise than in accordance with the scheme together with the grant of any necessary Listed Building Consent or Consent pursuant to Works to an Ancient Monument
- c. Market conditions in connection with the sale of the Dwellings Units or otherwise

and for the avoidance of doubt the Restoration Scheme or any part of the works of repair and conversion to the Listed Buildings specified within it may be completed accordingly ahead of the Proposed Development or Commencement as set out in Appendix 1 as aforesaid and further it is recognised that, in such circumstances when a rescheduling of the Restoration Scheme is appropriate, the Council may reasonably require a Bond as described in paragraph 2.3 of this Schedule or the Owner may provide a Bond where such agreed alteration in sequencing may delay the completion of part of the works comprised in the Restoration Scheme arises. The Bond would be a sum that is equal to the agreed construction cost of works in the Restoration Scheme that would be outstanding plus a contingency of at least 10% in relation to the respective Phase as contained in Appendix 1 as aforesaid.

2.3. To provide a Bond when requested by the Council pursuant to paragraph 2.2 above and with a Bondsman first having been approved in writing by the Council acting reasonably.

2.4. For the avoidance of doubt the Bondsman shall be released from all liability under the Bond and the obligations in this Agreement on completion of the works specified in the Restoration Scheme to the reasonable satisfaction of the Council

- 2.5. In the event of the receipt of any third party funding in respect of any aspect of the works set out in the Restoration Scheme the parties to this Agreement shall agree the further works to be added to the Restoration Scheme which shall reflect the total value of the works forming the Restoration Scheme as at the date of this Agreement
- 2.6. For the avoidance of doubt the individual buyers/tenants and their mortgagees of the Dwelling Units shall not be bound by the phasing provisions herein and such purchase or Lease shall be free from the same PROVIDED ALWAYS that this shall not fetter the discretion of the Council to apply occupational restrictions on a phase by phase basis.
- 2.7. The Council and its advisors shall be permitted access upon reasonable prior notice and subject to such operational requirements as are reasonably required to the Priory Precinct for the purposes of monitoring inspecting and approving the works pursuant to the Restoration Scheme (such approvals not to be unreasonably withheld or delayed and the provisions of clause 2.5 ante shall apply in all respects to this clause).
- 2.8. Subject to the provisions of this Schedule, the Restoration Scheme will be completed no later than 5 years from the Date of Commencement.

3. THE MANAGEMENT PLANS

3.1. THE LISTED BUILDINGS

Following the completion of each Phase of the Restoration Scheme as identified in Appendix 1 to put in place a maintenance regime so that the completed Restoration Scheme as enabled by the Planning Permission are appropriately thereafter maintained in accordance with the Faith in Maintenance Calendar.

- 3.2. To prior to Completion of the first Dwelling Unit on the site that the Owner will form a Management Company or Management Companies ("The Management Company")

which will be a registered limited company for the purposes of being responsible for the future maintenance of the Restoration Works identified at Appendix 2 in accordance with recognised good practice and the Faith in Maintenance Calendar to the satisfaction of the Council acting reasonably.

- 3.3. The Priory Precinct Owners shall afford all necessary and proper rights of access to the Priory Precinct for the purposes of enabling Owner and the Management Company to undertake the Restoration Works comprised in Appendix 2 and their future maintenance as above and shall afford all necessary and proper rights of access to the Council to the Priory Precinct for the purposes of inspecting any Restoration Works and thereafter their maintenance.

SCHEDULE 3

Listed Buildings

1. Darcey House (Grade I)
comprises:
 - i. Abbots Lodgings
 - ii. South Wing Roof
2. Crenellated Wall (Grade II*)

Appendix 1 **RESTORATION SCHEME**

Phase	St Osyth Priory Precinct S.106 Restoration Works (6th January 2020)	Dwelling Units Completion
a.	To complete the internal fitout/improvement works to the Abbotts's Lodgings (Darcy House West). (Items 1A to 6D proportioned on a square footage basis).	Prior to Completion 30% of the approved Dwelling Units
b.	To complete the Darcy House South Wing Roof - Section 2.3.2.1a to 2.3.2.1k	Prior to Completion of 50% of the approved Dwelling Units
c.	To complete the Works to the Crenellated Wall Section (6.1.2.1a to 6.1.2.2j)	Prior to Completion of 90% of the approved Dwelling Units

APPENDIX 2 SPAB CALDENDAR

Faith in Maintenance Calendar

Regular checks are a vital part of building maintenance. Check as frequently as you can, but preferably no less often than that suggested below. The best time to check gutters and rainwater goods is during or just after rain so this will help you to spot any leaking sections. Further information and guidance can be found on the Faith in Maintenance website at www.spab.co.uk

Tick the boxes as you complete each task. You can also use this chart to identify any points of concern that need to be addressed.



JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE
<p>Things to do:</p> <ul style="list-style-type: none"> Check the pitched roof for any loose tiles or broken eaves. Check the gutters for any debris or blockages. Check the rainwater pipes for any leaks or blockages. Check the downpipes for any leaks or blockages. Check the roof for any signs of wear or damage. 	<p>Things to do:</p> <ul style="list-style-type: none"> Check the roof for any signs of wear or damage. Check the gutters for any debris or blockages. Check the rainwater pipes for any leaks or blockages. Check the downpipes for any leaks or blockages. Check the roof for any signs of wear or damage. 	<p>Things to look for:</p> <ul style="list-style-type: none"> Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. 	<p>Things to look for:</p> <ul style="list-style-type: none"> Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. 	<p>Things to do:</p> <ul style="list-style-type: none"> Check the roof for any signs of wear or damage. Check the gutters for any debris or blockages. Check the rainwater pipes for any leaks or blockages. Check the downpipes for any leaks or blockages. Check the roof for any signs of wear or damage. 	<p>Things to look for:</p> <ul style="list-style-type: none"> Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage.
<p>Safety</p> <ul style="list-style-type: none"> Always use a ladder correctly. Never work alone. Use proper lifting techniques. Wear your safety harness. Check the weather before working. Use the correct tools for the job. Keep your work area clear. Use the correct PPE for the job. Follow the manufacturer's instructions. Use the correct fall protection. Use the correct first aid kit. Use the correct fire extinguisher. Use the correct fire escape route. Use the correct fire alarm. Use the correct fire extinguisher. Use the correct fire escape route. Use the correct fire alarm. 					
<p>Name and contact details for workers or supplier</p>					

Faith in Maintenance Calendar

Regular checks are a vital part of building maintenance. Check as frequently as you can, but preferably no less often than that suggested below. The best time to check gutters and rainwater goods is during or just after rain so this will help you to spot any leaking sections. Further information and guidance can be found on the Faith in Maintenance website at www.spab.co.uk

Tick the boxes as you complete each task. You can also use this chart to identify any points of concern that need to be addressed.



JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
<p>Things to look for:</p> <ul style="list-style-type: none"> Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. 	<p>Things to do:</p> <p><i>Take a break!</i></p>	<p>Things to look for:</p> <ul style="list-style-type: none"> Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. 	<p>Things to look for:</p> <ul style="list-style-type: none"> Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. 	<p>Things to look for:</p> <ul style="list-style-type: none"> Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. Check for any signs of wear or damage. 	<p>Things to do:</p> <ul style="list-style-type: none"> Check the roof for any signs of wear or damage. Check the gutters for any debris or blockages. Check the rainwater pipes for any leaks or blockages. Check the downpipes for any leaks or blockages. Check the roof for any signs of wear or damage.
<p>Safety</p> <ul style="list-style-type: none"> Always use a ladder correctly. Never work alone. Use proper lifting techniques. Wear your safety harness. Check the weather before working. Use the correct tools for the job. Keep your work area clear. Use the correct PPE for the job. Follow the manufacturer's instructions. Use the correct fall protection. Use the correct first aid kit. Use the correct fire extinguisher. Use the correct fire escape route. Use the correct fire alarm. 					
<p>Name and contact details for workers or supplier</p>					

SCHEDULE 4

EDUCATION CONTRIBUTION

Education Plan

1. In this Schedule 2 unless the context requires otherwise the following words and expressions shall have the following meanings:

“Alternative Education Plan” has the meaning set out in clause 5 of this Schedule.

