

DATED 22nd July 2022

UNILATERAL UNDERTAKING BY
JONATHAN HILLS and TRACY HILLS
TO
TENDRING DISTRICT COUNCIL
and
ESSEX COUNTY COUNCIL

Planning obligation by deed of undertaking under the Town and Country Planning
Act 1990 section 106
relating to Land to the East of Tye Road, Elmstead Colchester Essex CO7 7BB
(20/01797/FUL)

THIS DEED is made the day of Two Thousand and Twenty
Two

BY:

- (1) **JONATHAN HILLS** and **TRACY HILLS** of J&I Management Ltd, 201 Shrub End Road, Colchester, CO3 4RH being **THE TRUSTEES OF THE HILLS GROUP FUND 2 RETIREMENT BENEFIT SCHEME** ("the Owner");

and creates planning obligations which are enforceable by

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

WHEREAS:

- A. For the purposes of the Act, the Council and the County Council are both local planning authorities for the area within which the Site is located and the authorities by whom the obligations in this Deed are enforceable.
- B. The County Council is the local education authority for statutory age education and pre-statutory age education and childcare for the County of Essex and in whose administrative area the Site is located.
- C. The County Council is also the local library authority for the provision of library services under the 1964 Act and the County Council is required to provide a comprehensive and efficient service for all persons resident working or studying in the area in which the Site is located.
- D. The Owner is the owner of the Site which forms the land that is registered at HM Land Registry with Freehold Title Absolute under title number AA8941 and has an interest in the Site within the meaning of Section 106 (9) (b) of the 1990 Act and free from any encumbrances that would prevent the Owner from entering into this Deed.
- E. A planning application reference 20/01797/HUL ("the Planning Application") has been made to the Council for permission to develop the Site for residential development of 15 dwellings, land for open space and associated car parking and infrastructure ("the Development") and the Council has not determined the Planning Application.

F. The Owner has submitted the Appeal and the Appeal will be considered by an Inspector appointed by the Secretary of State and in the event that the Inspector or the Secretary of State decides to uphold the Appeal and grant Planning permission the Owner agrees that the Planning Permission should be granted subject to the planning obligations set out herein.

G. The Owner provided a unilateral undertaking to the Council and the County Council dated 22 December 2021 (the "Original Undertaking") in relation to the Appeal but has agreed to replace the Original Undertaking with this Deed to reflect that the value of the RAMS Contribution has changed from £127.30 per Residential Dwelling to £137.71 per Residential Dwelling.

H. The Owner has agreed to enter into this Deed to covenant that Affordable Housing Dwellings will be provided on the Site, that Open Space will be provided at the Site and thereafter maintained and to covenant to pay financial contributions for Libraries Education Open Space facilities and Recreational Disturbance Avoidance & Mitigation ("RAMS") as set out this Deed.

I. The Owner requires the Council to use the sum paid in accordance with the Second Schedule for the purpose of mitigating harm arising from the Development at the Special Protection Area, Special Areas of Conservation and Ramsar site designated primarily to protect waders & wildfowl specified in the Third Schedule.

J. In order to satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 the Owner, the Council and the County Council 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.

K. This Deed is enforceable in accordance with of section 106 of the Town and Country Planning Act 1990 if permission is granted pursuant to the Planning Application.

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

1.1 In this Deed where the context so admits the following words and expressions shall have the following meanings:
"1964 Act" means the Public Libraries & Museums Act 1964;

"Act" means the Town and Country Planning Act 1990, as amended;

"Appeal" means an appeal lodged with the Secretary of State pursuant to section 78 of the Act under reference number APP/P1560M/21/3283544;

"Development" means the development authorised by the Planning Application;

"Commencement of the Development" means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the Act and "Commence the Development" shall *mutatis mutandis* be construed accordingly PROVIDED THAT (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, enabling works, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements shall not be a material operation and "Commence" and "Commence Development" shall be construed accordingly;

"County Council Monitoring Fee" the non-refundable monitoring fee of £550 per obligation due to the County Council under this Deed and for the avoidance of doubt this is a total of £1100 (pounds sterling) (no VAT) towards ECC's reasonable and proper administration costs of monitoring and managing the performance of the

planning obligations that the Owners are required to observe and perform pursuant to the terms of this Deed;

