

DATED

18<sup>th</sup> January 2022

2021

TENDRING DISTRICT COUNCIL (1)

-and-

ESSEX COUNTY COUNCIL (2)

-and-

BRITTON DEVELOPMENTS LTD (3)

and-

PERSIMMON HOMES LIMITED (4)

AGREEMENT UNDER SECTION 106  
OF THE TOWN AND COUNTRY PLANNING  
ACT 1990

relating to Oakwood Park ,  
land to the east of Thorpe Road,  
Little Clacton, Clacton On Sea



1 Bedding Lane

Norwich

Norfolk

NR3 1RG

Ref: JZC/221025.0048

**THIS AGREEMENT is a DEED and is made this**

18<sup>th</sup>

day of January

2022,  
2024

**BETWEEN**

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE ("District Council");
- (2) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex CM1 1QH ("County Council");
- (3) **BRITTON DEVELOPMENTS LTD** (Co registration no. 10257659) whose registered office address is situated at Summit House, 13 High Street, London E11 2AA and whose address for service is at Unit 2, Wild Close, Oakwood Business Park, Clacton-on-Sea CO15 4TL ("Owner");
- (4) **PERSIMMON HOMES LIMITED** (Co registration no. 4108747) whose registered office address is situated at Persimmon House, Fulford, York YO19 4FE ("Developer")

## **RECITALS**

- 1 The District Council and the County Council are the local planning authority for the purposes of the Act for the area in which the Site is situated and the authorities who are entitled to enforce the obligations contained in this Deed.
- 2 The County Council is also the local 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 situated.
- 3 The Owner is the freehold owner of the Site registered at the Land Registry under title number EX960012 whose interest is free from any encumbrances that would prevent the Owner from entering into this Deed.
- 4 The Developer has the benefit of an option agreement dated 3 October 2019 to purchase the Site from the Owner.
- 5 The Developer and the Owner have submitted the Application to the District Council for Planning Permission for the Development on the Site.
- 6 The District Council and the County Council consider it expedient that provision should be made for regulating or facilitating the development or use of the Site in the manner hereinafter appearing.



- 7 The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed and with the intention that the said planning obligations may be enforced by the District Council and or the County Council against the Owner and its successors in title.
- 8 In order to satisfy the tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 all the parties are satisfied that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms are directly related to the Development and fairly and reasonably relate in scale and kind to the Development.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PROVISIONS**

**1 DEFINITIONS**

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

"2008 Act"	means the Housing and Regeneration Act 2008
"Act"	the Town and Country Planning Act 1990
"Affordable Dwellings"	unless otherwise agreed in writing with the District Council means the following 15 Dwellings to be constructed in accordance with the Planning Permission which shall be provided as 12 Affordable Rented Dwellings and 3 Intermediate Housing Dwellings identified as plots 36 to 50 (inclusive) on the Affordable Housing Plan and in accordance with the Tenure Mix
"Affordable Housing"	means housing provided to a Person in Housing Need whose needs are not met by the market with eligibility determined with regard to local incomes and local house prices and includes Affordable Rented Dwellings and Intermediate Housing
"Affordable Housing Plan"	unless otherwise agreed in writing with the District Council means plan PH-156-008 rev A attached to this Deed at Schedule 1 showing the locations of the plots on the Development in accordance with the Planning Permission
"Affordable Rent"	means a rent not exceeding eighty percent (80%) of the local market rent for properties of a similar size and location within the Clacton area
"Affordable Rented Dwellings"	means an Affordable Dwelling to be let at an Affordable Rent



