

Dated 29th March 2021

(1) **LINDEN LIMITED**

- to -

(2) **TENDRING DISTRICT COUNCIL**

and to

(3) **ESSEX COUNTY COUNCIL**

Deed of Undertaking

made under Section 106 of the Town and Country Planning Act 1990 (as amended)

Land East of Halstead Road Kirby Cross Frinton on Sea CO13 0LR

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THIS AGREEMENT is made the 29th day of March 2021

BETWEEN:

- (1) **LINDEN LIMITED** (Co. Regn. No. 01108676) whose registered office is situated at 11 Tower View, Kings Hill, West Malling, Kent, England, ME19 4UY ("**Owner**"); and

IN FAVOUR OF

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

RECITALS:

- (A) The Council and the County Council are the Local Planning Authorities for the purposes of the Town and Country Planning Act 1990 within which the Site is located and by whom this Deed is enforceable.
- (B) The County Council is also the local education authority for statutory age education and pre-school age education and childcare and the local highway authority for the area in which the Site is located.
- (C) The Owner is the registered proprietor of the Site with Title Absolute under Title Number EX660865.
- (D) The Council is satisfied that the Development is such as may be permitted by the Council under Part 3 of the 1990 Act and is minded to grant the Planning Permission subject to the further provisions in this Deed.
- (E) This Deed of Undertaking is entered into by the Owner pursuant to Section 106 of the 1990 Act to secure obligations on the terms set out herein.
- (F) The parties to this Deed of Undertaking are satisfied that the planning obligations secured by this deed are necessary to make the Development acceptable in planning terms and are directly related to the Development and are fairly and reasonably related to the scale and kind of Development and thus satisfy the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following words and phrases shall unless the context otherwise requires bear the following meanings:

"100% Staircaser"	means a lessee of an Affordable Housing Dwelling under a shared ownership arrangement who has acquired 100% of the equity in the said Affordable Housing Dwelling;
"1990 Act"	means the Town and Country Planning Act 1990;
"2008 Act"	means the Housing and Regeneration Act 2008;
"Affordable Housing"	means housing to be provided to eligible households whose needs are not met by the market;

"Affordable Contribution"	Housing	means the sum of of £103,000 (one hundred and three thousand pounds) to be used by the Council to provide or assist in the provision of Affordable Housing within the district;
"Affordable Dwellings"	Housing	means 4 Dwellings to be provided as Affordable Housing in accordance with Schedule 1 and as identified on the plan appended to this deed;
"Affordable Housing"	Rented	means housing let by a local authority or private registered provider of social housing to households who are eligible for Social Rented Housing where the rent level is capped at 80% of the local market rent (including any service charges, where applicable);
"Application"		means the application for planning permission reference number 19/00283/FUL for the Development of 13 Dwellings with associated landscaping and infrastructure.
"Chargee"		means any mortgagee or chargee or any manager or receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the whole or any part of the Affordable Housing Dwellings that have been transferred to a Registered Provider;
"Default Rate"		4% above the base rate from time to time of Barclays Bank plc;
"Development"		means the development of the Site described in the Application;
"Dwellings"		means any of the dwellings forming part of the Development and for the avoidance of doubt for the purposes only of the Education Contribution Schedule of this Deed this definition shall exclude any dwelling that by condition set out in the Planning Permission cannot under any circumstance be Occupied by persons under the age of nineteen (19) years of age;
"Implementation"		means implementation of the Planning Permission by the carrying out of any material operation within the meaning of Section 56(2) and (4) of the 1990 Act and "Implement" and "Implemented" and cognate expressions will be interpreted in accordance with this definition PROVIDED ALWAYS THAT for the purposes of this Deed the carrying out of the following operations shall not constitute Implementation: (a) Site investigations or survey;

- (b) Archaeological works;
- (c) Site decontamination;
- (d) The construction of access and service roads;
- (e) Excavation works;
- (f) The clearance or re-grading of the Site;
- (g) The erection of hoardings and fences;
- (h) Works connected with infilling; or
- (i) Works for the provision or diversion of drainage or mains services to prepare the Site for development,

and "Implement" shall be construed accordingly;

"Index Linked"

increased in accordance with the following formula:

Amount payable = the Contribution x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date of actual payment.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this Deed.

"Intermediate Housing"

means housing for sale and rent provided to households eligible for intermediate housing at a cost below market levels in accordance with the current guidance and standards published from time to time by Homes England.

