

THIS DEED is made the 1st day of August Two Thousand and Twenty Two

BETWEEN:

- (1) **HILLS RESIDENTIAL CONSTRUCTION LIMITED** (Co. Regn. No. 03919214) of Bridge Mill House, Brook Street Business Centre, Brook Street, Colchester, CO1 2UZ (the "Owner")
- (2) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE ("the Council")
- (3) **ESSEX COUNTY COUNCIL** of County Hall Chelmsford Essex CM1 1QH ("the County Council")
- (4) **CLOSE BROTHERS LIMITED** (Company Registration Number: 195626) of 10 Crown Place London EC2A 4FT (the "First Mortgagee") and
- (5) **GARY CLIFTON HUBERT** of Grove Farm, School Road, Elmstead, Colchester, CO7 7EU (the "Second Mortgagee")

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 also the local authority for statutory age education and pre-school age education and childcare for the area in which the Site is located
- C. The Owner is the owner of the freehold interest in the Site that is registered at HM Land Registry under title number AA37009
- D. Outline planning permission was granted on appeal on 5 February 2018 by the Secretary of State under appeal reference number APP/P1560/W/17/3169150 (Council reference 16/01797/OUT) (the "Outline Permission") in relation to the Site for the erection of 62 dwellings, associated garaging, parking and infrastructure
- E. A unilateral undertaking dated 7 June 2017 was given to the Council and the County Council by the Second Mortgagee (the "2017 Unilateral Undertaking") in relation to the Outline Permission
- F. Reserved matters approval was granted on 15 June 2020 by the Council under reference number 19/00791/DETAIL (the "2020 RMA")
- G. A unilateral undertaking dated 27 May 2020 was given to the Council by the Second Mortgagee in relation to the 2020 RMA (the "2020 Unilateral Undertaking")
- H. The Owner acquired the Site from the Second Mortgagee on 14 January 2022

- I. The Second Mortgagee is the beneficiary of a legal charge over part of the land comprised in Title Number AA37009 dated 22 December 2021. Part of this charge was released on 11 May 2022
- J. The First Mortgagee is the beneficiary of a legal charge over the land comprised in Title Number AA37009 dated 11 May 2022
- K. A planning application has been submitted to the Council for "proposed development of 40 dwellings to amend the approved plans for the same plots as per approved application 19/00791/DETAIL" which has been registered by the Council under reference number 21/01552/FUL (the "2022 Application")
- L. The 2022 Application is not an application made under s73 of the 1990 Act but an application for a full grant of planning permission for 40 dwellings and will not result in an increase to the numbers of Residential Dwellings to be provided at the Site but as it will result in the issue of a new planning permission, the Owner has agreed to enter into this Deed to ensure that the terms of this Deed shall apply to both the development authorised by the 2022 Planning Permission (the "2022 Development") and the development authorised by the Outline Permission and the 2020 RMA (the "Original Development").
- M. This Deed is enforceable by the Council and the County Council (as the case may be) in accordance with section 106 of the Town and Country Planning Act 1990 if permission is granted pursuant to the 2022 Application
- N. This Deed is independent and separate from the 2017 Unilateral Undertaking and the 2020 Unilateral Undertaking and the Parties have agreed to enter into this Deed to regulate the development of the Site as a whole and on the condition that upon Commencement of the 2022 Development the terms of this Deed will bind all of the Site and the 2017 Unilateral Undertaking and the 2020 Unilateral Undertaking will cease to have any effect

NOW THIS DEED WITNESSETH as follows:

1. DEFINITIONS

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

"2017 Unilateral Undertaking" means the unilateral undertaking dated 7 June 2017 given to the Council and the County Council by the Second Mortgagee in relation to the Outline Permission;

"2020 RMA" means the reserved matters approval granted on 15 June 2020 by the Council under reference number

19/00791/DETAIL in relation to the Outline Permission;

"2020 Unilateral Undertaking"

means the unilateral undertaking dated 27 May 2020 given to the Council by the Second Mortgagee in relation to the 2020 RMA;

"2022 Application"

means the planning application submitted to the Council for "proposed development of 40 dwellings to amend the approved plans for the same plots as per approved application 19/00791/DETAIL" which has been registered by the Council under reference number 21/01552/FUL;