“Development” means the development authorised by the Planning Permission;

“Index” means the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as the Council reasonably requires;

“Index Linked” where an amount is stated to be paid Index Linked the amount shall be increased or decreased by applying the RPI All Items Index Jan 1987 = 100 published by the Office for 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;

“Inspector” a planning inspector appointed by the Secretary of State to hear/determine the Appeal;

“Market Dwellings” means all Residential Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings as defined in the First Schedule;

"Notice of Commencement" means notice in writing to advise the Council of the expected date of Commencement of the Development;

"Occupation" means occupation of a building constructed as part of the Development and shall not include day time occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for the storage of plant and materials and "Occupy" and "Occupied" shall mutatis mutandis be construed accordingly;

"Planning Application" means the application for Planning Permission for the carrying out of the Development carrying the reference (20/01797/FUL);

"Planning Permission" means conditional planning permission for the Development at the Site comprised in the Planning Application;

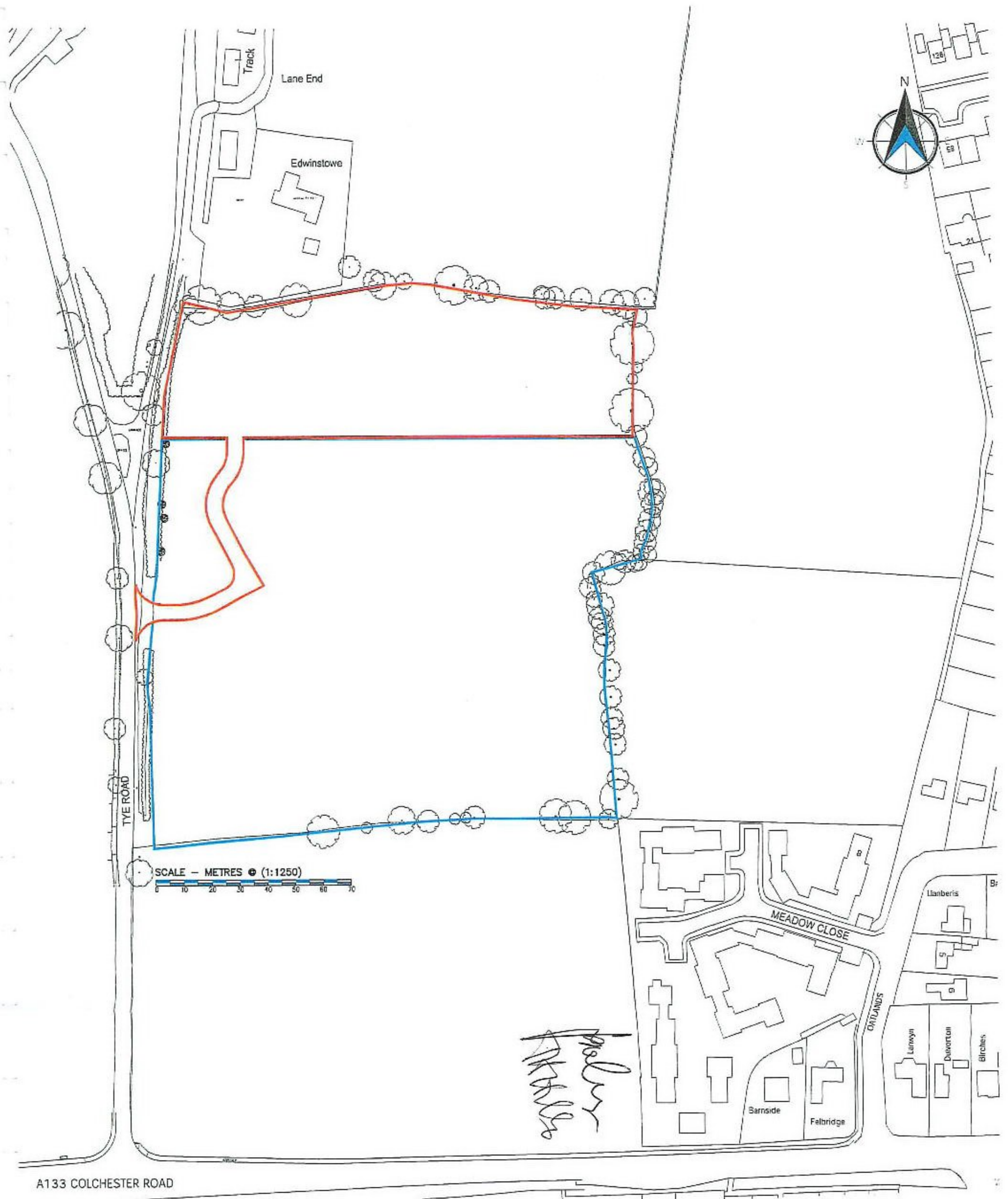
"Residential Dwellings" means the residential dwellings permitted by the Planning Permission;