"Occupation"

means occupation of a Dwelling for the purpose permitted by the Planning Permission, but not including occupation by personnel engaged in the construction, fitting out or occupation for marketing or display, and the words "Occupy" and "Occupied" will be construed accordingly;

"Open Market Dwellings"

means the Dwellings which are not the Affordable Housing Dwellings;

"Open Space Contribution"

Means the sum of £25,348 towards the provision of recreational open space at Halstead Road play area in accordance with Policy COM6 in the Tendring District Local Plan 2007;

"Planning Permission"

means the planning permission granted pursuant to the Application;

"Protected Tenant"

means any tenant who:

- (a) has exercised the right to acquire pursuant to s.180 of the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling;
- (c) has been granted a Shared Ownership lease in respect of a particular Affordable Housing Dwelling and has acquired a 100% interest in the Shared Ownership Unit;

"RAMS Contribution" means the sum of £125.58per Dwelling payable to the Council towards the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy to be spent at Hamford Water SPA and SSSI;

"Registered Provider(s)" means any body or organisation that is permitted by law and whose main function or aim is to provide and/or manage Affordable Housing including a housing association or housing company or trust registered as a provider with Homes England or its successor or an alternative provider of Affordable Housing approved by the Council

"Social Rented Housing" means affordable housing that is owned by local authorities and Registered Providers of social housing for which guideline target rents are determined through the national rent regime;

"Site" means the land registered with freehold title at the Land Registry under title numbers EX660865 as shown indicatively edged red on the plan;

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 Any covenant not to do any act or thing shall be deemed to include an obligation not to knowingly permit or suffer such act or thing to be done by another person within the control of the person concerned.
- 1.4 Any references to any particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also include any subordinate instruments, regulations or orders made in pursuance of it.
- 1.5 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 1.6 Where reference is made to a clause, part, plan, paragraph, recital or schedule such reference (unless the context requires otherwise) is a reference to a clause, part, plan, paragraph, recital or schedule of or to this Deed and insofar as any clause or clauses of this Deed are found to be invalid, illegal, or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 1.7 The obligations in this Deed shall only apply and be enforceable by the Council and the County Council if and to the extent that any obligation so specified meets the



REV.	DATE	REVISIONS:	BY	STATUS:
F	06/12/18	Plot 4 wall changed to close boarded fence. Issued for planning	OT	
G	18/06/19	Amendments following planning consultations	OT	
H	28/08/19	Amendments following planning consultations	OT	
J	20/01/20	Plots 1 - 4 moved southwards following planning consultations	GE	
K	30/01/20	Plots 1 & 2 substitution for bungalows and tenure reconfigured	OR	
L	18/02/20	Plots 1 - 4 adjusted following planning consultations	GE	

Planning

This drawing may be scaled or cross referenced to the scale bar for planning application purposes only. Do not scale for any other purpose, use figured dimensions only. Subject to site survey and all necessary consents. All dimensions to be checked by user and any discrepancies, errors or omissions to be reported to the Architect before work commences. This drawing is to be read in conjunction with all other relevant materials. OS Licence No. 100007327

CLIENT:	Linden Limited	PROJECT:	Land North of Barley Road Kirby Cross, Essex
SCALE:	1:500 (A3 ORIGINAL)	DRAWING:	Proposed Site Layout
DRAWN:	RDB		
DATE:	Oct 18		
	18284	P101	L



architecture planning masterplanning

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requirement of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and without which the Planning Permission would not otherwise be granted.

- 1.8 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not an appeal) after the date of this Deed.
- 1.9 References in this Deed to the Owner or the Council any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them.
- 1.10 Words importing the singular meaning where the context so admits shall include the plural meaning and vice versa.
- 1.11 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.

2. STATUTORY PROVISIONS

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the 1990 Act, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 The obligations contained in Schedules 1 and 2 of this Deed are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by the Owner with the intention that they bind the interest held by those persons in the Site and their respective successors and assigns.
- 2.3 With the exception of this clause 3 and any other provision of this Deed which requires action by the Owner prior to Implementation none of the terms of provisions in this Deed will have operative effect unless and until:
 - 2.3.1 The Planning Permission has been granted; and
 - 2.3.2 Implementation has taken place.
- 2.4 Subject to clauses 1.7 and 4.5 the obligations contained in clause **Error! Reference source not found.** of this Deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

3. NON-FETTER OF STATUTORY POWERS

Nothing in this Deed shall prejudice or affect the rights powers duties and obligations of the Council or the County Council in the exercise by it of its statutory functions and the rights powers duties and obligations of the Council and the County Council under private or public statutes bye-laws orders and regulations may be as fully and effectively exercised as if it were not a party to this Deed.