"Application"	the application for full planning permission submitted to the District Council and allocated reference number 20/00179/FUL
"Approved Body"	means a private registered provider of social housing as defined in Section 80 of the 2008 Act and which provider is (a) approved by the District Council; and (b) regulated by Homes England
"Approved Unit Mix"	means 5 Qualifying Flats and 40 Qualifying Houses and 5 Dwellings that by definition shall not be counted as Qualifying Flats or Qualifying Houses
"Chargee"	means any mortgagee or chargee of the Affordable Housing (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 (each a "Receiver") of the whole or any part of the Affordable Dwellings
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, reptile habitat receptor site creation, reptile translocation, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly
"Completion"	completion of a Dwelling with all Drainage Systems and Service Installations connected such that the Dwelling



	concerned is capable of being Occupied for their intended purpose and "Complete" shall be construed accordingly
"Completion Notice"	means the notice served by the Owner on the County pursuant to paragraph 1.4 of Schedule 3
"Development"	the development of the Site pursuant to the Planning Permission for 50 residential dwellings, associated car parking, cycle parking, public open space and pedestrian/cycle infrastructure, formation of pedestrian and cycle links and other associated works and improvements
"Drainage Systems"	any sewers drains pipes manholes culverts soakaways channels watercourses and other conduits and systems necessary for the disposal of foul and surface water and all ancillary apparatus and equipment
"Dwellings"	the residential dwellings to be constructed on the Site as part of the Development in accordance with the Planning Permission and "Dwelling" shall be constructed accordingly
"Education Index"	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
"General Index Point"	means a point on the most recently published edition of the General Index at the time of use
"Healthcare Contribution"	the sum of £28,222.22 (twenty eight thousand two hundred and twenty two pounds and twenty two pence) Index Linked applying the Healthcare Index to be paid to the District Council and thereafter paid to the NHS England for use towards the Healthcare Contribution Purposes
"Healthcare Contribution Purposes"	means the funding of proposed healthcare improvements to North Clacton Medical Group – Crusader Surgery (that may include costs of extending and/or refurbishing this existing facility) to serve the Development or other equivalent facility serving the Development as NHS England shall reasonably determine upon receipt of the Healthcare Contribution
"Healthcare Index"	the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-housing (PUBSEC) (or such other index as may be nominated by or agreed with the District Council)
"Homes England"	the government's housing, land and regeneration agency in England or its successor body or such other body as may replace it and undertakes the existing functions of Homes England within the meaning of Part 1 of the 2008 Act (or as may be defined by any amendment to or replacement or re-enactment of the 2008 Act)
"House"	means a Dwelling that does not meet the definition of a Flat



"Housing Needs Register"	means the register maintained by the District Council or its nominee or an Approved Body for Persons in Housing Need
"Index"	the retail price index published by the Office for National Statistics (or such other index as may be nominated by or agreed with the District Council or County Council in respect of their respective contributions payable under this Deed)
"Index Linked"	means (1) in relation to the Healthcare Contribution increased to reflect any increase in the Healthcare Index during the period from the base date of Q1 2019 to and including the date of the actual payment; and (2) in relation to the RAMS Contribution increased by applying the RPI All Items Index: Jan 1987 = 100 published by the Office of National Statistics using the formula $A=B \times C$ divided by D – where A is the amount actually payable – B is the amount specified as payable – C is the RPI All Items Index two months before the date of payment – and D is the RPI All Items Index two months before the date of this Deed
"Interest"	interest at 4 per cent above the base lending rate of the Bank of England from time to time
"Intermediate Housing"	means housing at prices and rents above those of Affordable Rented Dwellings but below market price or rents and which meet the needs of Persons in Housing Need and can include: <ul style="list-style-type: none"> <li>a) intermediate rented homes which are provided at rent levels above those of Affordable Rented Dwellings but below private rent levels;</li> <li>b) shared equity homes where more than one party has an interest in the property for example by way of shared ownership lease and there may be a charge on the loan and restrictions on price access and resale;</li> </ul>



- c) shared ownership homes whereby the purchaser buys an initial share in the equity of the property from the housing provider who retains the remainder and may charge a rent with the purchaser being able to purchase additional shares of the equity ("staircasing");
- d) any other tenure of affordable housing set out in parts b), c) or d) of the definition of affordable housing in Annex 2 of the NPPF;

and the expressions "Intermediate Housing Dwelling" and "Intermediate Housing Dwellings" shall be construed accordingly

"Market Dwellings"

the Dwellings that are not Affordable Dwellings

"NHS England"

the body who leads the National Health Service in England

"Notice of Commencement"

means the written notice served pursuant to paragraph 1.2 of Schedule 3

"NPPF"

the National Planning Policy Framework published in July 2021 (or any amended or successor document)