"Act"

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

"Commencement of the 2022 Development"

means the date of the implementation of the 2022 Planning Permission by the carrying out of a material operation described in section 56 of the Act and "Commence the 2022 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 2022 Development" shall be construed accordingly;

"Commencement of the Development"

means the date of the implementation of either the Outline Permission and the 2020 RMA or the 2022 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;

"Development"

means the development authorised by the Outline Permission and the 2020 RMA as amended by the 2022 Planning Permission and including the 2022 Planning Permission;

"Index"

means the "All Items" index figure of the Index of Retail Prices (RPI All Items Index) 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"

means increased 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;

"Market Dwellings"

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

"Notice of Commencement of the Original Development"

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

"Notice of Commencement of the 2022 Development"

means notice in writing to advise the Council of the expected date of Commencement of the 2022 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;

"Original Development"

means the development authorised by the Outline Permission and the 2020 RMA;

"Outline Permission"

means the planning permission granted on appeal on 5 February 2018 by the Secretary of State under appeal reference number APP/P1560/W/17/3169150 (Council reference 16/01797/OUT) in relation to the Site for the erection of 62 dwellings, associated garaging, parking and infrastructure;

"Planning Permission"

means the Outline Permission and the 2020 RMA as amended by the 2022 Planning Permission and including the 2022 Planning Permission;

"Residential Dwellings"

means the sixty two (62) residential dwellings permitted by the Planning Permission excluding the respite house to be provided as part of the Development;

"Site"	means land adjacent to Market Field School, School Road, Elmstead Market, Colchester, Essex shown for identification edged red on the Site Plan;
"Site Plan"	means the drawing annexed hereto marked 'Site Location Plan';
"2022 Development"	means the development as set out in the 2022 Application;
"2022 Planning Permission"	means conditional planning permission for that part of the Development at the Site comprised in the 2022 Application;
"Working Days"	any day from Monday to Friday (inclusive) which is not Christmas day Good Friday or a statutory bank holiday in England and reference to "Working Days" shall be construed accordingly.

1.2 Where the context so requires:

- 1.2.1 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.
- 1.2.2 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.
- 1.2.3 Any headings or side notes are for ease of reference only and shall not affect the construction of this Deed.
- 1.2.4 Where a party includes more than one person any obligations of that party shall be joint and several.

Do not scale from this drawing. All information shown is to be checked on site for accuracy and fit. Any discrepancies or omissions to be reported to Arcady Architects immediately.