"Secretary of State" means the Secretary of State for Levelling Up, Housing and Communities;

"Site" means land east of Tye Road Elmstead Colchester Essex CO7 7BB shown for identification edged red on the Site Plan;

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

1.2 Where the context so requires:



*proposed
outlets*

A133 COLCHESTER ROAD

hillsbuilding group



Project: Residential Development of Tye Road & Meadow Close (Former Farm)	
Drawing No: L1002019.PLAN	Date: 23/07/2019
Project Ref / Drawing No: 170119P/11	Scale: 1:1250 @ A3

Edge Hill House, Brook Street, Liverpool, Merseyside, L3 5QJ. Tel: 0151 929 795 000

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

2. INTERPRETATION AND LEGAL EFFECT

- 2.1 This Deed is made pursuant to Section 106 of the Act and the covenants contained herein are planning obligations for the purposes of Section 106 of the Act in respect of which:
 - (a) The Owner owns the freehold title to the Site;
 - (b) The Council and the County Council are the Local Planning Authorities entitled to enforce the provisions of this Deed and the covenants contained in this Deed shall be so enforceable;
 - (c) This Deed is entered into in respect of the Site with the intent that it shall bind the Owner's freehold interest in the Site;
 - (d) This Deed shall be binding on all successors and assigns in title of the Owner and any persons claiming under or through it;
 - (e) This Deed has been executed as a Deed and the Owner shall supply a copy of it to the Council so that it may be registered by the Council against the Site as a Local Land Charge and entered into the planning register maintained by the Council under the Act.
- 2.2 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval;
- 2.3 Save in respect of the obligations in this Deed expressly requiring compliance prior to Commencement of the Development and which shall become operative on the issue of the Planning Permission this Deed shall thereafter come into effect on the

Commencement of the Development PROVIDED ALWAYS THAT the obligations contained in this Deed are conditional upon confirmation by the Inspector or the Secretary of State in the decision notice issued pursuant to the Appeal that the obligations in this Deed are in compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and material weight has been given to the obligation in determining the Appeal SAVE THAT if the Inspector or Secretary of State in the decision notice issued pursuant to the Appeal states that an obligation is not in compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and gives no material weight to it in determining the Appeal that shall not affect the enforceability of the remaining obligations in this Deed;

2.4 This Deed is provided by the Owner to the Council and the County Council on the basis that upon its completion the Original Undertaking shall cease to have any effect and shall not be enforceable against the Owner by the Council and the County Council;

2.5 The provisions of this Deed shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999.

3. MISCELLANEOUS

3.1 Nothing in this deed shall prohibit the rights to develop any part of the Site in accordance with a grant of further planning permission issued after the completion of this Deed;

3.2 No person shall be liable for any breach of this Deed unless they hold an interest in that part of the Site in respect of which such breach occurs or held such an interest at the date of the breach neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause;

3.3 The Owner shall save for liability in respect of any antecedent breach upon parting with its interests in the Site or part thereof be released from all obligations rights and duties under the terms of this Deed and all outstanding obligations rights and duties shall pass to the Owner's successors in title to the Site;