“Education Contribution” means the sum of the Primary Education Contribution and the Secondary Education Contribution to which the Relevant Education Indexation shall be added

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

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

“Flat” means a Dwelling that occupies a single floor and /or does not benefit from private open space for the exclusive use of the residents of the Dwelling and no other persons

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

“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) payable to the County Council for the Primary Education Purposes

“Primary Education Purposes” means the use of the Primary Education Contribution towards the education and/or care of children between the ages of 4 to 11 (both inclusive) including those with special educational needs at Engaines Primary School and/or a new primary school planned for the area that could accommodate primary school aged children from the Development] or successor education facilities

including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Primary Education Contribution

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

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

“Qualifying Houses” means the number of Dwellings that shall be constructed on the Site that have two or more rooms that may by design be used as bedrooms which are not by definition Qualifying Flats

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

“Relevant Education Indexation” means the amount that the Owner shall pay with and in addition to the Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Education Contribution being paid and by multiplying such amount by the percentage changes in the Education Index Point as at April 2018 and the Education Index Point on the date the payment is due to the County Council

“Relevant General Indexation” means the amounts that the Owner shall pay with and/or agree in addition to each part of the fee or sum set out under paragraph 4.3.1 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 Index Point pertaining to April 2018 and 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 Forty One Pounds (£23,241)

“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 use of the Secondary Education Contribution towards the expansion of the [Tendring Technology College or Clacton County High] (which school provides for the education and/or care of children (or young adults) between the ages of 11 to 19 (both inclusive)) or successor education facilities including the reimbursement of capital funding for such provision made by the

County Council in anticipation of receipt of the Secondary Education Contribution

“Seven Day LIBID Rate” means 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 eurocurrency deposits or such other rate that the County Council reasonably consider appropriate

AND

In the event that the Education Contribution or part thereof is paid later than the relevant dates for payment then the amount of the Education Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the relevant date for payment and the Education Index Point prevailing at the date of payment multiplied by the Education Contribution or part thereof due or if greater an amount pertaining to interest on the Education Contribution or part thereof calculated at the Seven Day LIBID Rate from the relevant date for payment until the date payment of the amount due is received by the County Council

“Unit Mix” means the number of Qualifying Flats and the number of Qualifying Houses and the number of Dwellings that by definition shall not be counted as Qualifying Flats or Qualifying Houses the sum of which shall for the avoidance of doubt equal the total number of Dwellings to be constructed on the Site pursuant to the Planning Permission or created by conversion of an existing building on the Site

2. The Owner hereby covenants with the Council and the County Council as follows:
 - 2.1 to serve on the Council and the County Council not less than three (3) months prior to Commencement of 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 Owner shall serve on the Council and County Council a further notice stating the revised Unit Mix within fourteen (14) Days of the revised Unit Mix being decided
 - 2.1.1 to serve on the Council and the County Council a notice on first Occupation of a Dwelling within one (1) month thereof and on a six (6) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings the Unit Mix of Dwellings that are completed but not Occupied the Unit Mix of Dwellings that are under construction

and the Unit Mix of Dwellings where construction work has yet to start at the time the notice is served

- 2.2 not to Commence Development unless and until ten percent (10%) of the Education Contribution has been paid to the County Council
 - 2.3 to pay ten percent (10%) of the Education Contribution to the County Council prior to Commencement of Development
 - 2.4 not to Occupy (or allow, cause or permit the Occupation of) more than 20% of the Dwellings unless and until an additional twenty five percent (25%) of the Education Contribution has been paid to the County Council giving an aggregate total of 35%.
 - 2.5 to pay a further thirty five percent (35%) of the Education Contribution to the County Council before any more than 30% of the Dwellings are Occupied given an aggregate total of 70%
 - 2.6 not to Occupy (or allow, cause or permit the Occupation of) more than 50% of the Dwellings unless and until a further thirty percent (30%) of the Education Contribution has been paid to the County Council giving an aggregate total of 100%
 - 2.7 to pay a further thirty percent (30%) of the Education Contribution to the County Council before any more than 50% of the Dwellings are Occupied
3. The County Council hereby acknowledge and confirm with the Owner as follows:
 - 3.1 Within two (2) months of receipt of the written notice given pursuant to Paragraph 2.1 of this Schedule to inform the Owner of the amount of the Education Contribution due at the expected date of payment under Paragraphs 2.2 – 2.7 of this Schedule 1
 - 3.2 To place the Education Contribution when received into an interest bearing account and to utilise the same solely for the Primary Education Purposes and the Secondary Education Purposes as appropriate
 - 3.3 That upon receipt of a request in writing to do so to be received by the County Council no sooner than the tenth (10th) anniversary of the first Occupation of a 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) PROVIDE 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 Dwelling to make a payment in respect of the Education Contribution 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 Provided further that any such legally binding Contract or obligation shall require such payment to be made no later than 10 years and 6 months from receipt of such contribution.