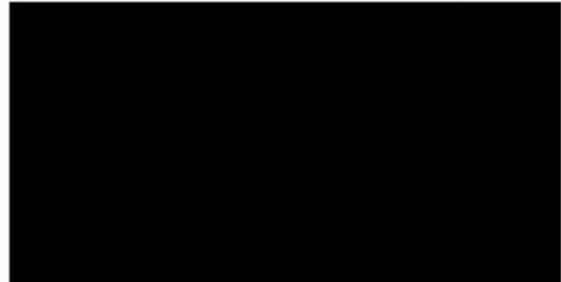
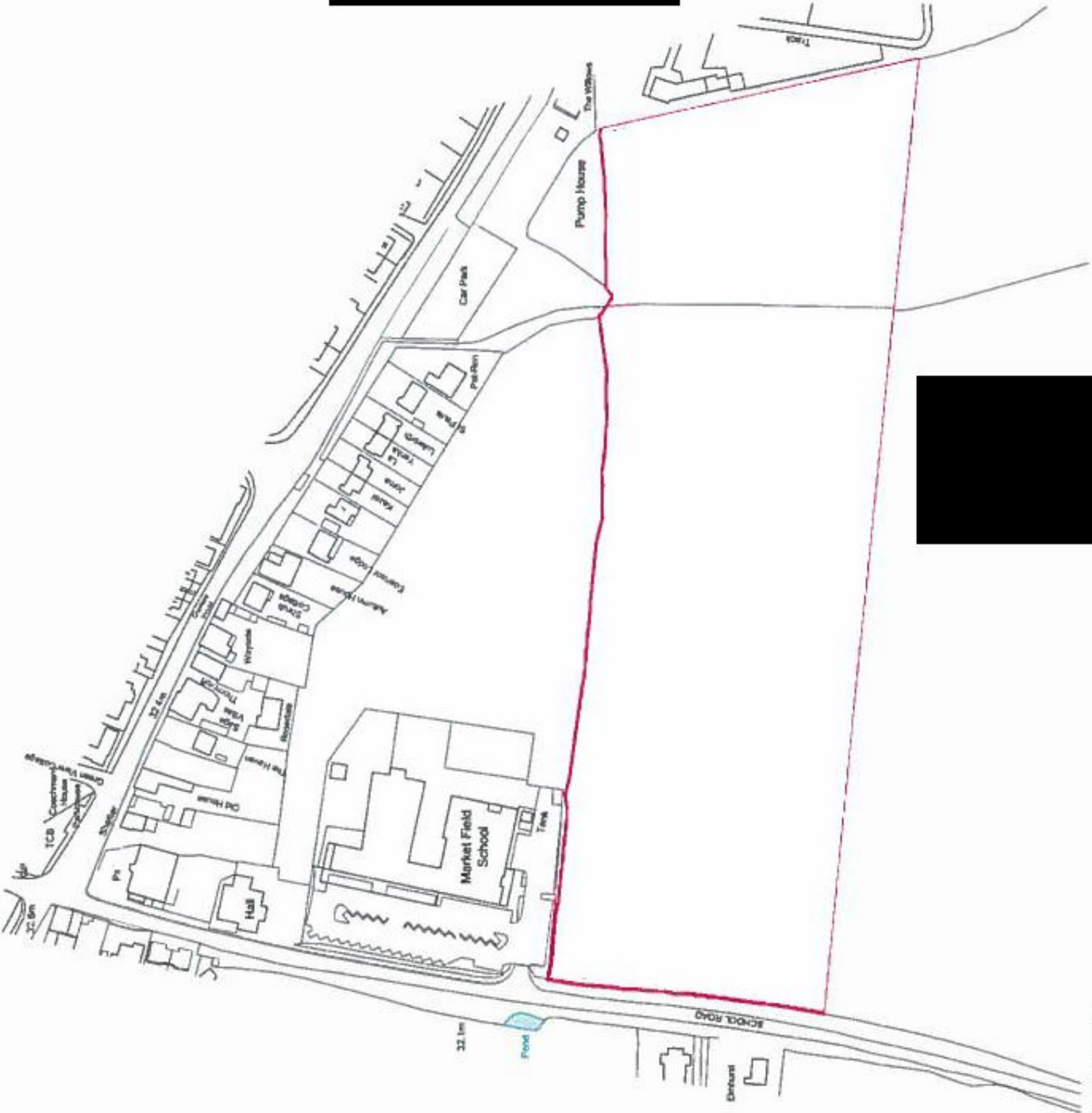
PROJECT LAND ADJACENT TO SCHOOL ROAD, ELPSTEAD MARKET - ESSEX

TITLE LOCATION PLAN

DATE	14/08/01
BY	MAY 16 MR

The Old Bakery, The Street, Popham, Chelmsford Essex, CH1 8DQ.

ARCADY ARCHITECTS



LOCATION PLAN
 Scale 1:1250
 SCALE METRES



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:

2.1.1 The Owner owns the freehold title to the Site;

2.1.2 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;

2.1.3 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;

2.1.4 This Deed shall be binding on all successors and assigns in title of the Owner and any persons claiming under or through it;

2.1.5 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 To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

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

2.4 Save in respect of the obligations in this Deed expressly requiring compliance prior to Commencement of the 2022 Development and which shall become operative on the issue of the 2022 Planning Permission this Deed shall thereafter come into effect on the Commencement of the 2022 Development PROVIDED ALWAYS THAT it is agreed by the Parties that following Commencement of the 2022 Development the terms of the 2017 Unilateral Undertaking and the 2020 Unilateral Undertaking shall cease to have effect and shall not be enforceable against the Site;

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

3. **MISCELLANEOUS**

3.1 Insofar as any provision or clause of this Deed are found (for whatever reason) to be invalid or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed

3.2 Nothing in this Deed shall prohibit the rights to develop any part of the Site in accordance with a grant of further planning permission (other than the Outline Permission and the 2020 RMA and the 2022 Planning Permission) issued after the completion of this Deed;