3.4 The obligations in this Deed will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.

- 3.5 The obligations in this Deed will not be enforceable against a purchaser an occupier or tenant or mortgagee of any completed Market Dwelling or against any successor in title or against anyone deriving title from any of them;
- 3.6 The provisions and obligations set out in the Second to Seventh Schedule inclusive of this Deed shall not be enforceable against any Approved Body or any owner or occupier or tenant or mortgagee of any Affordable Housing Dwelling or any mortgagee of an Approved Body or against anyone deriving title from any of them;
- 3.7 Subject to the provisions of the First Schedule in relation to a Chargee (as defined in the First Schedule) a mortgagee of the Site will not incur any liability for any breach of the obligations contained in this Deed unless and until it becomes a mortgagee in possession of the Site;
- 3.8 The provisions of this Deed will come to an end if the Planning Permission is quashed revoked or otherwise withdrawn or modified without the consent of the Owner before the Commencement of the Development or the Planning Permission expires;
- 3.9 Where the provisions of this Deed come to an end under Clause 3.8 the Owner may request that the Council vacate or cancel the entry made in the Local Land Charges register in relation to this Deed or otherwise to record the fact that it has come to an end and no longer affects the Site.

4. NOTICES

- 4.1 All notices given or served or required to be given or served under this Deed shall be given or served as follows:
- (a) by personal delivery by hand (in which case service is immediately effected);
 - (b) by first class post (in which case service is effected on the second day after posting).
- 4.2 The address for service of notices:
- 4.2.1 for the Council shall be at the Council's address at the head of this Deed and notices shall be marked for the attention of the Council's Head of Planning ref 20/01797/FUL;
- 4.2.2 to the Owner as aforesaid;

4.2.3 for the County Council notices and communications shall be deemed to have been validly served or given if received by electronic mail AND delivered by recorded delivery post and marked for the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH and to development.enquiry@essex.gov.uk.

5. THE OWNER'S COVENANTS

5. The Owner HEREBY COVENANTS with the Council and the County Council:

- 5.1. To serve on the Council and the County Council a Notice of Commencement not less than four weeks before the expected date of Commencement of the Development;
 - 5.2. To serve on the Council and the County Council a notice in writing not less than four weeks before the expected date of first Occupation of a Residential Dwelling;
 - 5.3 To observe the planning obligations contained in this Deed and the Schedules to this Deed;
 - 5.4 To pay the County Council Monitoring Fee to the County Council prior to Commencement of Development; and
 - 5.5 that the Owner who holds the freehold of the Site on behalf of the Hills Group Fund 2 Retirement Benefit Scheme as trustees of that trust fully binds the Site within the trust to the terms of this Deed but it is not the intention that by entering into this Deed the Owner should incur any personal liability and the liability of the Owner shall not exceed the value of the trust assets in their respective hands from time to time.
- 6. COSTS**
- 6.1 On completion of this deed the Owners shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed.

7. JURISDICTION

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

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

FIRST SCHEDULE

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 provided to a Person in Housing Need whose needs are not met by the market with eligibility determined with regard to local incomes and local house prices in accordance with the definition of “Affordable Housing” set out in Annex 2 of the National Planning Policy Framework (“NPPF”);

“Affordable Housing Dwellings”

means either (a) the Residential Dwellings to be provided as Affordable Housing pursuant to the Affordable Housing Scheme or (b) the one (1) Residential Dwelling to be transferred to the Council pursuant to the Affordable Housing Option;

“Affordable Housing Option”

means the option to accept one (1) of the Residential Dwellings being transferred to the Council at the Affordable Housing Price in lieu of the delivery of the Affordable Housing Scheme and which Residential Dwelling when transferred to the Council is to be used solely as Social Rented Housing;

“Affordable Housing Price”

means the sum of One Pound (£1.00) for each Affordable Housing Dwelling transferred to the Council pursuant to the Affordable Housing Option;

“Affordable Housing Plan”

means the plan to show the size and the location within the Site of the Affordable Housing Dwellings to be transferred to the Council pursuant to the Affordable Housing Option;

“Affordable Housing Scheme”

means the scheme to provide for four (4) two (2) bedroom Residential Dwellings to be constructed, transferred (to an Approved Body) and used as Affordable Housing and which scheme shall include: (a) a plan that shows the location and size

of the said Affordable Housing; and (b) the tenure split between social rented housing, affordable rented housing and intermediate housing (all as defined in Annex 2 of the NPPF); and (c) the identity of the Approved Provider;