"Occupation" and "Occupied"

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

"Payment Notice"

means a written notice advising of a proposed payment served pursuant to paragraph 1.3 of Schedule 3

"Persons in Housing Need"

means a person or persons being in need of Affordable Housing and registered as such on the District Council's Housing Needs Register or by the Approved Body or such other person or persons considered by the District Council in accordance with its relevant



	policies for the allocation of Affordable Housing or the Approved Body to be in housing need having regard to their income and local house prices or rents
"Plan"	the plan attached to this Deed which shows the Site outlined in red for identification purposes only
"Planning Permission"	the full planning permission granted for the Development by the District Council pursuant to the Application
"Protected Tenant"	<p>any tenant who:</p> <ul style="list-style-type: none"> <li>(a) has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (including a preserved right to buy) (or any equivalent contractual right) in respect of a particular Affordable Dwelling;</li> <li>(b) has exercised any statutory right to buy, purchase or acquire (or equivalent contractual right) in respect of a particular Affordable Dwelling;</li> <li>(c) has been granted a shared ownership lease by the Approved Body in exercise of that persons' statutory right in respect of a particular Affordable Dwelling</li> </ul>
"Qualifying Flats"	means the total number of Dwellings that meet the definition of a Flat and that shall have two or more rooms that may by design be used as bedrooms
"Qualifying Houses"	means the total number of Dwellings that meet the definition of a House and that shall have two or more rooms that may by design be used as bedrooms
"RAMS"	means the adopted Essex Coast Recreational Disturbance Avoidance Mitigation Strategy in relation to Essex Coast Natura 2000 Designations
"RAMS Contribution"	the sum of £127.30 (one hundred and twenty seven pounds and thirty pence) per Dwelling Index Linked



which for 50 Dwellings will equal £6,365 (six thousand three hundred and sixty five pounds) Index Linked (as set out in the RAMS and to be used towards the RAMS Contribution Purposes

**"RAMS Contribution Purposes"**

means the use of the RAMS Contribution for the funding of works and improvements identified by the adopted RAMS to mitigate any increased disturbance as a result of the Development at Essex Coast Natura 2000 European Designations in particular the Hamford Water SPA and RAMSAR

**"Relevant Education Indexation"**

means the amount that the Owner shall pay with and in addition to each part of the Secondary Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Secondary 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 fees or sums set out under paragraph 1.6 of Schedule 3 that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change shown in the General Index between the General Index Point pertaining to April 2019 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 fourteen pounds sterling (£23,214) save that it is agreed between the parties that the sum shall be one hundred and ninety nine thousand six hundred and forty pounds (£199,640) provided the Development is



	carried out in accordance with the Approved Unit Mix to which sum the Relevant Education Indexation shall be added
"Secondary Pupil Product"	means the sum of the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2
"Secondary Education Purposes"	the use of the Secondary Education Contribution towards the design (including feasibility work) and or delivery and or provision and/or improvement 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 at Clacton County High School and/or education facilities in the vicinity deemed by the County Council as serving the Development including the reimbursement of capital funding for such provision made by the County Council in anticipation of receiving the Secondary Education Contribution
"Services"	the supply of water gas electricity telephone telecommunications and all other appropriate services (as determined by the Owner) other than Drainage Systems
"Service Installations"	all apparatus and other ancillary equipment for the conduct of Services
"Seven Day LIBID Rate"	an assessment of the rate of interest the County Council and District 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 as the County Council or District Council considers appropriate
"Site"	the land known as Oakwood Park, land to the east of Thorpe Road, Little Clacton, Clacton On Sea being that part of the land as shown edged red on the Plan attached to this Deed for identification purposes only



	that is registered at the Land Registry under title number EX960012
"Tenure Mix"	the provision of the Affordable Dwellings in accordance with the table set out at Part 2 Schedule 2 (unless otherwise agreed in writing with the District 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 Houses or Qualifying Flats the sum of which shall for the avoidance of doubt equal the total number of Dwellings to be constructed on the Site or created by conversion of an existing building on the Site
"Working Days"	means any day(s) upon which banks in the City of London are open to the general public

## 2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.5 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and County Council shall include the successors to their respective statutory functions.



