

DATED

31<sup>st</sup> January

~~2022~~ 2023

- (1) TENDRING DISTRICT COUNCIL
  - (2) STRUTT AND PARKER (FARMS) LIMITED
  - (3) LIANA ENTERPRISES LTD
  - (4) ESSEX COUNTY COUNCIL
- 

#### AGREEMENT

under section 106 Town and Country Planning Act 1990 as amended  
relating to Land East of Henderson Road, Thorpe-le-Soken

Planning Application reference: 21/01397/FUL

THIS AGREEMENT is made on 31<sup>st</sup> January

2022 2023

BETWEEN:

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton on Sea, Essex, CO16 1SE ("the Council"); and
- (2) **STRUTT AND PARKER (FARMS) LIMITED** (Company Registration No. 0151618) of Unit 1, Old Park Farm Ford End, Chelmsford, Essex, United Kingdom, CM3 1LN ("the Owner"); and
- (3) **LIANA ENTERPRISES LTD** (incorporated in British Virgin Islands) care of Blake Morgan LLP, New Kings Court, Tollgate, Chandler's Ford, Eastleigh SO53 3LG ("the Mortgagee")
- (4) **ESSEX COUNTY COUNCIL** of County Hall Market Road Chelmsford CM1 1QH ("the County Council")

#### BACKGROUND

- (A) For the purposes of the 1990 Act, the Council and the County Council are the local planning authority for the area within which the Site is located and the authority who is entitled to enforce the obligations contained in this Agreement.
- (B) The Owner is the freehold owner of the Site, the title to which is registered at the Land Registry with the Title Number EX828567
- (C) The Site is free from any encumbrances that would prevent the Owner from entering into this Agreement.
- (D) The Mortgagee has the benefit of a charge dated 13<sup>TH</sup> September 2019 over the Site
- (E) The Council has resolved to approve the Planning Application and considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development in the manner hereinafter appearing and is satisfied that planning permission for the Development could be granted subject to conditions and to the execution of this Agreement.

- (F) 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 in the area in which the Site is located.
- (G) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council and the against the Owner and any successors in title subject to the terms of this Agreement as to the lawfulness of the obligations
- (H) In order to satisfy the tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, all of the parties are satisfied that the planning obligations contained in this Agreement 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

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:
- |                                      |   |
|--------------------------------------|---|
| <b>"1990 Act"</b>                    | means the Town and Country Planning Act 1990 as amended;  |
| <b>"Commencement Date"</b>           | means, subject to clause 3.2, the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act;                                |
| <b>"Commencement of Development"</b> | means, subject to clause 3.2, the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and "Commence the Development" and "Commenced" shall be construed accordingly; |

<b>"Committed"</b>	means subject to a contract or other legally binding obligation;
<b>"Community Infrastructure Levy"</b>	means the Community Infrastructure Levy introduced by the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended or any successor levy or charge which triggers payments towards Infrastructure
<b>"Contributions"</b>	means the Library Contribution and the Healthcare Contribution and the RAMS Contribution (all as defined in the Schedules);
<b>"Development"</b>	means the development permitted by the Planning Permission;
<b>"Dwelling"</b>	means a bungalow constructed as part of the Development and "Dwellings" shall be construed accordingly;
<b>"Index"</b>	means (1) in relation to the (a) RAMS Contribution; and (b) Open Space Contribution 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; and (2) in relation to the NHS Contribution the Department for Business Innovation and Skills Tender Price Index of Public Sector Building Non-housing (PUBSEC) or if such index no longer exists at the relevant time, such other equivalent index in place at the discretion of the Council
<b>"Index Linked"</b>	means (1) in relation to both (a) the RAMS Contribution; and (b) the Open Space

Contribution increased in respect of each contribution 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 Agreement; and (2) in relation to the Healthcare Contribution increased to reflect any increase in the Index during the period from the base date of December 2015 to and including the date of actual payment;

**“Market Dwellings”**

means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings (as defined in Schedule 2);

**“the Notice of Commencement”**

means the written notice to the Council and the County Council advising of the proposed Commencement Date;

**“Occupation”**

means beneficial occupation of a building constructed as part of the Development for the purposes permitted by the Planning Permission and shall not include occupation for the construction of the Development and shall not include daytime occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales or purposes for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security

operations and "Occupy" and "Occupied" and "Occupancy" shall mutatis mutandis be construed accordingly;

**"Plan"** means the drawing numbered 79A-13 a copy of which is attached to this Agreement;

**"Planning Application"** means the application which the Council has given reference 21/01397/FUL requesting full planning permission for the development of proposed construction of 28 no. bungalows with associated parking, roads, site infrastructure and hard and soft landscaping;

**"Planning Permission"** means the planning permission granted in pursuance of the Planning Application subject to any conditions imposed in relation to the Planning Permission;

**"Site"** means the land East of Henderson Road Thorpe-Le-Soken Essex shown for identification purposes only edged red on the Plan;