3.3 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;

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

3.5 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;

3.6 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;

3.7 The provisions and obligations set out in the First Schedule and the Third Schedule and the Fourth Schedule of this Deed shall not be enforceable against any owner or occupier or tenant or mortgagee of any Affordable Housing Dwelling or against anyone deriving title from any of them;

3.8 Subject to the provisions of the Second Schedule in relation to a Chargee (as defined in the Second Schedule) a mortgagee of the Site will not incur any liability for any breach of the obligations contained in this Deed unless and until it becomes a mortgagee in possession of the Site;

3.9 The provisions of this Deed will come to an end if the 2022 Planning Permission is quashed revoked or otherwise withdrawn or modified without the consent of the Owner before the Commencement of the 2022 Development or the 2022 Planning Permission expires;

3.10 Where the provisions of this Deed come to an end under Clause 3.9 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:

4.1.1 by personal delivery by hand (in which case service is immediately effected).

4.1.2 by first class post (in which case service is effected on the second day after posting).

4.1.3 by email if an email address has been provided (in which case service is immediately effected).

4.2 The address for service of notices:

4.2.1 for the Council if by post or hand delivery addressed to the Assistant Director of Planning at the Council's address at the head of this Deed or by email to obligations@tendringdc.gov.uk and marked for the attention of the s106 Officer in all cases marked with the Planning references 16/01797/OUT (APP/P1560/W/17/3169150) and 21/01552FUL.

4.2.2 for the County Council shall be marked for the attention of the s106 Officer, Planning Service, Economy, Localities and Public Health County Hall Chelmsford CM1 1QH AND to development.enquiry@essex.gov.uk;

4.2.3 to the Owner as aforesaid.

4.2.4 to the First Mortgagee as aforesaid.

4.2.5 To the Second Mortgagee as aforesaid.

5. THE OWNER'S COVENANTS

- 5.1 The Owner HEREBY COVENANTS with the Council and the County Council;
- 5.2 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 Original Development;
- 5.3 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 2022 Development;
- 5.4 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
- 5.5 To serve on the Council a notice in writing not less than four weeks before the expected date of the first Occupation of the thirty fifth (35th) Market Dwelling unless notice has already been given under clause 5.3 of the 2017 Unilateral Undertaking;
- 5.6 To observe the planning obligations contained in this Deed including the Schedules to this Deed;
- 5.7 To pay to the County Council on or before the Commencement of Development a fee of £550.00 (five hundred and fifty pounds sterling) per obligation due to the County Council under this Deed and for the avoidance of doubt this is a total of £1650.00 (one thousand six hundred and fifty pounds sterling) for the purposes of monitoring and managing the administration of the obligations.

6. CHANGE IN OWNERSHIP

- 6.1 The Owner agrees to give the Council written notice of any transfer in ownership of any of its freehold interests in the Site occurring before all of the obligations under this Deed have been discharged such notice to be served within fifteen (15) Working Days of such transfer and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Residential Dwellings within the Development.

7. RIGHT OF ENTRY

- 7.1 At all times on not less than 3 Working Days' written notice except in the case of emergency with or without notice the Owner shall allow any employee or agent of either

or both of the Council or the County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed.

8. JURISDICTION

8.1 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.

9. FIRST AND SECOND MORTGAGEES' CONSENT

9.1 Save as otherwise detailed in in Clause 3.8 the First Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of its charge over the Site shall take effect subject to this Deed PROVIDED THAT the First Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it was a person deriving title from the Owner.

9.2 Save as otherwise detailed in in Clause 3.8 the Second Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of its charge over the Site shall take effect subject to this Deed PROVIDED THAT the Second Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it was a person deriving title from the Owner.

10. LEGAL FEES

10.1 The Owner hereby agrees to pay prior to the date of this Deed the Council's reasonable legal costs and disbursements incidental to the preparation negotiation and entering into of this Deed.

10.2 The Owner hereby agrees to pay prior to the date of this Deed the County Council's reasonable legal costs and disbursements incidental to the preparation negotiation and entering into of this Deed.