3.4 That upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of the first Occupation of a Dwelling the County Council shall provide the Owner with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent

4. It is hereby agreed and declared:

4.1 In the event that the Owner fails to serve notice as set out in Paragraph 2.1 of this Schedule 1 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 Agreement

4.2 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 Owner 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

4.3 In the event that any 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 Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the point on the Education Index prevailing at the date of Commencement of Development and the point on the Education Index 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

- 4.3.1 In addition to the requirement of 4.3 above in the event that any sum due to be paid by the Owner to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owner hereby 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 Owner pursuant to the debt
- 4.4 In the event that the Education Contribution is overpaid by the Owner 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 Owner notifies the County Council of such overpayment within 10 working days of such overpayment having been made to the County Council
- 4.5 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owner and received by the County Council within six months of receipt by the Owner of the County Council's statement referred to in Paragraph 3.4 of this Schedule 1 and shall clearly state the grounds on which the expenditure is disputed
- 4.6 In the event that no written request is received by the County Council from the Owner pursuant to Paragraph 3.3 or no valid dispute is raised by the Owner pursuant to Paragraph 4.5 above the Owner shall accept that the Education Contribution has been spent in full on the Early Years and Childcare Purposes, the Primary Education Purposes and the Secondary Education Purposes as appropriate
- 4.7 The County Council may utilise up to two percent (2%) of the total amount of the Education Contribution received under this Agreement to a maximum of two thousand pounds sterling (£2,000) for the purposes of monitoring and managing the administration of the Education Contribution and for the avoidance of doubt such

purposes are agreed by the Owner to form part of the definitions for the use of the Education Contribution

SCHEDULE 5

OPEN SPACE AND PLAY

In this Schedule 3 unless the context requires otherwise the following words and expressions shall have the following meanings:

- “Equipped Play Area”** means a play area provided by the Owner in accordance with the requirements set out in Annex 1
- “Open Space Specification”** means a specification for the laying out including specifying the location of the Equipped Play Area, profiling, clearing, planting, landscaping and decontaminating 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
- “Open Space Land”** means the land identified on the Open Space Plan and equating to at least ten per cent of the Site which shall include but not be limited to an Equipped Play Area and recreational open space 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 so far as is reasonably practical in perpetuity
- “Open Space Maintenance Contribution”** means the sum of Three Hundred and Eighty Four Pounds (£384.00) per unit Index Linked for each Dwelling to be constructed on the Site.
- “Open Space Maintenance Contribution Purposes”** means the use of the Open Space Maintenance Contribution towards the long term maintenance by the Council of the Open Space

“Open Space Plan”	means the plan identifying the Open Space Land
“Open Space Completion Certificate”	means a certificate or certificates in writing issued by a Chartered Landscape Architect that confirms that the Open Space Land and the Equipped Play Area has been laid out in accordance with the Open Space Specification and Annex 1

1. The Owner hereby covenants with the Council as follows:
 - 1.1 To submit the Open Space Plan and the Open Space Specification to the Council for approval with the first application for reserved matters approval
 - 1.2 Not to Occupy a Market Dwelling unless and until the Council has approved in writing the Open Space Plan and the Open Space Specification, such approval to not be unreasonably withheld or delayed
 - 1.3 Not to Occupy (or allow, cause or permit the Occupation of) any dwelling unless and until:
 - 1.3.1 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 Open Space Completion Certificate
 - 1.3.2 the freehold interest (without encumbrances) in the Open Space Land has been transferred to the Council for One Pound (£1.00) in accordance with the provisions of clause 4 post
 - 1.3.3 the Open Space Maintenance Contribution has been paid to the Council
 - 1.4 To maintain the Open Space Land which for the avoidance of doubt shall include maintaining the Equiped Play Area including replacing any equipment which fails or is damaged beyond repair 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 Council hereby acknowledges and confirms with the Owner as follows:
 - 2.1 That it will only use the Open Space Contribution towards the Open Space Contribution Purposes and will return to the payer any part of the said Open Space

Maintenance Contribution that has not been used (or committed) on the twentieth (20th) anniversary of the date that the Council received the said Open Space Maintenance Contribution PROVIDED THAT the Council's obligation to return the unused (or uncommitted) part of the Open Space Maintenance Contribution referred to shall only apply in the event that the Council receives a request in writing to return the said unused (or uncommitted) part referred to herein

3. The Transfer of the Open Space Land shall contain a covenant by the Council that the same shall not be used otherwise than as public open space for use by members of the public in perpetuity together with a Restriction namely

"No disposition of the registered estate or any part of the registered estate is to be registered without a consent in writing signed by Manningtree Farms Limited or their conveyancer".