**"Sterling Overnight Average (SONIA) Rate Index"** means an assessment of the rate of interest the Council and or County Council can expect to earn on investments through the British sterling market, the rate used being the average interest rate at which banks are willing to borrow sterling overnight from other financial institutions and other institutional investors and SONIA Rate shall be construed accordingly or such other rate as approved by the County Council or the Council;



PLAN 1  
 LAND EAST OF HENDERSON ROAD,  
 THORPE-LE-SOKEN  
 DATE : 07.03.2022  
 SCALE: A4 1:2,000      DRAWN : DW  
 DRAWING NO: 79A-13      REV : -

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**“Working Days”**

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

1.2 In this Agreement:

1.2.1 the clause or Schedule headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

1.2.3.2 any orders, regulations, instruments, subordinate legislation, Specification Code of Practice or General Direction made under that statute or statutory provision;

1.2.4 references to the Site include any part of it;

1.2.5 references to any party in this Agreement shall include the successors in title of that party and persons claiming through or under them. In addition, references to the Council and the County Council shall include any successor local planning authority exercising planning powers under the 1990 Act and shall include any successor to its functions;

1.2.6 “including” means “including, without limitation” or prejudice to the generality of any description defining term or phrase preceding that word and the word “include” and its derivatives shall be constructed accordingly;

1.2.7 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;

1.2.8 words importing the singular meaning where the context so admits shall include the plural meaning and vice versa;



- 1.2.9 words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner;
- 1.2.10 Any agreement obligation covenant or undertaking contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or undertaking is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each person separately and where the Developer and the Owner are different persons, agreements obligations covenants and undertakings given by either shall be deemed to be given jointly and severally by both.
- 1.2.11 words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to cause permit or allow infringement of the restriction;
- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and any such rights that arise pursuant to the said Act of 1999 are hereby excluded.

## 2. EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is made pursuant to Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council.
- 2.2 The obligations contained in this Deed are conditional upon the grant of the Planning Permission.
- 2.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 Local Government Act 1972 and Section 1 Localism Act 2011 and all other enabling powers.
- 2.4 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council and the County Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.

- 2.5 The obligations in this Agreement will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.
- 2.6 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.7 Subject to the provision of the Second Schedule of this Agreement in relation to a Chargee (as defined in the Second Schedule) a mortgagee of all or any part of the Site will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under a security.
- 2.8 This Agreement shall bind the Owner, its successors in title, assigns and persons claiming under or through it subject to Clause 5.2 of this Agreement.
- 2.9 The obligations in this Agreement will not be enforceable against the individual owners, lessees or occupiers of any Market Dwellings constructed on the Site pursuant to the Planning Permission or any mortgagee or chargee of such owner, lessee or occupier nor any receiver appointed by a mortgagee or chargee or any person deriving title from them.
- 2.10 The provisions and obligations set out in the First and Third Schedules inclusive of this Agreement 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;
- 2.11 Nothing in this Agreement intended to confer any benefit on any party other than the parties executing this Agreement.

### 3. COMMENCEMENT DATE

- 3.1. Save in respect of Clause 7 and this clause 3.1 (which will become operative on the date of this Agreement) and in respect of obligations expressly in this Agreement requiring compliance prior to the Commencement Date and which will become operative on the issue of the Planning Permission this Agreement will come into effect on the Commencement Date.

- 3.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:
- 3.2.1 archaeological or site investigations or surveys;
  - 3.2.2 site or soil surveys or site decontamination;
  - 3.2.3 the clearance or demolition of the Site;
  - 3.2.4 works connected with groundworks;
  - 3.2.5 works for the provision of drainage or mains services to prepare the Site for development;
  - 3.2.6 erection of fencing or boarding;
  - 3.2.7 erection of boards advertising the Development (including the erection of advertising hoardings);
  - 3.2.8 the construction of a temporary site compound or temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite; and
  - 3.2.9 works to the existing public highways and the provision of site access and temporary internal roads

#### 4. OBLIGATIONS OF THE PARTIES

- 4.1 The Owner so as to bind the Site covenants with the Council and the County Council to comply with the obligations set out in this Agreement and the Schedules to this Agreement.
- 4.2 The Owner covenants with the Council and the County Council to provide Notice of Commencement to the Council and the County Council not less than three (3) Working Days prior to the Commencement Date.
- 4.3 The Owner covenants with the Council to provide not less than three (3) Working Days' notice in writing of the intended first Occupation of the first Dwelling on the Site.
- 4.4 The Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.

- 4.5 The Council covenants with the Owner to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation Provided Always that such notice, consent, approval, authorisation, agreement or other similar affirmation may only be given in writing and only prior to the act or event to which it applies (unless agreed otherwise by the Council as applicable).
- 4.6 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 4.7 Any obligation that prohibits the Owner from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owner to positively carry out those certain events by no later than the number of occupations set out therein unless the context otherwise requires.
- 4.8 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Agreement occurring before that date. For the further avoidance of doubt neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site or part of the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.8
- 4.9 No compensation shall be payable by the Council and the County Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council and the County Council.
- 4.10 Representatives of the Council and the County Council may enter upon the Site at any reasonable time on reasonable prior written notice giving at least three (3) clear days before such entry is required (unless otherwise agreed with the Owner) (and immediately in the event of an emergency provided that the Council and the County

Council will give as much notice as they reasonably can) to ascertain whether the terms of this Agreement are or have been complied with subject to complying with all health and safety and security requirements required by the Owner provided that this right shall cease and determine as follows:

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

- 4.11 Any agreement obligation covenant or Agreement contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or Agreement is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.12 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.13 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent, seal, signature, execution or approval of the owner, lessee or occupier of any Dwelling or their mortgagees or chargees or any receiver appointed by a mortgagee or chargee or any person deriving title from them shall not be required to vary any part of this Agreement.
- 4.14 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.15 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

- 4.16 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the Council as such and the Council covenants with the Owner that following the performance of all of the obligations contained in the Agreement the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 4.17 That in the event that the Owner fails to serve any of the notices that they are required by the provisions of this Agreement to serve then the Council and the County Council shall be entitled to payment of the various Contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of a Contribution and the time period for the return of a Contribution shall be extended accordingly.
- 4.18 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts shall together constitute the one Agreement.
- 4.19 Upon passing an interest in the Site to a successor in title to the Site the Owner shall be released from all obligations rights and duties (save for liability in respect of any antecedent breach) pertaining to the relevant interest under the terms of this Agreement PROVIDED THAT for the avoidance of doubt if the Owner shall retain an interest in any part of the Site the Owner shall remain liable insofar as such liability relates to such retained interest.

**5. TERMINATION OF THIS AGREEMENT**

- 5.1 This Agreement will come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date or the time for implementation of the Planning Permission expires without the Commencement Date having occurred so as to render this Agreement or any part of it irrelevant, impractical or unviable; or the Planning Permission expires.
- 5.2 Where the Agreement comes to an end under clause 5.1 the Council shall, on the written request of the Owner, vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise record the fact that it has come to an end and no longer affects the Site.

6. **NOTICES**

- 6.1 Any notice, demand or any other communication served under this Agreement will be effective only if in writing and delivered by mail by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following or to such other address as one party may notify in writing to the others at any time as its address for service:
- 6.1.1 for the Owner as set out above;
- 6.1.2 for the Council service shall if by post or hand delivery be addressed to the Head of Planning at the Council's address at the head of this Agreement and by email to [obligations@tendringdc.gov.uk](mailto:obligations@tendringdc.gov.uk) and marked for the attention of the s106 Officer in all cases marked with the reference 21/01397/FUL
- 6.1.3 for the County Council it shall be 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](mailto:development.enquiry@essex.gov.uk)
- 6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.2.1 if delivered by hand, at the time of delivery;
- 6.2.2 if sent by post, on the second Working Day after posting; or
- 6.2.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 6.4 Otherwise than in relation to individual purchasers, occupiers and mortgagees of Dwellings and their successors in title the Owner shall give to the Council and the County Council within one month of the Owner disposing of any part of the Site written notice of the name and address of the person or persons to whom the Site or part thereof has been transferred provided that this obligation shall cease and determine on the first Occupation of the last Dwelling at the Site.

**7. DETERMINATION OF DISPUTES**

- 7.1 Subject to clause 7.7, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this clause 7. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 7.2 For the purposes of this clause 7 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 7.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 7.4.
- 7.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute).
- 7.5 The Specialist is to act as an independent expert and:
- 7.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;



7.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

7.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

7.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;

7.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

7.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.

- 7.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 7, including costs connected with the appointment of the Specialist and the Specialist's own costs will be decided by the Specialist but not the legal or other professional costs of any party in relation to a dispute.
- 7.7 This clause 7 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England.

## **8. COMMUNITY INFRASTRUCTURE LEVY**

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

## **9. JURISDICTION**

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

**10. SECTION 73**

10.1 In the event that any new planning permission is granted by the Council pursuant to Section 73 of the 1990 Act and unless otherwise agreed between the parties:

10.1.1 The obligations in this Agreement shall relate to and bind any subsequent planning permission in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself; and

10.1.2 The definitions of Planning Application, Development and Planning Permission in this Agreement shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission; and

10.1.3 This Agreement shall be endorsed with the following words in respect of any future Section 73 application:

*"The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced ..... has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"*

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new Agreement or supplemental deed pursuant to Section 106 or Section 106A of the 1990 Act.

**11. MORTGAGEE'S CONSENT AND ACKNOWLEDGEMENT**

The Mortgagee hereby consents to the Owner binding the Site by the giving of the covenants referred to herein and acknowledges that its interest in the Site is also bound by the said covenants referred to herein PROVIDED THAT the Mortgagee shall not be required to observe or perform the restrictions and obligations contained in this Agreement unless the Mortgagee enters into possession of the Site

**12. COSTS OF THIS AGREEMENT**

12. Upon completion of this Agreement the Owner covenants to pay:

12.1 to the Council its reasonable and proper legal costs in a sum not to exceed £2000 (Two Thousand Pounds) (no VAT) in connection with the preparation, negotiation and completion of this Agreement

12.2 to the County Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement

**13. EXECUTION**

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

## SCHEDULE 1

### OPEN SPACE

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

"Open Space Specification"	the specification and layout plan and timing for the laying out, profiling, clearing, planting, landscaping decontaminating 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 10% of the Site 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 shall not include any sustainable drainage systems for the Development;
"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 Contribution"	means the sum of Fifteen Thousand Nine Hundred and Ninety Eight Pounds and Thirty Three Pence (£15,998.33) Index Linked;
"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 Dwellings to be approved by the Council;

2. The Owner hereby covenants with the Council:
  - 2.1 To submit the Open Space Plan, the Open Space Specification, and the Open Space Management Plan to the Council for approval prior to the Commencement of Development;
  - 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 received by 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 eighty percent (80%) of the 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 Following provision and laying out of the Open Space Land in accordance with paragraph 2.4 of this Schedule the Owner shall offer to transfer the Open Space Land to the Council PROVIDED ALWAYS THAT the Owner shall remain liable for the maintenance of any Open Space Land in accordance with the Open Space Management Plan until such time as it is transferred AND FOR THE AVOIDANCE OF DOUBT the Council shall not be obliged to accept a transfer of the Open Space Land.
  - 2.6 In the event that the Council agree to accept a transfer of the Open Space Land the Owner shall pay the Open Space Contribution to the Council contemporaneously with the transfer of the Open Space Land to the Council and the Owner shall pay the Council's reasonable legal fees for such transfer up to a limit of Two Thousand pounds (£2,000.00).
  - 2.7 Any transfer of the Open Space Land to the Council pursuant to paragraphs 2.5 and 2.6 of this Schedule shall be on the following terms (unless otherwise agreed in writing between the parties):
    - 2.7.1 in consideration of the sum of £1.00 to be paid to the Owner and shall contain a covenant by the transferee not to use or suffer or permit to be used the land transferred otherwise than for the purpose of providing recreation and amenity facilities for members of the public and for the maintenance of the Open Space Land;

- 2.7.2 free of all financial charges and other encumbrances that may materially affect use of the Open Space Land for such purposes; and
  - 2.7.3 with all necessary easements and with vacant possession
- 2.8 In the event that the Council give notice to the Owner in writing that they do not want to accept a transfer of the Open Space Land the Owner shall be required to transfer the Open Space Land to a Management Company PROVIDED THAT before agreeing to the transfer of the Open Space Land the Owner shall:
  - 2.8.1 provide the Council with full details of the Management Company for approval by the Council in writing (such approval not to be unreasonably withheld);
  - 2.8.2 following approval by the Council to transfer the Open Space Land to the Management Company free of encumbrances that may materially affect use of the Open Space Land as providing recreation and amenity facilities for members of the public with all necessary easements and with vacant possession who from the date of transfer shall manage and maintain the Open Space Land for the purpose of providing recreation and amenity facilities for members of the public in perpetuity in accordance with the Open Space Management Plan; and
  - 2.8.3 the Owner shall provide a copy of the transfer(s) to the Council within Two (2) months of completion of the transfer to the Management Company.
- 2.9 The Owner shall include the following in any transfer of the Open Space Land pursuant to this Schedule:
  - 2.9.1 a covenant to only permit the Open Space Land to be used as recreation and amenity land by members of the public;
  - 2.9.2 a covenant to maintain the Open Space Land in perpetuity and where the Open Space Land is transferred to a Management Company in accordance with the Open Space Management Plan; and
  - 2.9.3 a covenant not to transfer the Open Space Land into the individual ownership of an owner or owners of any of the Dwellings.
- 2.10 To maintain the Open Space Land in accordance with the Open Space Management Plan for one (1) year following the issue of the Open Space Completion Certificate or until such time as any transfer described in this Schedule has been completed;

2.11 In the event that the Open Space Land is transferred to a Management Company to be funded through contributions from purchasers or lessees of Dwellings the Owner shall include in the transfer or lease to the purchasers or lessees of Dwellings (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 and lessees of Dwellings shall be sufficient to enable the Management Company to discharge its obligations under any transfer of the Open Space Land.

## **SCHEDULE 2**

### **AFFORDABLE HOUSING**

#### **Part One**

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

- |                                       |  |
|---------------------------------------|--|
| <b>“2008 Act”</b>                     | means the Housing Regeneration Act 2008;   |
| <b>“Affordable Housing”</b>           | 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) as may be amended from time to time;                    |
| <b>“Affordable Housing Dwellings”</b> | means the Eight (8) Dwellings the location of which are shown on the Affordable Housing Plan and consistent with the affordable housing table set out in Schedule 5 of this Agreement (a) to be provided as Affordable Housing pursuant to the Affordable Housing Scheme; or (b) to be transferred to the Council pursuant to the Affordable Housing Option; ; |
| <b>“Affordable Housing Option”</b>    | means the option for the Council to purchase the Affordable Housing Dwellings at the Affordable Housing Price in lieu of the delivery of the Affordable Housing Scheme and which   |



Affordable Housing Dwellings when transferred to the Council are to be used solely as Affordable Housing for social rent;

**“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 Approved Body pursuant to an approved Affordable Housing Scheme or to the Council pursuant to the Affordable Housing Option;

**“Affordable Housing Price”**

means the sum to be paid by the Council for the transfer of the Affordable Housing Dwellings pursuant to the Affordable Housing Option which sum is to be negotiated and agreed between the Owner and the Council prior to transfer;

**“Affordable Housing Scheme”**

means the scheme to provide for not less than thirty percent (30%) of the Dwellings being Eight (8) Dwellings to be constructed, transferred to an Approved Body and used as Affordable Housing and which scheme shall include: (a) the Affordable Housing Plan; (b) identify the exact Affordable Housing Tenure of the Affordable Housing Dwellings; and (c) a list of Approved Bodies who will be approached to take a transfer of the Affordable Housing Dwellings;

**“Affordable Housing for Rent”**

has the meaning ascribed to it in paragraph a) of the definition of Affordable Housing at Annex 2 of the NPPF or as otherwise agreed with the Council in writing

<b>“Affordable Housing Tenure”</b>	means 70% of the Affordable Housing Dwellings shall be Affordable Housing for Rent and 30% of the Affordable Housing Dwellings shall be Intermediate Housing or an alternative tenure mix agreed by the Council
<b>“Approved Body”</b>	means a provider of social housing registered with the Homes England under the provisions of the 2008 Act or any body organisation or company which is a registered charity with the Charity Commissioners for England and Wales and approved by the Homes England or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a housing association and ‘Approved Bodies’ shall be construed accordingly;
<b>“Capital Receipts”</b>	means proceeds from Staircasing less the Approved Body's cost of acquisition, build, management, sale, the redemption of any mortgage and reasonable legal fees
<b>“Chargee”</b>	any mortgagee or chargee (or any receiver or manager (including an administrative receiver or any other administrator howsoever appointed) appointed by such mortgagee or chargee) of the whole or any part of the Affordable Housing Dwellings
<b>“Homes England”</b>	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body;

<b>"Housing Needs Register"</b>	means the register maintained by the Council or its nominee for Persons in Housing Need;
<b>"Intermediate Housing"</b>	means other affordable routes to home ownership which has the meaning ascribed to it at paragraph (d) of the definition of affordable housing at Annex 2 of the NPPF and for the avoidance of doubt includes Shared Ownership;
<b>"Nomination Rights"</b>	the ability for the Council to nominate 100% of the occupants on the first letting of the Affordable Housing for Rent and (unless otherwise agreed in writing with the Council) 100% of the occupants of subsequent lettings of Affordable Housing for Rent in accordance with the Affordable Housing Scheme;
<b>"NPPF"</b>	means the National Planning Policy Framework 2021 (or any successor policy thereto) issued by H M Government
<b>"Protected Tenant"</b>	means any tenant who: (a) has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (or any equivalent

contractual right) in respect of a particular Affordable Housing Dwelling;

(b) 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 by the Approved Body and has become a 100% Staircaser;

**“Persons in Housing Need”**

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

**“Regulator of Social Housing”**

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

**“Serviced Condition”**

means the Affordable Housing Dwellings have proper connections within its boundary so as to connect it to surface water drainage facilities and to mains foul drainage, water, gas, electricity and telecommunications and enjoys direct access to the public highway or a roadway constructed to adoptable standards (connecting to the public highway) which is the subject of an agreement under section 38 of the Highways Act 1980 and in each case adequate for the purpose of its prospective use

**“Shared  
Ownership  
Dwellings”**

means dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with terms in the Regulator of Social Housing capital funding guide

**“Shared  
Ownership  
Lease”**

means a lease of over 990 years substantially in the form of the Homes England model shared ownership lease from time to time where:-Capital Receipt received from Staircasing is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re-invest such Capital Receipt in Affordable Housing (in order of priority):-

- i) within the district of Tendring
  - ii) within the neighbouring councils areas within the county of Essex
  - iii) within the rest of England
- subject to any contrary requirements within the Regulator of Social Housing capital funding guide

**“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 shall reflect the standard requirements for the provision of Affordable Housing for Rent

**"Staircasing"**

means the process by which a lessee of Shared Ownership Dwelling becomes a 100% Staircaser