- 2.6 The headings are for reference only and shall not affect the construction of this Deed.
- 2.7 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to allow cause permit or suffer any infringement of the restriction.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act for the purposes of creating planning obligations in respect of the Site and subject to clause 3.2, all the restrictions covenants and undertakings in this Deed are planning obligations for the purposes of Section 106 of the Act and are (subject to the terms of this Deed) enforceable by the District Council and/or the County Council (as appropriate) not only against the Owner but also against any successors in title to the respective interests of the Owner (unless otherwise stated in this Deed).
- 3.2 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act, they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.

### **4 CONDITIONALITY**

This Deed is conditional and shall become binding upon:

- 4.1 the grant of the Planning Permission; and
- 4.2 the Commencement of Development

save for the provisions of this Clause and Clauses 8.1, 8.2, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10, 8.11, 9, 10 and 13 to 17 which shall come into effect immediately upon completion of this Deed.

### **5 THE OWNER'S COVENANTS**

- 5.1 The Owner covenants with the District Council to perform the obligations as set out in this Deed including in Schedule 2.
- 5.2 The Owner covenants with the County Council to perform the obligations as set out in this Deed including in Schedule 3.



## **6 THE DISTRICT COUNCIL'S COVENANTS**

- 6.1 The District Council covenants with the Owner as set out in Paragraph 2 of Part 3 of Schedule 2 and Schedule 4.

## **7 THE COUNTY COUNCIL'S COVENANTS**

- 7.1 The County Council covenants with the Owner as set out in Schedule 5.

## **8 MISCELLANEOUS**

- 8.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.2 This Deed shall be registrable and enforceable as a local land charge.
- 8.3 Where any agreement, approval, consent or expression of satisfaction is required requested or may be sought by the Owner or the Developer from the District Council or County Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 8.4 Any notice or written communication to be served or given by one party to any other party under the terms of this Deed shall be deemed to have been properly served or given if delivered by electronic mail hand or sent by first class post or registered or recorded delivery at:
- 8.4.1 its address given in this Deed; or
- 8.4.2 such other address as may be notified in writing from time to time;
- 8.4.3 and the Developer hereby gives notice pursuant to clause 8.4.2 above that its address for service of notices is its address given in this Deed with a copy to Howes Percival LLP, Flint Buildings, 1 Bedding Lane, Norwich NR3 1RG (ref: JZC/221025.0048);
- 8.4.4 and the address for service on the District Council is hereby given as Tendring District Council, Council Offices, Weeley, Clacton on Sea, Essex, CO16 9AJ or via email to [obligations@tendringdc.gov.uk](mailto:obligations@tendringdc.gov.uk) and marked for the attention of the S106 Officer with reference number 20/00179/FUL.
- 8.5 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith at its own cost effect the cancellation of all entries made in the Register of Local Land Charges in respect of that Deed.



- 8.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the written consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Site (or the part of the Site in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it PROVIDED THAT the Developer hereby covenants that it shall indemnify the Owner for any liability arising on the Owner's part in the event that the Developer Commences the Development before the Developer acquires an interest in the Site and in respect of any liability arising on the Owner's part in connection with a part of the Site that the Owner has previously disposed of to the Developer (save in respect of any subsisting breach resulting from an act or omission by the Owner prior to such a disposal)..
- 8.9 This Deed shall not be enforceable against owner-occupiers or tenants of the Dwellings nor against those deriving title from them, statutory undertakers, utility providers nor their successors.
- 8.10 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 on appeal) after the date of this Deed.
- 8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the District Council and County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities.
- 8.12 Without prejudice to any statutory rights of entry representatives of the District Council and the County Council may enter upon the Site at any reasonable time prior to the first Occupation of the final Dwelling on reasonable notice (and in the case of an emergency immediately) to ascertain whether the terms of this Deed are or have been



complied with subject to complying with all health and safety and/or security requirements of the Owner or of any developer carrying out the Development.