“Approved Body”

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

“Chargee”

means any mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any administrator (howsoever appointed) or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any Housing Administrator of the whole or any part of the Affordable Housing Dwellings that have been transferred to an Approved Body;

“Homes England”

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

“Housing Administrator”

has the meaning ascribed to it in the Housing and Planning Act 2016;

“Housing Needs Register”

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

“Persons In Housing Need”

means a person or persons registered on the Housing Needs Register or such other person considered by the Council or the Approved Body to be in housing need having regard to their income and local house prices and rents;

“Protected Tenant”

means any tenant who:
(a) has exercised the right to acquire pursuant to the Housing and

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

(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling;

(c) has been granted a shared ownership lease in exercise of that person's statutory right in respect of a particular Affordable Housing Dwelling;

"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), for which guideline target rents are determined through the national rent regime;

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

The Owner hereby covenants with the Council as follows:

1. Not to Commence the Development unless and until the Council has provided the Owner with notice in writing to confirm that the Council is exercising the Affordable Housing Option (in which case paragraphs 2, 3, 6 and 7 of this Schedule shall apply) or the Council requires the Owner to submit and implement the Affordable Housing Scheme (in which case paragraphs 4, 5, 6 and 7 of this Schedule shall apply) and in the event such notice is not served within 20 Working Days of the date of a request in writing to be served on the Council by the Owner for said notice to be served the Owner shall implement the Affordable Housing Scheme.

2. Not to Commence the Development unless and until the Affordable Housing Plan and the Specification have been submitted to the Council and the Council has approved the said Affordable Housing Plan and the Specification in writing PROVIDED THAT each of the said documents shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to

- the Owner within 12 weeks of the date on which each said document is submitted to the Council.
3. Not to Occupy (or allow, cause or permit the Occupation of) more than ten (10) Market Dwellings unless and until:
- 3.1 the one (1) Affordable Housing Dwelling has been:
- 3.1.1 constructed in accordance with the Specification and is capable of being Occupied for its intended purpose; and
- 3.1.2 transferred (freehold) to the Council for the Affordable Housing Price and for the purposes of this Schedule only the expression "transferred" shall mean a transfer of the freehold interest (of any house or block of flats) that comprises the Affordable Housing Dwelling or an agreement for sale agreed with the Council that has been unconditionally released for completion by the Owner Provided Always that the transfer of the Affordable Housing Dwelling to the Council shall be subject to the provisions contained in Part Two of this Schedule.
4. Not to Commence the Development unless and until the Affordable Housing Scheme has been submitted to the Council for approval and the Council has approved the said Affordable Housing Scheme in writing PROVIDED THAT the said document shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Owner within 12 weeks of the date on which each said document is submitted to the Council.
5. Not to Occupy (or allow, cause or permit the Occupation of) more than eight (8) Market Dwellings unless and until the Affordable Housing Dwellings referred to in the Affordable Housing Scheme have been:
- 5.1 constructed and are available to be Occupied for their intended purpose; and
- 5.2 transferred to the Approved Body and for the purposes of this Schedule only the expression "transferred" shall mean a transfer of the freehold interest (of any house or block of flats) or leasehold interest (of any flat in a block that also contains one or more Market Dwellings) that comprises the Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner Provided Always that any transfer of the Affordable Housing Dwellings to the Approved Body shall be subject to the provisions contained in Part Two of this Schedule.

6. (Subject always to paragraph 7 of this Schedule) the Affordable Housing Dwellings shall be Occupied for no purpose other than as Affordable Housing.
7. The Owner confirms and acknowledges that without prejudice to paragraph 6 the obligations and restrictions contained in this Schedule shall not bind:
 - 7.1 a Protected Tenant;
 - 7.2 any person or body deriving title through or from a Protected Tenant;
 - 7.3 a Chargee of the Approved Body of the whole of any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such Chargee
PROVIDED THAT:
 - 7.3.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Dwellings; and
 - 7.3.2 such Chargee shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Dwellings to another Approved Body or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 7.3.3 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

Part Two

- A. The transfer of the Affordable Housing Dwellings to the Council or the Approved Body (as appropriate) shall be with vacant possession.
- B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Council or the Approved Body shall be prepared by the Owner and the Owner shall pay the Council's or the Approved Body's reasonable costs of transferring the Affordable Housing Dwellings up to a total aggregate limit of £1,500 (One Thousand Five Hundred Pounds) on completion of the transfer deed.
- C. The transfer deed shall contain:
 - 1. a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;
 - 2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and
 - 3. 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.