**"100% Staircaser"**

means a lessee of an Affordable Housing Dwelling under a shared ownership or shared equity arrangement who has acquired 100% of the equity in the said Affordable Housing Dwelling

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, 4 and 5 of this Schedule shall apply) or the Council requires the Owner to submit and implement the Affordable Housing Scheme (in which case paragraphs 3, 4 and 5 of this Schedule shall apply) and in the event such notice is not served by the Council within 20 Working Days of the date of a request in writing by the Owner for the said notice the Owner shall implement the Affordable Housing Scheme PROVIDED THAT in the event that the parties have not agreed the Affordable Housing Price within a period of 20 Working Days from the date that the Council serves notice in accordance with this paragraph then the Affordable Housing Option shall lapse and the Owner shall proceed in accordance with paragraph 3 of this schedule
2. In the event the Council confirms that it is exercising the Affordable Housing Option pursuant to paragraph 1 of this Schedule:

2.1 Not to Commence the Development unless and until the Affordable Housing Plan and Specification have been submitted to and approved in writing by the Council; and

2.2 Not to Occupy or allow cause or permit to be Occupied more than Fifteen (15) of the Market Dwellings unless and until the Eight (8) Affordable Housing Dwellings have been:

2.2.1 constructed in accordance with the Specification and are capable of being Occupied for their intended purpose;

2.2.2 are in a Serviced Condition; and

2.2.3 transferred (freehold) to the Council for the Affordable Housing Price and for the purpose of this Schedule only the expression 'transferred' shall mean a transfer of the freehold interest 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. In the event that the Council confirms that it is not exercising the Affordable Housing Option in accordance with paragraph 1 of this Schedule or fails to give notice in accordance with paragraph 1 of this Schedule:

3.1 Not to Commence the Development unless and until the Affordable Housing Scheme has been submitted to and approved in writing by the Council; and

3.2 Not to Occupy or allow cause or permit to be Occupied more than Fifteen (15) of the Market Dwellings unless and until the Eight (8) Affordable Housing Dwellings referred to in the Affordable Housing Scheme have been:

3.2.1 constructed in accordance with the Specification and are capable of being Occupied for their intended purpose;

3.2.2 are in a Serviced Condition; and

3.2.2 transferred to the Approved Body and for the purpose of this Schedule only the expression 'transferred' shall mean a transfer of the freehold or leasehold interest that comprises the Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approve

Body that has been unconditionally released for completion by the Owner PROVIDED ALWAYS that the transfer of the Affordable Housing Dwellings to the Approved Body shall be subject to the provisions contained in Part Two of this Schedule.

4. (Subject always to paragraph 5 of this Schedule ) the Affordable Housing Dwellings shall be Occupied for no purpose other than as Affordable Housing

5. It is Hereby Agreed and Declared:

5.1 The obligations and restrictions contained in this Schedule shall not bind:

5.1.1 a Chargee who has become a mortgagee in possession (or any receiver appointed by such Chargee) of the whole or part of the Affordable Housing Dwellings PROVIDED THAT such Chargee (or any receiver thereby, including an administrative receiver) acting pursuant to any event of default has first complied with the provisions of paragraph 5.2 of this Schedule

5.1.2 a Protected Tenant;

5.1.3 any 100% Staircaser;

5.1.4 any mortgagee or chargee of an occupier of a non rented Intermediate Dwelling lawfully exercising the mortgagee protection provision within a lease;

5.1.5 any person or body deriving title through or from any of the parties mentioned in paragraphs 5.1.1 – 5.1.5 of this Schedule above.

5.2 Any Chargee claiming the protection granted by paragraph 5.1 of this Schedule above must first:

5.2.1 give written notice to the Council of its intention to dispose of the Affordable Housing Dwelling;

5.2.2 and shall have used reasonable endeavours over a period of twelve (12) weeks from the date of the written notice to dispose of the Affordable Housing Dwelling to another registered provider with Homes England or to the Council for a



consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and costs and expenses incurred by the Chargee in respect of the mortgage or charge;

5.2.3 If such disposal has not taken place within the twelve (12) week period the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing provisions contained in this Agreement which shall determine absolutely.

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

#### **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 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 of the Affordable Housing Dwellings up to a total aggregate limit of £1500 (One Thousand Five Hundred Pounds) on completion of the transfer deed.
- B. 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.
  4. a provision whereby Capital Receipt received from Staircasing is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re invest such Capital Receipt in Affordable Housing (in order of priority):-

i) within the district of Tendring

ii) within the neighbouring councils areas within the county of Essex

iii) within the rest of England

subject to any contrary requirements within the Regulator of Social Housing capital funding guide