- 8.13 No compensation shall be payable by the District Council or the County Council to any party to this Deed or their successors in title and assigns arising from the terms of this Deed and unless specified otherwise in this Deed 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 District Council or the County Council.
- 8.14 This Deed may be executed in any number of counterparts and by different parties hereto on separate counterparts and each of those counterparts when executed and delivered shall constitute an original but all the counterparts together shall constitute one and the same instrument.
- 8.15 This Deed shall not be enforceable against an Approved Body (other than in relation to the provisions of Parts 1 and 2 of Schedule 2) nor against those deriving title from them nor their successors.

## **9 WAIVER**

No waiver (whether expressed or implied) by the District Council or the County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council or the Owner from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

## **10 COMMUNITY INFRASTRUCTURE LEVY**

In the event that the District 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 the Planning Permission the obligations contained in this Deed which are also covered in such a charging schedule shall cease and no longer be of any effect.

## **11 INTEREST**

If any payment due to the District Council under this Deed is late then the Owner shall pay Interest from the date the payment fell due to the date of payment AND FOR THE AVOIDANCE OF DOUBT interest payable on late payment of the Secondary Education Contribution is dealt with separately under this Deed.



## **12 VAT**

- 12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.
- 12.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and provided a valid VAT invoice has been provided together with valid proof of an election to charge VAT the VAT shall be paid accordingly.

## **13 NOTICE**

- 13.1 The Owner shall give notice to the District Council and the County Council within 28 Working Days of:
  - 13.1.1 the date of Commencement of Development;
  - 13.1.2 the completion of any Dwelling which acts as a trigger for the performance by the Owner of any obligation owed to the District Council and/or the County Council; and
  - 13.1.3 the occupation of any Dwelling which acts as a trigger for the performance by the Owner of any obligation owed to the District Council and/or the County Council.
- 13.2 Save in respect of disposals of individual Dwellings or the disposal of any land to a statutory undertaker the Owner shall give to the District Council and the County Council within 28 Working Days of the Owner disposing of any part of the land comprised in the Site written notice of the name and address of the person to whom the land has been transferred.

## **14 DISPUTE PROVISIONS**

- 14.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference may be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant to England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and



any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.

## **15 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

## **16 DELIVERY**

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

## **17 LEGAL AND MONITORING FEES**

- 17.1 Upon completion of this Deed, the Developer shall pay the legal fees reasonably incurred by the District Council up to the maximum sum of £1,600 (one thousand six hundred pounds) and the legal fees reasonably incurred by the County Council up to the maximum sum of £1,500 (one thousand five hundred pounds).



- 17.2 The Owner covenants to pay to the County Council on or before the Commencement Date a fee of £550 per obligation due to the County Council under this Deed and for the avoidance of doubt this is a total of £550 (five hundred and fifty pounds sterling) for the purposes of monitoring and managing the administration of the obligations under this Deed.
- 17.3 The Owner covenants to pay the District Council on or before the Commencement Date a fee of £300 per obligation due to the District Council under this Deed and for the avoidance of doubt this is a total of £900 (nine hundred pounds) for the purposes of monitoring and managing the administration of the obligations under this Deed.

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



**SCHEDULE 1**

**Plan**

**Affordable Housing Plan**



## **SCHEDULE 2**

### **The Owner's Covenants with the District Council**

#### **Part 1**

#### **Affordable Housing**

The Owner hereby covenants with the District Council as follows:

- 1 Not to Commence Development unless and until the identity of the Approved Body has been submitted to the District Council for approval and the District Council has approved the Approved Body in writing PROVIDED THAT where the District Council fail to give notice of approval or rejection with reasons of the said Approved Body within one (1) month of receipt by the District Council of the identity of the Approved Body the same shall be deemed to be approved on expiry of the one (1) month period PROVIDED if the District Council reject the Approved Body the Owner shall seek to overcome the reasons for rejection and make a further submission and FURTHER that the said one (1) month period shall commence after each rejection by the District Council of the identity of the Approved Body.
- 2 Unless otherwise agreed in writing with the District Council not to Occupy or cause or permit to be Occupied more than 40 of the Market Dwellings unless and until all of the Affordable Dwellings have been:
  - 2.1 constructed to Completion; and
  - 2.2 transferred to the Approved Body
  - 2.3 Unless otherwise agreed in writing with the District Council "transferred" to the Approved Body for the purposes of this Schedule only shall mean a transfer of the freehold interest (of any house or block of flats containing only Affordable Housing Dwellings) or leasehold interest (of any flat in a block that contained one or more Market Dwellings) that comprises the Affordable Dwellings or an undertaking for sale or lease signed with the Approved Body that has been unconditionally released for completion by the Owner Provided Always that any transfer of the Affordable Dwellings to the Approved Body shall be with vacant possession;
  - 2.4 The transfer deed for the transfer of the Affordable Dwellings to the Approved Body shall be prepared by the Owner and the Owner shall pay the Approved Body's reasonable costs of transferring all of the Affordable Dwellings up to a total aggregate limit of £1,500 (One Thousand Five Hundred Pounds) on completion of the transfer deed;



2.5 The transfer deed shall contain:

- 2.5.1 a) A grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Dwellings;
- 2.5.2 b). A reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development; and
- 2.5.3 c) Such other covenants and reservations as the Owner may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

3 Unless otherwise agreed in writing with the District Council and subject to paragraph 4 below not to use or Occupy the Affordable Dwellings otherwise than for Affordable Housing in accordance with the Affordable Housing Plan and the Tenure Mix.

4 It is hereby agreed and declared:

4.1 The obligations and restrictions in this Part 1 Schedule 2 shall not bind the following:

- 4.1.1 a Chargee of the whole or part of the Affordable Dwellings or any successors in title to such Chargee PROVIDED THAT such Chargee must first comply with the provisions of paragraph 4.2 of this Part 1 Schedule 2; or
- 4.1.2 any person who has bought an Affordable Rented Dwelling pursuant to a statutory right to buy or a statutory right to acquire or any person who has acquired one hundred percent (100%) ownership (save for any mortgage) in an Intermediate Housing Dwelling;
- 4.1.3 a Protected Tenant;
- 4.1.4 any mortgagee or chargee of a person referred to at paragraph 4.1.2 of this Part 1 Schedule 2;
- 4.1.5 any person or body deriving title through or from any of the parties mentioned in paragraphs 4.1.1 – 4.1.3 above

4.2 Any Chargee claiming the protection granted by paragraph 4.1 to this Part 1 Schedule 2 above must first:

- 4.2.1 give written notice to the District Council of its intention to dispose of the Affordable Dwelling(s); and



- 4.2.2 have used reasonable endeavours over a period of eight (8) weeks from the date of the written notice to dispose of the Affordable Dwelling(s) to another Approved Body or to the District 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 in respect of the mortgage or charge; and
- 4.2.3 if the completion of the transfer of the Affordable Dwelling(s) has not taken place within the said eight (8) week period the Chargee shall be entitled to dispose of the Affordable Dwelling(s) free from the affordable housing provisions contained in this Deed which shall determine absolutely in respect of that particular Affordable Dwelling (or Affordable Dwellings)

PROVIDED THAT at all times the rights and obligations in this paragraph 4.2 shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage including all accrued principal monies, interest and costs and expenses incurred.



**Part 2**  
**Tenure Mix**

<b>Plot No.</b>	<b>Tenure</b>	<b>Dwelling type</b>	<b>Storey Height</b>	<b>Number of Bedrooms</b>
36	Intermediate Housing Dwelling	3 bed House (built to M4(2) standard)	2.5	3
37	Intermediate Housing Dwelling	3 bed House (built to M4(2) standard)	2.5	3
38	Intermediate Housing Dwelling	2 bed House	2	2
39	Affordable Rented Dwelling	2 bed House	2	2
40	Affordable Rented Dwelling	2 bed House	2	2
41	Affordable Rented Dwelling	2 bed Flat Over Garage	2	2
42	Affordable Rented Dwelling	1 bed Ground Floor Apartment -Wheelchair User Dwelling (fully wheelchair accessible to meet M4(3) standards)	N/A	1
43	Affordable Rented Dwelling	2 bed Ground Floor Apartment	N/A	2
44	Affordable Rented Dwelling	1 bed Ground Floor Apartment	N/A	1
45	Affordable Rented Dwelling	2 bed First Floor Apartment	N/A	2
46	Affordable Rented Dwelling	2 bed First Floor Apartment	N/A	2
47	Affordable Rented Dwelling	1 bed First Floor Apartment	N/A	1
48	Affordable Rented Dwelling	2 bed Second Floor Apartment	N/A	2
49	Affordable Rented Dwelling	2 bed Second Floor Apartment	N/A	2
50	Affordable Rented Dwelling	1 bed Second Floor Apartment	N/A	1