SECOND SCHEDULE

Recreational Disturbance, Avoidance & Mitigation Contribution (RAMS)

1. To notify the Council before Commencement of the Development in accordance with clause 5.1 of this Deed to allow the calculation of the RAMS contribution of £137.71 Index Linked multiplied by the net increase in the number of new Residential Dwellings)
2. Not to Commence the Development unless and until the said **RAMS** contribution has been paid.
3. Notifications and payments shall be marked for the attention of the Section 106 Officer, Tendring District Council, Council Offices, Weeley, Clacton-on-Sea, Essex, CO16 9AJ or via email at obligations@tendringdc.gov.uk

THIRD SCHEDULE

Relevant Designated European Wildlife Site

Special Areas of Conservation and Ramsar site(s) at Colne Estuary RAMSAR and SPA and the Stour and Orwell Estuary RAMSAR and SPA designated primarily to protect waders & wildfowl.

FOURTH SCHEDULE

OPEN SPACE

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

“Public Open Space Contribution” the Public Open Space Contribution is the sum calculated using the net increase in the number of new Residential Dwellings on the Site and applying Table 4 of the Council’s Supplementary Planning Document “Provision of Recreational Open Space for New Development” published in May 2008 as revised by an Addendum published in May 2021 (Table 4 is set out in the Fifth Schedule) the calculated sum is then Index Linked to be expended by the Council upon the recreational facilities to be provided at the site known as Charity Fields School Road Elmstead Market;

“Open Space Specification” the specification and layout plan and timing for the laying out, profiling, clearing, planting, landscaping of the Open Space Land and generally for ensuring that the said land is fit for its intended purpose as recreational land to be enjoyed by members of the public as such;

“Open Space Land” areas of land not to be less than 0.083 hectares as shown on the Open Space Plan to be used for no purposes other than as public open space to provide a recreational facility for members of the public in perpetuity and as sustainable drainage;

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

“Open Space Management Plan” means a management plan prepared by the Owner to include levels of maintenance and details of funding for the maintenance of the Open Space Land and to be approved in writing by the Council for the

ongoing management and maintenance of the Open Space Land;

“Open Space Plan” a plan identifying the Open Space Land;

“Management Company” means a management entity established for inter alia the purpose of managing and maintaining the Open Space Land and funded for that purpose by the Owner and its successors in title and the Occupiers of the Market Dwellings and if relevant the Approved Body as defined in the First Schedule;

2. The Owner hereby covenants with the Council:-

- 2.1 To notify the Council before commencement of the Development in accordance with clause 5.1 of this Deed to allow the calculation of the Public Open Space Contribution;
- 2.2 Not to Occupy the Development unless and until the said Public Open Space Contribution has been paid to the Council;
- 2.3 Notifications and payments shall be marked for the attention of the Section 106 Officer, Tendring District Council, Council Offices, Weeley, Clacton-on-Sea, Essex, CO16 9AJ or via email at obligations@tendringdc.gov.uk;
- 2.4 Prior to Commencement of the Development to submit the Open Space Plan, the Open Space Specification, the Open Space Management Plan and details of the Management Company to the Council for approval;
- 2.5 Not to Commence the Development unless and until the Council has approved the Open Space Plan, the Open Space Specification and the Open Space Management Plan in writing PROVIDED THAT each of the said documents shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Owner within 12 weeks of the date on which each said document is submitted to the Council;
- 2.6 To physically set out the Open Space Land in accordance with the Open Space Plan and the Open Space Specification and the timing contained therein;
- 2.7 Not to Occupy or allow cause or permit to be Occupied any more than 80% of the Residential Dwellings unless and until all of the Open Space Land has been physically set out on the Site in accordance with the Open Space Specification and the Council has received the relevant Open Space Completion Certificate;

- 2.8 To maintain the Open Space Land in accordance with the Open Space Management Plan for 1 year following the issue of the relevant Open Space Completion Certificate as appropriate or until such time as the transfer described in paragraph 2.9 has been completed;
- 2.9 To transfer the Open Space Land to the Management Company approved by the Council with all necessary easements and vacant possession who shall from that date manage and maintain the Open Space Land in perpetuity;
3. The Owner shall include in the transfer to the Management Company:
 - 3.1 a covenant only to permit the Open Space Land to be utilised solely as recreation land by the general public;
 - 3.2 a covenant to maintain the Open Space Land in perpetuity in accordance with the Open Space Management Plan; and
 - 3.3 a covenant not to transfer the Open Space Land into the individual ownership of the owners of the Residential Dwellings.
4. The Owner shall furnish a copy of the transfers referred to in paragraph 2.9 above to the Council within 6 months of the completion of the transfer and shall inform the Council in writing of the contact details of the Management Company.
5. The Owner shall include in the transfer or lease to the purchasers or lessees of the whole or any part of the Site (other than the Council in relation to the Affordable Housing Dwellings under the Affordable Housing Option) an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Management Company to discharge its obligations under paragraph 3 of this Schedule.
6. The payment made under paragraph 2.2 above is made strictly on the basis that:
 - 6.1 the Public Open Space Contribution when received shall be placed into an interest bearing account and utilised solely for the purposes of providing recreational facilities at Charity Fields School Road Elmstead Market;
 - 6.2 that upon receipt of a request in writing to do so received by the Council no sooner than the fifth (5th) anniversary of receipt by the Council of the Public Open Space Contribution to return to the party who deposited the Public Open Space Contribution the Public Open Space Contribution or any part of the Public Open Space Contribution that remains unexpended when such request in writing is received (together with interest accrued at the Seven Day LIBID Rate on the unexpended part) shall be returned to the party that

made the payment PROVIDED ALWAYS that where a legally binding contract or obligation has been entered into by the Council prior to the fifth (5th) anniversary of receipt of the Public Open Space Contribution the unexpended part of the Public Open Space 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 Public Open Space Contribution to be repaid (if any) shall not include such payment;

6.3

that upon receipt of a written request from the Owner prior to the sixth (6th) anniversary of receipt by the Council of the Open Space Contribution the Council shall provide the Owner with a statement confirming whether the Open Space Contribution has been spent and if the Open Space Contribution has been spent in whole or in part outlining how the Open Space Contribution has in whole or in part been spent.

FIFTH SCHEDULE

PUBLIC OPEN SPACE CONTRIBUTION

TABLE 4

Table 4 Revised May 2021 by Addendum

Number of bedrooms per Dwelling	Contribution per Dwelling
Studio Flat	£751.00
1 bedroom	£1166.00
2 bedrooms	£2333.00
3 bedrooms	£3110.00
4 bedrooms	£3887.00
5+ bedrooms	£4665.00

SIXTH SCHEDULE

EDUCATION CONTRIBUTION

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

"Education Contribution" means the Primary Education Contribution;

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

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

"Education Purposes" means the Primary Education Purposes;

"Flat" means a Residential Dwelling that occupies a single floor and for does not benefit from private open space for the exclusive use of the residents of the Dwelling and no other persons;

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

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

"Primary Education Contribution" means the Primary Pupil Product multiplied by the cost generator of Seventeen thousand two hundred and sixty-eight pounds £17,268) to which the Relevant Education Indexation shall be added;

"Primary Education Purposes" means the use of the Primary Education Contribution towards the provision and/or improvement of facilities for the education and/or care of children between the ages of 4 to 12 (both inclusive) including those with special educational needs in the Tending group 3 (Brightlingsea and Elmstead) primary forecast planning group area as specified in the Essex School Organisation Service's Ten Year Plan including the reimbursement of capital funding for such provision (and/or improvement) made by the County Council in anticipation of the Primary Education Contribution;

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

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

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

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

"Relevant General Indexation" means the amounts that the Owner shall pay with and/or agree in addition to each part of the fee or sum set out under paragraph 3.2.2 of this Schedule that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change shown in the General Index between the General Index Point pertaining to January 2020 and the date payment is made to the County Council;

"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 Index Point pertaining to January 2020 and the Education Index Point pertaining to the date the payment is due to be made to the County Council;

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

2. The Owner hereby covenants with the Council and the County Council as follows:

2.1 to serve on the Council and the County Council prior to Commencement of the 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 twenty (20) Working Days of the revised Unit Mix being decided;

2.2 not to Occupy any Residential Dwelling unless and until fifty percent (50%) of the Education Contribution has been paid to the County Council;

- 2.3 to pay fifty percent (50%) of the Education Contribution to the County Council prior to the Occupation of any Residential Dwelling;
- 2.4 not to Occupy (or allow, cause or permit the Occupation of) more than seven (7) of the Residential Dwellings unless and until a further (and final) fifty percent (50%) of the Education Contribution has been paid to the County Council;
- 2.5 to pay a further (and final) fifty percent (50%) of the Education Contribution to the County Council before any more than eight (8) of the Residential Dwellings are Occupied;
3. The Owner confirms and acknowledges:
 - 3.1 In the event that the Owner fails to serve notice as set out in Paragraph 2.1 of this Schedule then the County Council may calculate the amount of the Education Contribution based on an estimate of the Unit Mix as it sees fit acting reasonably and demand and enforce payment of the Education Contribution at any time after the date that the Education Contribution becomes payable under this Deed;
 - 3.2 In the event that the Unit Mix to be constructed as the Development does not match the Unit Mix on which the Education Contribution paid was based the Owners shall pay to the County Council within 30 Working Days of the change in Unit Mix becoming apparent any amount pertaining to the difference between the Education Contribution paid and the Education Contribution pertaining to the Unit Mix to be constructed as part of the Development and any such amount shall from the date payment is received by the County Council form part of the Education Contribution;
 - 3.2.1 In the event that the parts of the Education Contribution are paid later than the dates they are due then the amount of the Education Contribution (or relevant part thereof) payable by the 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 Commencement of the Development and the Education Index Point prevailing at the date of payment multiplied by the Education Contribution (or relevant part thereof) due or if greater an amount pertaining to interest on the Education Contribution (or relevant part thereof) due calculated at the Seven Day LIBID Rate from the date of Commencement of Development until the date payment of the amount due is received by the County Council;
 - 3.2.2 In addition to the requirement of 3.2.1 above in the event that any sum due to be paid by the 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; and

3.3 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 in whole or in part.

SEVENTH SCHEDULE
LIBRARIES CONTRIBUTION

1. In this Schedule the following words and expressions shall have the following meaning:

“Library Contribution” means the sum of seventy-seven pounds and eighty pence (£77.80) per Dwelling to which sum the Relevant Library Indexation shall be added;

“Library Contribution Purposes” means the use of the Library Contribution towards the upgrading of existing facilities at Groenstead Library to include, but not limited to, additional furniture, technology and stock;

“Library Index” means the General Index as defined in seventh schedule above;

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

“Relevant Library Indexation” means the amount that the Owner shall pay with and in addition to the Library Contribution paid that shall in each case equal a sum calculated by taking the amount of the Library Contribution being paid and multiplying this amount by the percentage change shown in the Library Index between the Library Index Point pertaining to April 2021 and the date of the most recent index point published in relation to the date the payment is due to be made to the County Council;

2. The Owner hereby covenants with the County Council:

2.1 To pay the Library Contribution to the County Council prior to Commencement of Development and not to allow Commencement of Development unless and until the Library Contribution has been paid in full to the County Council;

2.2 In the event that the Library Contribution is paid later than date set out in paragraph 2.1 of this Schedule then the amount of the Library 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 Library Index between the Library Index Point prevailing at the date of

Commencement and the Library Index Point prevailing at the date of actual payment multiplied by the Library Contribution due or if greater an amount pertaining to interest on the Library Contribution (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 Library Contribution is received by the County Council;

2.3 In addition to the requirement of 2.2 above in the event that any sum due to be paid by the Owner to the County Council pursuant to this Schedule 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).

3. It is hereby agreed and declared:

3.1 In the event that the Library 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.