**SCHEDULE 3**

**CONTRIBUTIONS**

**Part One**

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

- "Healthcare Contribution"** means the sum of Sixteen Thousand Five Hundred Pounds (£16 500) Index Linked
- "Healthcare Contribution Purposes"** means improvements to healthcare capacity by way of extension refurbishment reconfiguration or relocation at Thorpe Surgery High Street Thorpe Le Soken
- "Natura 2000"** has the meaning ascribed to it in section 3(1) of the Conservation and Habitats and Species Regulations 2017
- "NHS England"** means the national commissioning authority for health services in England (or its successor body from time to time)
- "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) Index Linked per Dwelling as approved pursuant to the Planning Application which for 28 Dwellings is Three Thousand Eight Hundred and Fifty Five Pounds and Eighty Eight Pence (£3,855.88) Index Linked, as set out in the RAMS to be paid towards the RAMS Contribution Purposes

**“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 the Hamford Water Ramsar and SAC

4. The Owner hereby covenants with the Council as follows:

2.1 To notify the Council prior to the Commencement of the Development to allow the calculation of the RAMS Contribution and the NHS Contribution; and

1.2 To pay the RAMS Contribution and the NHS Contribution to the Council prior to the Commencement of the Development and not to Commence the Development unless and until the Contributions have been paid to the Council.

5. 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](mailto:obligations@tendringdc.gov.uk)

1.1

4.

## Part Two

1. The Council hereby covenants with the Owner to:

1.1 provide a written form of receipt for payment of the Healthcare Contribution on receipt of the Healthcare Contribution;

1.2 pay the Healthcare Contribution to NHS England upon receipt of a document from NHS England confirming that they will:

1.2.1 apply the Healthcare Contribution solely for the Healthcare Contribution Purpose;

1.2.2 provide full details of the expenditure of the Healthcare Contribution on demand to the Council or the Owner which details shall comprise either a receipt for expenditure incurred or a contract committing such expenditure;

1.2.3 return any unspent part of the Healthcare Contribution together with interest accrued to the Council after the expiry of five (5) years from the date of receipt by the Council of the Healthcare Contribution (or the final tranche thereof if the contribution is paid in tranches) .

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

1.4 Any part of the NHS Contribution that has not been paid to NHS England within five (5) years of receipt shall be returned to the Owner along with interest that has accrued on that unpaid part (calculated using the SONIA Rate from the date of payment until the date the unexpended part is actually repaid) upon receipt of a request in writing to do so received by the Council no sooner than the 5th anniversary of the date of the payment.

1.5 Where before the fifth (5th) anniversary of the date of receipt of the NHS Contribution a legally binding contract has been entered into by the Council with NHS England for the payment of the NHS Contribution the Council shall be entitled to make that payment to NHS England.

2 The Council covenants with the Owner:

5.1 To apply the RAMS Contribution solely for the RAMS Contribution Purposes

2.2 any part of the RAMS Contribution that has not been spent or Committed by the Council within five (5) years of receipt shall be returned to the Owner along with interest that has accrued on that unused part (calculated using the SONIA Rate from the date of payment until the date the unexpended part is actually repaid) upon receipt of a request in writing to do so received by the Council no sooner than the 5th anniversary of the date of the payment.

## SCHEDULE 4

### LIBRARY CONTRIBUTION

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

<b>"1964 Act"</b>	means the Public Libraries & Museums Act 1964
<b>"Library Contribution"</b>	means the sum of seventy-seven pounds and eighty pence (£77.80) per Dwelling to which sum the Relevant Library Indexation shall be added [REDACTED]
<b>"Library Contribution Purposes"</b>	means the use of the Library Upgrade Contribution towards the upgrading of existing facilities at Clacton library and or local libraries serving the Development to include, but not limited to, additional furniture, technology and stock
<b>"Library Index"</b>	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
<b>"Library Index Point"</b>	means a point on the most recently published edition of the Library Index at the time of use
<b>"County Council Monitoring Fee"</b>	means a fee of £550 per obligation due to the County Council under this Agreement and for the avoidance of doubt this is a total of £550 (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owners is required to observe and perform pursuant to the terms of this Agreement
<b>"Relevant Library Indexation"</b>	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 2020 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 Council and the County Council:

2.1 To pay the Library Contribution to the County Council prior to Commencement of the Development and not to ~~Occupy~~ <sup>Commencement</sup> (or allow, cause or permit the Occupation of) any of the ~~Dwellings on the Development~~ unless and until the Library Contribution has been paid to the County Council in full;

2.2 In the event that the Library Contribution is paid later than dates 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 the payment is due and the Library Index Point prevailing at the date of actual payment to the County Council 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~~ <sup>SONIA</sup> 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 paragraph 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) plus the Relevant Library Indexation for each and every letter sent to the Owner pursuant to the debt.

3 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 if in good faith the County Council have spent the Library Contribution or have entered into a legally binding contract or obligation to spend the Library Contribution otherwise the County Council shall upon the Occupation of the final Dwelling on the Site or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owner (in excess of those sums calculated as due for payment under this Agreement) together with interest calculated at the ~~Seven Day LIBID~~ <sup>SONIA</sup> Rate within twenty (20) Working Days of the County Council being informed by the Owner of such overpayment.