### **Part 3**

#### **Healthcare Contribution**

- 1 The Owner hereby covenants with the District Council to pay the Healthcare Contribution to the District Council prior to Commencement of Development and the Owner shall not Commence Development nor permit the Commencement of Development until the Healthcare Contribution has been paid to the District Council.
- 2 The District Council shall not pass any part of the Healthcare Contribution to NHS England until it has obtained from NHS England the following confirmations in writing from NHS England for the benefit of the Owner:
  - 2.1 that the Healthcare Contribution will be placed into an interest- bearing account and used only for the Healthcare Contribution Purposes;
  - 2.2 if requested in writing by the Owner no sooner than the 5<sup>th</sup> anniversary of the date that the Healthcare Contribution was received by NHS England for NHS England to repay to the person who paid the Healthcare Contribution any part of the Healthcare Contribution that remains unexpended and all accrued interest thereon when such notice is received (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if NHS England is legally obliged to make a payment from the Healthcare Contribution at the said 5<sup>th</sup> anniversary then the unexpended part of the Healthcare Contribution shall not be repaid until such payment is made and the unexpended part of the Healthcare Contribution to be repaid shall not include such payment;
  - 2.3 on receipt of a written request from the Owner for NHS England to provide the Owner with a statement confirming whether the Healthcare Contribution has been spent and if the said Healthcare Contribution has been spent in whole or in part outlining how the Healthcare Contribution has in whole or in part been spent.



**Part 4**  
**RAMS Contribution**

1. The Owner hereby covenants with the District Council:
  - 1.1 to notify the District Council before the Commencement of the Development in accordance with this Deed to allow the calculation of the RAMS Contribution payable to the District Council;
  - 1.2 not to commence the Development nor permit the Commencement of the Development unless and until the said RAMS Contribution has been paid to the District Council.
2. Notifications and payments shall be marked for the attention of the S106 Officer, Tendring District Council at the address given in accordance with clause 8.4.4 of this Deed.



## **SCHEDULE 3**

### **The Owner's Covenants with the County Council**

#### **Secondary Education Contribution**

The Owner covenants with the County Council as follows:

- 1.1 To pay the Secondary Education Contribution to the County Council in the following instalments:
  - 1.1.1 fifty per cent (50%) of the Secondary Education Contribution prior to the Commencement of Development and not to allow Commencement of Development prior to paying that sum to the County Council; and
  - 1.1.2 a further and final fifty per cent (50%) of the Secondary Education Contribution prior to the first Occupation of any Dwelling and not to allow the first Occupation of any Dwelling before paying that sum to the County Council and thus 100% of the Education Contribution has been paid to the County Council
- 1.2 To serve on the County Council the Notice of Commencement not less than 28 Working Days prior to Commencement stating the expected Commencement Date an estimate of the triggers and any further information stipulated in the Schedules to this Deed
- 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 the Schedules to this Deed and for the avoidance of doubt any dispute regarding any notice to be served under this Agreement may be resolved through the 2 mechanisms set out in Clause 14 of this Deed
- 1.5 In the event that the Secondary Education Contribution or part thereof is paid later than the relevant dates for payment stipulated in paragraph 1.1 above then the amount of the Secondary 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 the payment is



due and the date payment is received by the County Council multiplied by the Secondary Education Contribution or part thereof due or if greater an amount pertaining to interest on the Secondary 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 is received by the County Council

- 1.6 In addition to the requirement of 1.5 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 the County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) plus Relevant General Indexation for each and every letter sent to the Owner pursuant to the debt
- 1.7 Any dispute in relation to how the Secondary Education Contribution has been spent must be raised in writing by the Owner and received by the County Council within one month of receipt by the Owner of the County Council's statement referred to in Paragraph 4 of Schedule 5 and shall clearly state the grounds on which the expenditure is disputed
- 1.8 In the event that no written request is received by the County Council from the Owner pursuant to Paragraph 3 of Schedule 5 or no valid dispute is raised by the Owner pursuant to Paragraph 1.7 above the Owner shall accept that the Secondary Education Contribution has been spent in full on Secondary Education Purposes
- 1.9 In the event that the Secondary Education Contribution is overpaid by the Owner then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Secondary Education Contribution or have entered into a legally binding contract or obligation to spend the Contribution otherwise the County Council shall upon the Occupation of the final Unit on the Development or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owner (in excess of those sums calculated as due for payment under this Deed) together with interest calculated at the Seven Day LIBID Rate within twenty (20) Working Days of the County Council being informed by the Owner of such overpayment
- 1.10 In the event that the Unit Mix constructed or to be constructed as the Development should at any time differ from the Approved Unit Mix then the Owner shall serve on the County Council a further notice stating such revised Unit Mix within fourteen (14) Working Days of the revised Unit Mix being decided



- 1.11 In the event that the Unit Mix to be constructed on the Development does not match the Approved Unit Mix 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 Secondary Education Contribution paid and the amount of the Secondary 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 Secondary Education Contribution



## **SCHEDULE 4**

### **The District Council's Covenants with the Owner**

- 1 At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been discharged.
- 2 The District Council shall hold all contributions paid under this Deed in an interest bearing account and only apply the contributions for the purposes set out in this Deed.
- 3 In the event that any contributions paid by the Owner to the District Council under this Deed has not been committed (by a contract or by the expenditure of the monies) for the purposes set out in this Deed for each of the contributions (in respect of the Healthcare Contribution the amount which has not been paid to NHS England) upon receipt of a request in writing to do so to be received by the District Council no sooner than the 5<sup>th</sup> anniversary of the date of the payment the District Council shall repay any unspent balance which they still hold to the person who made the payment with any interest accrued thereon calculated at the Seven Day LIBID Rate from the date of payment until the date the unexpended part is actually repaid.



## **SCHEDULE 5**

### **The County Council's Covenants with the Owner**

- 1 At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been discharged
- 2 The County Council shall place the Secondary Education Contribution when received into an interest bearing account and to utilise the same solely for Secondary Education Purposes
- 3 The County Council covenant 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 Secondary Education Contribution being paid to the County Council in full but no later than one year thereafter to return to the party who deposited the Secondary Education Contribution any part of the Secondary Education Contribution that remains unexpended when such request in writing is received (together with interest accrued on the unexpended part) PROVIDED ALWAYS that where a legally binding contract or obligation has been entered into by the County Council to make a payment in respect of Secondary Education Purposes the unexpended part of the Secondary Education Contribution shall not be repaid until such payment is made and the unexpended part of the Secondary Education Contribution to be repaid (if any) shall not include such payment
- 4 The County Council covenant that upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of Secondary Education Contribution being paid to the County Council in full shall provide the Owner with a statement confirming whether the Secondary Education Contribution has been spent and if the Secondary Education Contribution has been spent in whole or in part outlining how the Secondary Education Contribution has in whole or in part been spent

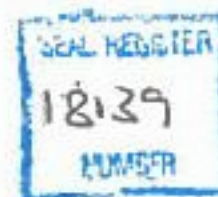


EXECUTED as a deed by affixing )  
the Common Seal of TENDRING )  
DISTRICT COUNCIL )

in the presence of:

Authorised Signatory:

Authorised Signatory:.....



EXECUTED as a deed by affixing )  
the Common Seal of ESSEX )  
COUNTY COUNCIL )

in the presence of:

Attesting Officer:



42109

Executed as a deed by BRITTON DEVELOPMENTS LTD )  
acting by one director in the presence of: )

Signature of Witne

Name of Witness:

Address of Witnes



SIGNED as a DEED by  
PERSIMMON HOMES LIMITED

Acting by its Attorneys

signed ....

In the presence of:

Witness signature .

And

In the presence of:

Witness signature ...