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

FIRST SCHEDULE

EDUCATION

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

"Completion Notice"	means the written notice served by the Owner pursuant to paragraph 2.4 of this Schedule
"Education Contribution"	means the sum of the Primary Education Contribution and the Secondary Education Contribution and the Secondary Transport Contribution to which sum the Relevant Education Indexation shall be added;
"Education Index"	means the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-housing (PUBSEC Index) or in the event that the PUBSEC Index is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County Council;
"Education Index Point"	means a point on the most recently published edition of the Education Index at the time of use;
"Education Purposes"	means the Primary Education Purposes and the Secondary Education Contribution Purposes and the Secondary Transport Contribution Purposes (as relevant)
"Flat"	means a Residential Dwelling that occupies a single floor and /or does not benefit from private open space for the exclusive use of the residents of the Dwelling and no other persons;
"General Index"	means the Consumer Price Index (CPI) or in the event that the CPI is no longer published or the calculation method used is substantially altered

	then an appropriate alternative index nominated by the County Council;
"House"	means a Residential Dwelling that does not meet the definition of a Flat;
"Notice of Commencement"	means the written notice served pursuant to paragraph 2.1 of this Schedule
"Payment Notice"	means a written notice advising of a proposed payment served pursuant to paragraph 2.3 of this Schedule
"Primary Education Contribution"	means the Primary Pupil Product multiplied by the cost generator of twelve thousand two hundred and eighteen pounds (£12,218.00);
"Primary Education Purposes"	means the use of the Primary Education Contribution towards the provision and/or improvement of facilities for the education and/or care of children between the ages of 4 to 12 (both inclusive) including those with special educational needs in the Tendring group 3 (Brightlingsea and Elmstead) primary forecast planning group area as specified in the Essex School Organisation Service's Ten Year Plan 2022-2031 and 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 paragraphs 4.4 of this Schedule that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change shown in the General Index between the General Index Point pertaining to April 2016 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 April 2016 and the Education Index Point pertaining to the date the payment is due to be made to the County Council;
"Secondary Contribution"	Transport	means the Secondary Pupil Product multiplied by the cost generator of four pounds and forty four pence (£4.44) multiplied by one hundred and ninety (190) (being the average days in an academic year) multiplied by five (5) to which the Relevant Education Indexation shall apply;
"Secondary Transport Purposes"		means the use of the Secondary Transport Contribution towards the transportation of children generated by the Development to a local secondary school with capacity;
"Secondary Contribution"	Education	means the Secondary Pupil Product multiplied by the cost generator of eighteen thousand five hundred and

thirty one pounds (£18,531.00) to which the Relevant Education Indexation shall be added;

“Secondary Education Purposes”

means the use of the Secondary Education Contribution towards the 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 Colne Community School and College and/or at any new school which is to be established in future and lies closer to the Development and including the reimbursement of capital funding for such provision (and/or improvement) made by the County Council in anticipation of the Secondary Education Contribution;

“Secondary Pupil Product”

means the sum of Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2;

“Seven Day LIBID Rate”

means an assessment of the rate of interest the County Council or the 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 approved by the County Council or the 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 to serve on the County Council notice of Occupation of the first Residential Dwelling within 1 (one) month thereof and on a 6 (six) monthly basis thereafter indicating the Unit Mix of Occupied Residential Dwellings the Unit Mix of Residential Dwellings that are completed but not Occupied the Unit Mix of Residential Dwellings that are under construction and the Unit Mix of Residential Dwellings where construction work has yet to start at the time the notice is served;
 - 2.3 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;
 - 2.4 to serve on the County Council the Completion Notice within 30 Working Days of all Residential Dwellings being Occupied for the first time stating the date that the last Residential Dwelling to be Occupied was Occupied for the first time and for the avoidance of doubt any dispute regarding any notice to be served under this Agreement may be resolved through the mechanisms set out in Clause 8 of this Agreement;
 - 2.5 not to cause allow or permit Occupation of any Residential Dwelling unless and until fifty percent (50%) of the Education Contribution has been paid to the County Council;
 - 2.6 to pay fifty percent (50%) of the Education Contribution to the County Council prior to the Occupation of any Residential Dwelling;
 - 2.7 not to Occupy (or allow, cause or permit the Occupation of) more than fifty percent (50%) 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 and thus 100% one hundred percent of the Education Contribution has been paid to the County Council;
 - 2.8 to pay a further (and final) fifty percent (50%) of the Education Contribution to the County Council prior to the Occupation of fifty percent (50%) of the Residential Dwellings are Occupied;
 - 2.9 The Payment Notice shall state the Unit Mix on which the payment is to be based; and
 - 2.10 The Completion Notice shall state the final Unit Mix.
3. The County Council hereby covenants with the Owner that:

- 3.1 the Education Contribution when received shall be placed into an interest bearing account and utilised solely for the Education Purposes as appropriate;
- 3.2 that upon receipt of a request in writing to do so to be received by the County Council no sooner than the tenth (10th) anniversary of the Education Contribution being paid in full to return to the party who deposited the Education Contribution any part of the Education Contribution that remains unexpended when such request in writing is received (together with interest accrued at the Seven Day LIBID Rate on the unexpended part) PROVIDED ALWAYS that where a legally binding contract or obligation has been entered into by the County Council prior to the tenth (10th) anniversary of the Education Contribution being paid in full the unexpended part of the Education Contribution that relates to that legally binding contract or obligation shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid (if any) shall not include such payment;
- 3.3 that upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of the Education Contribution being paid in full the County Council shall provide the Owner with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent;
4. The Owner further covenants with the County Council:
 - 4.1 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;
 - 4.2 In the event that the Unit Mix to be constructed as the Development does not match the Unit Mix on which the Education Contribution paid was based the Owner shall pay to the County Council within 30 Working Days of the change in Unit Mix becoming apparent any amount pertaining to the difference between the Education Contribution paid and the Education Contribution pertaining to the Unit Mix to be constructed as part of the Development and any such amount shall from the date payment is received by the County Council form part of the Education Contribution;
 - 4.3 In the event that 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 the Development until the date payment of the amount due is received by the County Council;

- 4.4 In addition to the requirement of 4.3 above in the event that any sum due to be paid by the Owner to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owner hereby covenants to pay to County Council within ten (10) Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) plus Relevant General Indexation for each and every letter sent to the Owner pursuant to the debt;
- 4.5 In the event that the Education Contribution is overpaid by the Owner then the County Council shall be under no obligation to return any such overpaid sum or sums in whole or in part if in good faith the County Council has spent the Education Contribution or has entered into a legally binding contract(s) or obligation(s) to spend the Education Contribution PROVIDED THAT the County Council shall otherwise be under an obligation to return any such overpaid sum or sums in whole or in part if the Owner notifies the County Council of such overpayment within 10 Working Days of such overpayment having been made to the County Council;
- 4.6 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owner and received by the County Council within two months of receipt by the Owner of the County Council's statement referred to in Paragraph 3.3 of this Schedule and shall clearly state the grounds on which the expenditure is disputed;
- 4.7 In the event that no written request is received by the County Council from the Owner pursuant to Paragraph 3.2 or no valid dispute is raised by the Owner pursuant to Paragraph 4.6 above the Owner shall accept that the Education Contribution has been spent in full on the Primary Education Purposes and the Secondary Education Purposes and the Secondary Transport Purposes as appropriate;

SECOND SCHEDULE

AFFORDABLE HOUSING

Part One

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

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

"Affordable Dwellings" **Housing** means the five (5) Residential Dwellings to be transferred to the Council pursuant to the Affordable Housing Option as shown on the Affordable Housing Plan and to be provided in accordance with the Specification approved by the Council;

"Affordable Housing Option" means the option to accept five (5) of the Residential Dwellings being transferred to the Council at the Affordable Housing Price and which Residential Dwellings when transferred to the Council are to be used solely as Social Rented Housing;

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

"Affordable Housing Plan" means the plan approved in writing by the Council which shows 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;

“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;

“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 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 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 the specification approved in writing by the Council 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 includes the fixtures and fittings to be used.

2. The Owner hereby covenants with the Council as follows:
 - 2.1 Not to Occupy (or allow, cause or permit the Occupation of) more than thirty five (35) Market Dwellings unless and until the five (5) Affordable Housing Dwellings have been:
 - 2.1.1 constructed in accordance with the Specification and are capable of being Occupied for their intended purpose; and
 - 2.1.2 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 Dwellings 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 Dwellings to the Council shall be subject to the provisions contained in Part Two of this Schedule.
3. (Subject always to paragraph 4 of this Schedule) the Affordable Housing Dwellings shall be Occupied for no purpose other than as Affordable Housing.
4. The Owner confirms and acknowledges that without prejudice to paragraph 3 the obligations and restrictions contained in this Schedule shall not bind;

- 4.1 a Protected Tenant;
- 4.2 any person or body deriving title through or from a Protected Tenant;
- 4.3 a Chargee of the whole of any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such Chargee PROVIDED THAT:
 - 4.3.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable housing Dwellings; and
 - 4.3.2 such Chargee shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Dwelling to a private registered provider 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
 - 4.3.3 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

- 1. The transfer of the Affordable Housing Dwellings to the Council shall be with vacant possession.
- 2. The transfer deed for the transfer of the Affordable Housing Dwellings to the Council shall be prepared by the Owner and the Owner shall pay the Council'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.
- 3. The transfer deed shall contain:
 - 3.1 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;
 - 3.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and

- 3.3 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.

THIRD SCHEDULE

OPEN SPACE

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

"Open Specification"	Space	the specification and layout plan and timing for the laying out, profiling, clearing, planting, landscaping decontaminating the Open Space Land and setting out of the Play Area and generally for ensuring that the said land is fit for its intended purpose as recreational land to be enjoyed by members of the public as such;
"Open Space Land"		areas of land not to be less than 0.4989 hectares including the Play Area as shown on the Open Space Plan to be used for no purposes other than as public open space to provide a recreational facility for members of the public in perpetuity and as sustainable drainage;
"Open Space Completion Certificate"		means a certificate or certificates in writing issued by a Chartered Landscape Architect that confirms that the Open Space Land has been laid out in accordance with the Open Space Specification;
"Open Space Management Plan"		means a management plan prepared by the 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 and the Play Area;

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

“Play Area” an area of space within the Open Space Land that shall be laid out for children’s play;

2. The Owner hereby covenants with the Council:
 - 2.1 That it has submitted the Open Space Plan, the Open Space Specification, the Open Space Management Plan and details of the Management Company to the Council for approval;
 - 2.2 Not to Commence the 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;
 - 2.3 To physically set out the Open Space Land in accordance with the Open Space Plan and the Open Space Specification and the timing contained therein;
 - 2.4 Not to Occupy or allow cause or permit to be Occupied any more than 75% of the Residential Dwellings unless and until all of the Open Space Land has been physically set out on the Site in accordance with the Open Space Specification and the Council has received the relevant Open Space Completion Certificate;
 - 2.5 To maintain the Open Space Land in accordance with the Open Space Management Plan for 1 year following the issue of the relevant Open Space Completion Certificate as appropriate or until such time as the transfer described in paragraph 2.6 has been completed;
 - 2.6 To transfer the Open Space Land to the Management Company with all necessary easements and vacant possession who shall from that date manage and maintain the Open Space Land in perpetuity.
3. The 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 2.6 above to the Council within 2 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.

FOURTH SCHEDULE

Recreational Disturbance, Avoidance & Mitigation Contribution (RAMS)

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

“Natura 2000” has the meaning ascribed to it in section 3(1) Conservation and Habitats and Species Regulations 2017.

“RAMS” means the Essex Coast Recreation Disturbance Avoidance Mitigation Strategy in relation to Essex Coast Natura 2000 European Designations.

“RAMS Contribution” means the sum of one hundred and thirty seven pounds and seventy one pence (£137.71) per Dwelling Index Linked (which for 62 Dwellings will equal £8,507.02 Index Linked) as set out in the RAMS.

“RAMS Contribution Purposes” means the funding of strategic ‘off-site’ measures identified by the draft or adopted RAMS (as the case maybe at Commencement of Development) to mitigate any increased use as a result of the Development at Essex Coast Natura 2000 European Designations in particular Hamford Water SAC, SPA and RAMSAR.

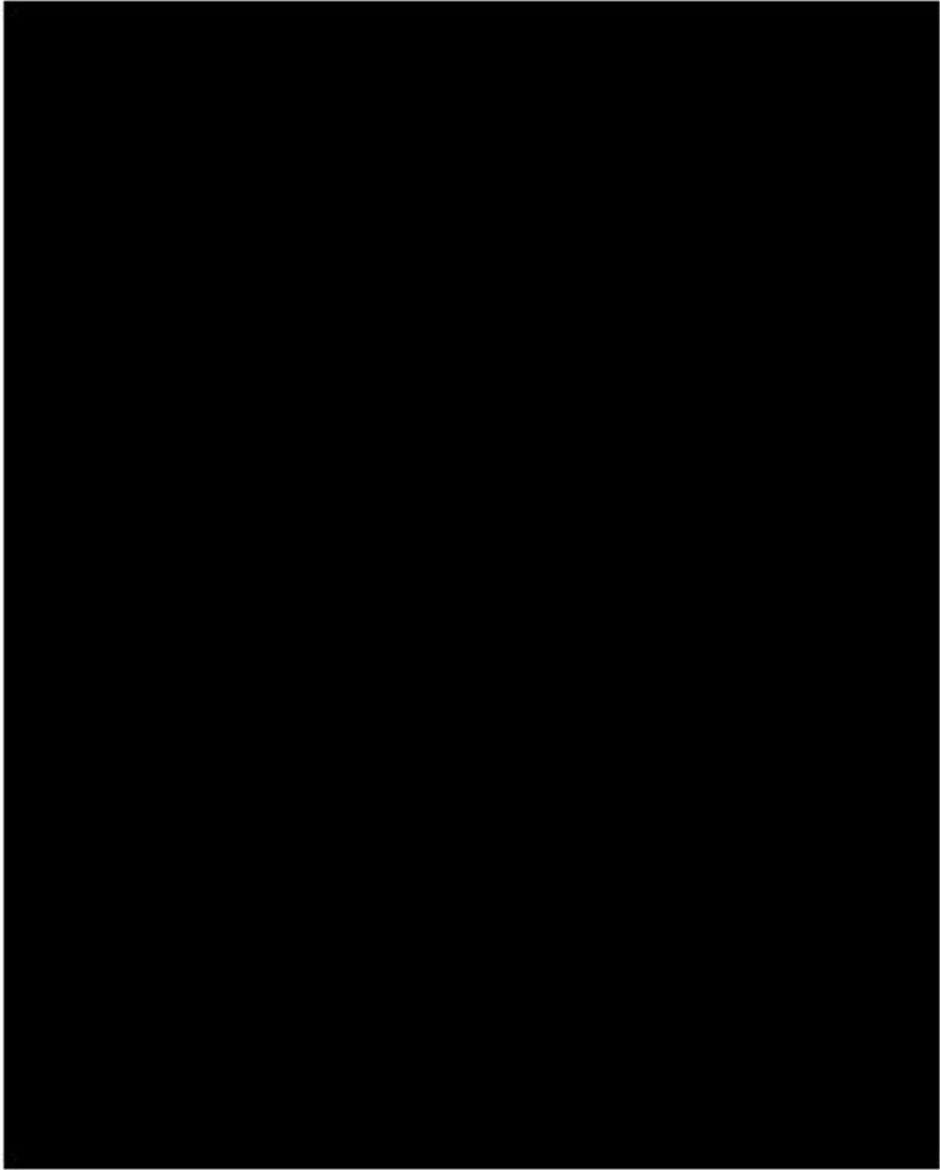
2. The Owner hereby covenants with the Council:

2.1 To notify the Council before Commencement of the Development to allow the calculation of the RAMS contribution prior to Commencement of the Development; and

2.2 Not to Commence the Development nor permit the Commencement of the Development unless and until the said RAMS Contribution has been paid to the Council.

3. Notifications and payments shall be marked for the attention of the Section 106 Officer, Tendring District Council, Town Hall, Station Road, Clacton-on-Sea, Essex, CO15 1SE or via email at obligations@tendringdc.gov.uk

4. The Council hereby covenants with the Owner to use the RAMS Contribution for the RAMS Contribution Purposes.



EXECUTED as a DEED by affixing)
THE COMMON SEAL of)
ESSEX COUNTY COUNCIL)
in the presence of:)



EXECUTED as a DEED by affixing)
THE COMMON SEAL of)
TENDRING DISTRICT COUNCIL)
in the presence of:)