4. LIMITS OF ENFORCEABILITY

- 4.1 No party shall be liable for breach of a covenant or obligation contained in this Deed after the party has parted with all the party's interest in the Site or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant or obligation arising prior to that party parting with such interest.
- 4.2 Nothing in this Deed shall be construed as imposing any obligation on and the obligations contained within this Deed shall not be enforceable against:
 - 4.2.1 persons occupying completed Dwellings the persons who purchase Dwellings (including purchasers of long leases) or any mortgagee of any such person; or

4.2.2 any statutory undertaker or public authority which acquires an interest in any part of the Site for the purposes of its statutory undertaking or functions.

4.3 If the Planning Permission shall be granted but then expire or be revoked or modified without agreement prior to Implementation this Deed shall forthwith determine and cease to have effect.

4.4 If the Planning Permission is quashed before Implementation then this Deed shall absolutely determine and become null and void but without prejudice to the rights of any party against the other or others.

5. OWNER COVENANTS

The Owner covenants:

5.1 To comply with the obligations contained in Schedules 1 2 and 3 to this Deed;

5.2 To give written notice to the County Council in accordance with Schedule 3; and

5.3 To give written notice to the Council no later than 5 Working Days therefrom of:

5.3.1 Implementation; and

5.3.2 First Occupation of a Dwelling.

6. INDEXATION

6.1 All financial contributions payable to the Council shall be Index Linked

6.2 All financial contributions payable to the County Council shall be indexed as outlined in Schedule 3.

6.3 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed).

7. INTEREST ON LATE PAYMENT

Without prejudice to any other right remedy or power herein contained or otherwise available to the Council or the County Council if any payment which is due to the Council or County Council under the terms of this Deed is made later than the date such payment is due it shall attract interest at the Default Rate from the date payment was due until the date payment is received.

8. REGISTRATION AS LOCAL LAND CHARGE

This Deed is a local land charge for the purposes of the Local Land Charges Act 1975 and shall be registered as such.

9. LEGAL CHALLENGE

Each clause sub-clause schedule or paragraph shall be separate distinct and severable from each other to the extent only that if any clause sub-clause schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause sub-clause schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause sub-clause schedule or paragraph be valid shall apply without prejudice to any other clause sub-clause schedule or paragraph contained herein.

10. NOTICES

10.1 Any notice to be served in accordance with this Deed shall be validly served if served

in accordance with Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 on the relevant party at the address for the party listed above except that:

10.1.1 any notice to be served on the Council shall be addressed to Town Hall, Station Road, Clacton-on-Sea, Essex, CO15 1SE; and

10.1.2 any notice to be served on the County Council shall be addressed to development.enquiry@essex.gov.uk and marked for the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH

10.2 Any notice given under Clause 11.1 shall be deemed to have been received as follows:

10.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day

10.2.2 if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

11. COSTS OF THIS DEED

11.1 The Owner covenants to pay to the County Council its reasonable and proper costs in a sum not to exceed £1,500 (one thousand five hundred pounds) (no VAT) in connection with the preparation, negotiation and completion of this Deed.

12. TERMINATION OF THIS DEED

12.1 This Deed will come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Implementation, or the Planning Permission expires before the Implementation.

13. WARRANTY OF TITLE

The Owner warrants that no person other than the Owner and the Mortgagee has any legal interest in the Property.

14. THIRD PARTY RIGHTS

It is not intended that this Deed should give rights hereunder to a third party arising solely by virtue of the Contract (Rights of Third Parties) Act 1999.

15. VALUE ADDED TAX

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

16. JURISDICTION

This Deed is subject to and will be construed in all respects in accordance with the provisions of English law.

IN WITNESS whereof the Owner has executed this Deed the day and year first before written.