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

4.1 to place the Library Contribution when received into an interest bearing account and to utilise the same for the Library Contribution Purpose;

4.2 If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Library Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Library Contribution any part of the Library Contribution that remains unexpended when the



Library Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of any Library Contribution Purpose the unexpended part of the Library Contribution shall not be repaid until such payment is made and the unexpended part of the Library Contribution to be repaid shall not include such payment

4.3 Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of receipt of the Library Contribution in full the County Council shall provide the Owners with a statement confirming whether the Library Contributions have been spent and if the Library Contribution has been spent in whole or in part outlining how the Library Contributions have in whole or in part been spent.

5. It is hereby agreed and declared:

5.1 In the event that the Unit Mix to be constructed on the Development does not match the Unit Mix on which the Library Contribution or part thereof paid was based the Owner hereby covenant to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Library Contribution paid and the amount of the Library Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Library Contribution.

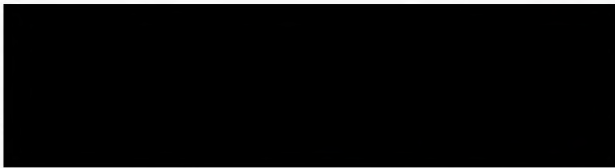
5.2 Any dispute in relation to how the Library Contribution has been spent must be raised in writing by the Owners and received by the County Council within twenty (20) Working Days of receipt by the Owners of the County Council's statement referred to in paragraph 6.3 and shall clearly state the grounds on which the expenditure is disputed.

5.3 In the event that no written request is received by the County Council from the Owners pursuant to paragraph 4.2 above or no valid dispute is raised by the Owners pursuant to paragraph 5.2 the Owners shall accept the Library Contribution has been spent in full on the Library Purposes as appropriate.

6. The Owner hereby covenants to pay the County Council Monitoring Fee to the County Council *prior to Commencement of the Development.*



EXECUTED as a DEED when the seal )  
of TENDRING DISTRICT COUNCIL )  
was affixed in the presence of: )



Authorised Signatory

Attesting Officer

SIGNED as a DEED by STRUTT AND )  
PARKER (FARMS) LIMITED )  
acting by )  
in the presence of:- )

Witness Signature

Witness Name

Witness Address

EXECUTED as a DEED when the seal )  
of TENDRING DISTRICT COUNCIL )  
was affixed in the presence of: )

Authorised Signatory

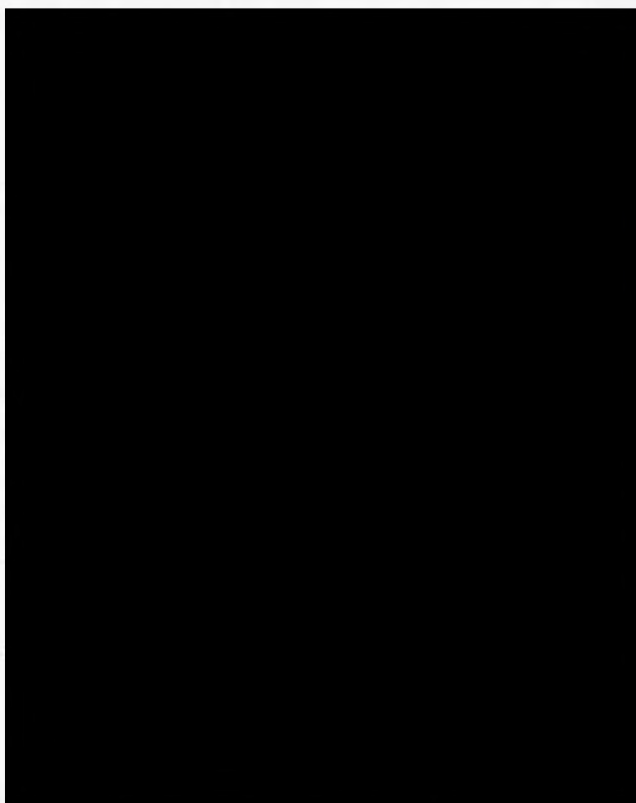
Attesting Officer

SIGNED as a DEED by STRUTT AND  
PARKER (FARMS) LIMITED  
acting by  
in the presence of:-

Witness Signature

Witness Name

Witness Address



Witness Occupation

SIGNED as a DEED BY LIANA )  
ENTERPRISES LIMITED )

acting by [REDACTED]  
in the presence of:- [REDACTED]

Witness Signature [REDACTED]

EXECUTED as a DEED when the seal )  
of ESSEX COUNTY COUNCIL )  
was affixed in the presence of: )

Attesting Officer

Witness Occupation

SIGNED as a DEED BY LIANA )  
ENTERPRISES LIMITED )  
acting by )  
in the presence of:- )

Witness Signature

Witness Name

Witness Address

Witness Occupation

EXECUTED as a DEED when the seal )  
of ESSEX COUNTY COUNCIL )  
was affixed in the presence of: )

43850



Attesting Officer