4. The Council will do all such acts and things as required by HMLR to give affect to the completion of the registration of the covenant.

SCHEDULE 6

CONTRIBUTIONS

1. In this Schedule 4 unless the context requires otherwise the following words and expressions shall have the following meanings:
 - "Healthcare Contribution"** means the sum of Three Hundred and Forty-Six Pounds and Ninety-four Pence (£346.94) per unit Index Linked
 - "Healthcare Contribution Purposes"** means the use of the Healthcare Contribution towards the improvement of healthcare facilities in the Clacton Parish that is agreed with the Owner.
 - " North East Essex Clinical Commissioning Group "** means the local commissioning authority for health services in England (or its successor body from time to time)
2. The Owner hereby covenants with the Council (in respect of the Healthcare Contribution) not to Occupy (or allow, cause or permit the Occupation of) any dwelling unless the Healthcare Contribution has been paid to the Council.
3. The Council hereby acknowledges and confirms with the Owner as follows:
 - 3.1 to provide a detailed proposal for the use of the Healthcare Contribution with the priority use of the Contribution being the provision of a new bespoke facility in line with the NHS's hub and spoke model to serve the locality and if that is not likely to be forthcoming in the period of the Development completing then the works required to improve the Lawford surgery.
 - 3.2 Once the proposals have been approved by the Owner acting reasonably the Owner shall within 60 working days pay the Healthcare Contribution to the Council who shall supply the Owner with a written form of receipt for payment of the Healthcare Contribution on receipt of the said Healthcare Contribution;

3.2 to pass the Healthcare Contribution to NHS England only upon receipt of a document from NHS England confirming that they will:

3.2.1 apply the Healthcare Contribution solely towards the Healthcare Contribution Purposes;

3.2.2 provide full details of the expenditure of the Healthcare Contribution on demand to the Council or the Owner;

3.2.3 return any unspent part of the Healthcare Contribution together with interest accrued to the Council after the expiry of ten (10) years from the date of receipt by the Council of the Healthcare Contribution;

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

3.4 following receipt of a written request not to be made prior to the expiration of ten (10) years from the date of receipt by the Council of the Healthcare Contribution to repay to the party who paid the Healthcare Contribution any unspent monies of the Healthcare Contribution held by the Council or received by the Council pursuant to paragraph 3.2.3 together with interest accrued within 28 working days of receipt of the aforementioned written request

3.5 in the event that the document in the form required by paragraph 3.2.3 is not received following the expiry of five (5) years from the date of receipt of the Healthcare Contribution by the Council then the Council's obligation to pay the Healthcare Contribution to NHS England shall cease absolutely and the Council shall refund to the party who paid the Healthcare Contribution the unexpended contribution within 28 days of receipt of a written request from the Owner to do so

4. The Council hereby acknowledges and confirms that it will use reasonable and commercially sensible steps to procure the repayment of monies from NHS England pursuant to paragraph 3.2.3 of this Schedule 4

SCHEDULE 7

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:

“European Wildlife Sites” means Special Protection Areas, Special Areas of Conservation and Ramsar sites) designated primarily to protect waders & wildfowl.

“Recreational Disturbance, Avoidance & Mitigation Contribution” means the sum of £122.30 (One hundred and twenty two pounds and thirty pence) per dwelling (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 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 Owner 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.

Executed as a deed by

MANNINGTREE FARMS LIMITED

acting by a

Signature.

In the presence of:

Address

Executed as a Deed by:

As an Attorney for and on behalf of

Lloyds Bank Plc

In the present of:

Signature of Witness.....

Name (in BLOCK CAPITALS)

Address

EXECUTED as a DEED by the said
RICHARD ARTHUR SARGEANT
in the presence of :

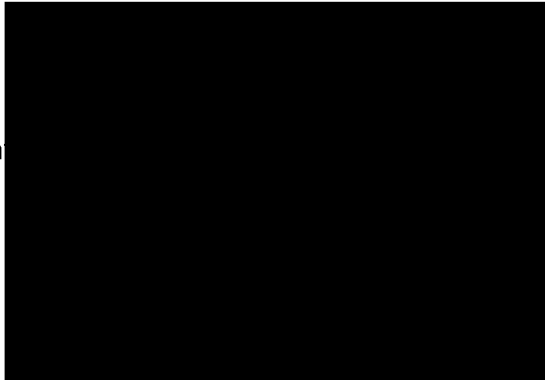


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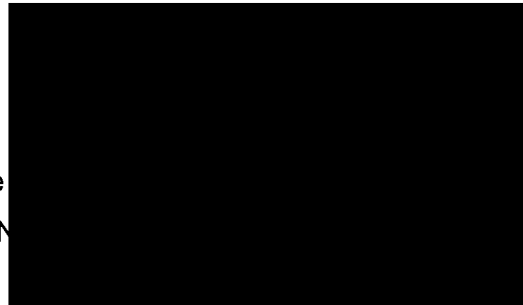
Signature:

Name (Print)

Address:



EXECUTED as a DEED by the
TIMOTHY ROBERT SARGEANT
in the presence of :

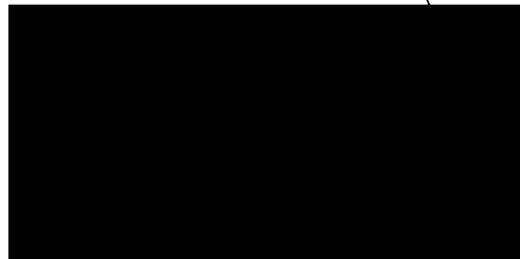
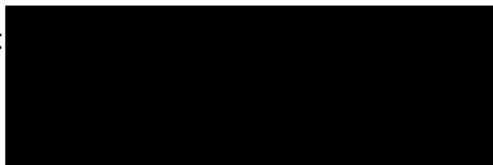


WITNESS:

Signature:

Name (Print):

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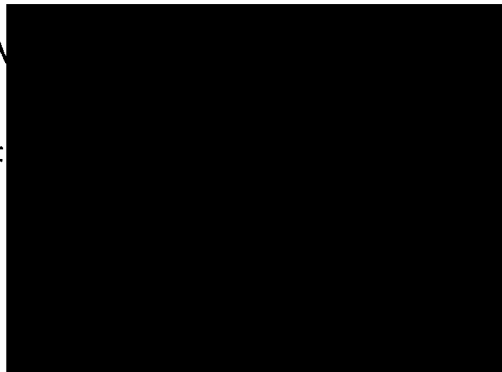


EXECUTED as a DEED by the said
ANDREW IAN SARGEANT
in the presence of :



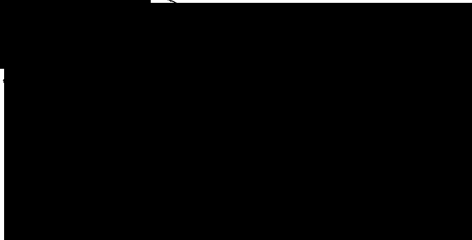
WITNESS:

Signature: \



Name (Print):

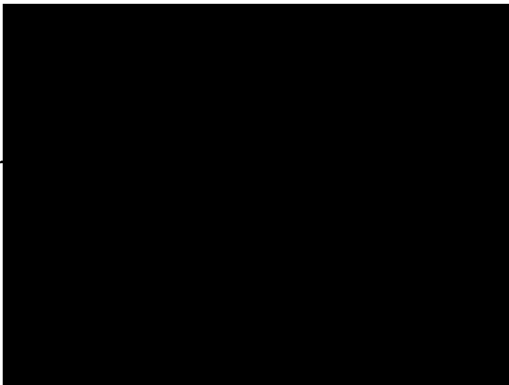
Address:



EXECUTED as a DEED by the said
DAVID RICHARD SARGEANT
in the presence of :

WITNESS:

Signature:



Name (Print)

Address:

ANNEX 1

Equipped Play Area requirements

1. Minimum area of 400m²
2. All equipment and facilities to have been assessed as safe for continued use by a competent playground inspector.
3. All equipment with a fall height greater than 600mm to have appropriate impact absorbing surfacing.
4. Minimum of seven different activities. Multi-play equipment may be counted as having up to three separate activities (e.g. sliding, climbing, rocking, swinging, or social play).
5. A small games area (may be grassed) within the boundary of the playground.
6. Entirely fenced with self-closing gates.
7. Signs excluding dogs.
8. To be overlooked by housing, pedestrian routes, or other well used public facilities, with surfaced links to the footpaths network.