SCHEDULE 1
Affordable Housing

1. The Owner undertakes to:
 - 1.1 Notify the Council on or before the Occupation of the 8th (eighth) Dwelling whether they intend to: pay to the Council an Affordable Housing Contribution in lieu of providing the Affordable Housing Dwellings; and
 - 1.2 Pay the Affordable Housing Contribution before the Occupation of the 8th (eighth) Dwelling.
2. If the Owner does not elect to pay the Affordable Housing Contribution in paragraph 1 then they will be required to provide the Affordable Housing Dwellings in accordance with paragraphs 3-8 of this Schedule 1.
3. The Owner may transfer the Affordable Housing Dwellings to a Registered Provider or to the Council.
 - 3.1 If transferred to a Registered Provider in accordance with this Schedule the Affordable Housing Dwellings shall consist of:
 - 3.1.1 3 Affordable Housing Dwellings as Dwellings for Affordable Rented Housing; and
 - 3.1.2 1 Affordable Housing Dwelling as a Dwelling for Intermediate Housing.
 - 3.2 If transferred to the Council in accordance with this Schedule the Affordable Housing Dwellings shall consist of:
 - 3.2.1 4 Affordable Housing Dwellings as Dwellings for Affordable Rented Housing.
4. Not to Occupy or allow the Occupation of more than 100% of the Open Market Dwellings unless and until all the Affordable Housing Dwellings have been constructed and are ready for Occupation AND the Affordable Housing Dwellings have been transferred (either freehold or long leasehold) to a Registered Provider or to the Council for use as Affordable Housing.
5. The transfer or lease of the Affordable Housing Dwellings to a Registered Provider pursuant to paragraph 2 of this schedule shall include the following terms:
 - 5.1 a grant by the Owner to the Registered Provider 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;
 - 5.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development and the beneficial use and enjoyment of the remainder of the Site; and
 - 5.3 such other covenants as the Owner may reasonably require for the maintenance of the Development once it is completed and the preservation of the appearance thereof.
6. The affordable housing obligations and restrictions contained in this Schedule 1 shall not bind:
 - 6.1 a Chargee of the whole or part of the Affordable Housing Dwellings PROVIDED THAT such Chargee has first complied with the provisions of paragraph 7 of this Schedule;
 - 6.2 a Protected Tenant;
 - 6.3 any mortgagee or chargee or receiver of a Protected Tenant;
 - 6.4 any person or body deriving title through or from any of the parties mentioned in

paragraphs 6.1-4.3 above.

7. Any Chargee claiming protection granted by paragraph 4.1 above must first:
 - 7.1 give written notice to the Council of its intention to dispose of the Affordable Housing Dwelling,
 - 7.2 use reasonable endeavours over a period of twelve weeks from the date of such written notice to complete the transfer of the Affordable Housing Dwelling to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Chargee,

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage,
 - 7.3 If such disposal referred to in paragraph 7.2 above has not completed within such twelve week period the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing provisions contained in this Agreement which shall determine absolutely.
8. The transfer of the Affordable Housing Dwellings to the Registered Provider shall be with vacant possession.

SCHEDULE 2
Council Financial Contributions

Unless otherwise agreed in writing between the Owner and the Council the Owner hereby undertakes to the Council as follows:

1. RAMS Contribution

- 1.1 To pay the RAMS Contribution prior to commencement of the Development
- 1.2 Not to Implement the Development until the RAMS Contribution has been paid in accordance with Paragraph 1.1 of this Schedule 2.

2. Open Space Contribution

- 2.1 To pay the Open Space Contribution prior to Occupation of 80% of the Open Market Dwellings.
- 2.2 Not to permit Occupation of 80% of the Dwellings until the Open Space Contribution has been paid in accordance with Paragraph 1.1 of this Schedule 2.

SCHEDULE 3
County Council Financial Contributions

Unless otherwise agreed in writing between the Owner and the County Council the Owner hereby undertakes to the County Council as follows:

Education Contribution

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

"Completion Notice" means the notice served by the Owner on the County Council pursuant to paragraph 1.4 of this Schedule;

"Early Years and Childcare Contribution" means the Early Years and Childcare Pupil Product multiplied by the cost generator of £17,422 (seventeen thousand four hundred and twenty two pounds sterling) to which the Relevant Education Indexation shall be added;

"Early Years and Childcare Product" means the sum of Qualifying Flats multiplied by 0.045 plus the Qualifying Houses multiplied by 0.09;

"Early Years and Childcare Purposes" means the provision of and/or improvement of facilities for the education of children between the ages of 0 to 4 (both inclusive) including those with special educational needs within the ward of Kirby Cross and or within 3 miles of the development including the reimbursement of capital funding for such provision made by the County Council following Implementation of Development in anticipation of the Early Years & Childcare Contribution;

"Education Contribution" means the Early Years and Childcare Contribution and Primary Education Contribution and Secondary Education Contribution to which sums the Relevant Education Indexation shall be added;

"Education Index" means the Department of 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 Early Years and Childcare Purposes and Primary Education Purposes and Secondary Education Purposes;

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

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

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;

Index means the most recently published edition at the time of use of each index used under the terms of this Agreement to calculate any amount to be paid with or in addition to a Contribution due under the terms of this Agreement to add to or reduce the Contribution to reflect changes in cost over time;

House means a Dwelling that does not meet the definition of a Flat;

Notice of Commencement means the written notice served pursuant to paragraph 1.1 of this Schedule;

Payment Notice means a written notice advising of a proposed payment served pursuant to paragraph 1.3 of this Schedule;

"Primary Education Contribution" means the Primary Pupil Product multiplied by the cost generator of £15,281 (fifteen thousand two hundred and eighty one pounds sterling) to which sums the Relevant Education Indexation shall be added;

"Primary Education Purposes" means the design (including feasibility work) and or delivery and or provision of facilities for the education and/or care of children between the ages of 4 to 11 (both inclusive) including those with special educational needs in the vicinity deemed by the County Council as serving the Development and at Kirby Primary Academy or at any other local primary school either at its present site or at an alternative site including any successor institution and including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Primary Education Contribution;

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

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

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

Qualifying Housing Units means the Qualifying Houses and Qualifying Flats;

"Relevant Education Indexation" means the amount that the Owner shall pay with and in addition to each part of the Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Education Contribution being paid and multiplying this amount by the percentage change shown in the Education Index between the Education Index Point pertaining to April 2019 and the Education Index Point pertaining to the date the payment is due to be made to the County Council;

"Relevant General Indexation" means the amounts that the Owner shall pay with and/or agree in addition to each part of the fee or sums payable under this schedule that shall in each case equal a sum calculated by taking the amount paid and multiplying this amount by the percentage

change shown in the General Index between the Index Point pertaining to April 2019 and the Index Point pertaining to the date the payment is due to be made to the County Council;

"Secondary Education Contribution" means the Secondary Pupil Product multiplied by the cost generator of £23,214 (twenty three thousand two hundred and fourteen pounds sterling) to which sums the Relevant Education Indexation shall be added;

"Secondary Education Purposes" means the design (including feasibility work) and or delivery and or provision of facilities for the education and/or care of children between the ages of 11 to 19 (both inclusive) including those with special educational needs in the vicinity deemed by the County Council as serving the Development and or at Tendring Technology College and/ or any other local secondary school either at its present site or at an alternative site including any successor institution and including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Secondary Education Contribution;

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

Seven Day LIBID Rate shall mean an assessment of the rate of interest the County Council can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow euro currency deposits or such other rate as the County Council considers appropriate;

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

1. The Owner hereby covenants with the County Council:
 - 1.1. to serve on the County Council not less than three (3) months prior to Implementation of Development a notice stating the expected Implementation date and any further information stipulated in this Schedule;
 - 1.2. to serve on the County Council notice of first Occupation of a Dwelling within one (1) month thereof and on a six (6) monthly basis thereafter indicating the number of Occupied Dwellings;
 - 1.3. to serve on the County Council the Payment Notice between sixty (60) and thirty (30) Working Days prior to the date that each and any payment is due to be made to the County Council under this Deed stating the date that such payment becomes due and any further information stipulated in the Schedules to this Deed;
 - 1.4. to serve on the County Council the Completion Notice within 30 Working Days of all Dwellings being Occupied for the first time stating the date that the last Dwelling was Occupied for the first time and any further information stipulated in this Schedule;
 - 1.5. to pay fifty percent (50%) of the Education Contribution to the County Council prior to Implementation of Development and not to Implement the Development until fifty percent (50%) the Education Contribution have been received by the County Council; and

- 1.6. to pay the remaining fifty percent (50%) of the Education Contribution to the County Council prior to the first Occupation of a Dwelling and not to Occupy any Dwelling (or cause or allow any Dwelling to be Occupied) until the County Council has received payment of the remaining fifty (50%) percent of the Education Contributions and 100% of the Education Contribution has thereby been paid.
- 1.7. to pay to the County Council on or before the Implementation of the Development an additional non-refundable contribution of £550 per Education Contribution sought under this Agreement and for the avoidance of doubt this is a total of £1650 (one thousand six hundred and fifty pounds sterling) for the purposes of monitoring and managing the administration of the Education Contribution. The Owner agrees not to be reimbursed in the event that this contribution is not expended by the County Council.
- 1.8. In the event that the Education Contribution is paid later than dates set out in this Schedule then the amount of the Education Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the date of Implementation and the Education Index Point prevailing at the date of actual payment multiplied by the Education Contribution due or if greater an amount pertaining to interest on the Education Contributions (or the part thereof) due calculated at the Seven Day LIBID Rate from the date that the payment is due until the date payment of the Education Contribution is received by the County Council.
- 1.9. In addition to the requirement of 1.8 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 the Relevant General Indexation for each and every letter sent to the Owner pursuant to the debt.
- 1.10. In the event that the Unit Mix to be constructed on the Development does not match the Unit Mix on which the Education Contribution or part thereof paid was based the Owner hereby covenants to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Education Contribution paid and the amount of the Education Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Education Contribution.

SIGNATURE PAGE

THE COMMON SEAL of
LINDEN LIMITED was hereunto affixed
AS A DEED in the presence of
two Authorised Signatories:

