

Dated 10 MARCH

2023

Kelsworth Ltd

to

Tendring District Council

and

Essex County Council

**Unilateral Undertaking under Section 106 Town and Country
Planning Act 1990**

in relation to land at 700 St Johns Road and 762 St Johns Road, St Johns
Nursery Site, Earls Hall Drive, Clacton On Sea, CO16 8BJ

CONTENTS

1	DEFINITIONS AND INTERPRETATION	3
2	LEGAL BASIS	5
3	CONDITIONALITY	5
4	THE OWNER'S COVENANTS	6
5	MISCELLANEOUS	6
6	MORTGAGEE LIABILITY	7
7	WAIVER	8
8	CHANGE IN OWNERSHIP	8
9	INTEREST	9
10	VAT	9
11	JURISDICTION	9
12	NOTICES	9
13	PLANNING CONSENTS GRANTED PURSUANT TO S73 OF THE ACT	

SCHEDULE 1 – Affordable Housing

SCHEDULE 2 – Education Contribution

SCHEDULE 3 – Open Space

SCHEDULE 4 – Health Contribution

SCHEDULE 5 – Recreational Disturbance, Avoidance & Mitigation Contribution (RAMS)

SCHEDULE 6 – Live / Work Units

SCHEDULE 7 – Highways and Transportation

Unilateral Undertaking

Dated 10 MARCH 2023

From

- (1) **Kelsworth Ltd** incorporated and registered in England and Wales with company number 06727355 whose registered office is at 3rd Floor Sterling House, Langston Road, Loughton, Essex, IG10 3TS ("**the Owner**")

To:

- (2) **Tendring District Council** of Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE ("**the Council**"); and
- (3) **Essex County Council** of County Hall Market Road Chelmsford Essex CM1 1QH ("**the County Council**"); and

Introduction

- (A) The Council and the County Council are the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (B) The County Council is also a Local Planning Authority pursuant to Section 1 of the Town and Country Planning Act 1990 and is the highway authority and the education authority for the area in which the Site is situated and by whom the highways, and education obligations created by this Unilateral Undertaking are separately enforceable
- (C) The Owner is the freehold owner of the Site (not including 700 and 762 St John's Road registered under separate title numbers) which is registered at H M Land Registry with Freehold Title Absolute under title number EX512914 and has an interest in the Site within the meaning of Section 106(9)(b) of the 1990 Act free from any encumbrances that would prevent the Owner from entering into this Unilateral Undertaking
- (D) The Owner submitted the Application to the Council which was refused by the Council by way of refusal notice dated 18 May 2022. The Owner has submitted the Appeal against the refusal of planning permission for the Development and this Unilateral Undertaking is to be considered as part of the Appeal.
- (E) The Owner has entered into this Unilateral Undertaking to the intent that should Planning Permission be granted the Site shall be bound by the obligations contained in this Unilateral Undertaking hereinafter appearing.
- (F) This Unilateral Undertaking is enforceable in accordance with Section 106 of the 1990 Act if permission is granted pursuant to the Application.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

For the purposes of this Unilateral Undertaking the following expressions shall have the following meanings:

1990 Act means the Town and Country Planning Act 1990 (as amended);

Appeal means the appeal under reference APP/P1560/W/22/3308647 submitted by the Developer to the Secretary of State against the refusal of the Application;

Application means the application for Planning Permission for the proposed demolition of nursery buildings and dwelling house (700 St Johns Road) and erection of 180 residential units (including affordable housing) comprising 10 two bed houses, 83 three bed houses, 24 four bed houses, 15 five bed houses, 16 one-bedroom apartments and 24 two-bedroom apartments and 8 live work units (mixed commercial units totaling 1064 square meters with flats above); and roads, open space, drainage, landscaping and other associated infrastructure on the Site validated by the Council on 2 July 2021 and has allocated reference number 21/01000/FUL;

Commencement Date means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Unilateral Undertaking and for no other purpose) operations consisting of site survey site clearance demolition works ground investigation temporary access construction works archaeological investigations for the purpose of assessing ground conditions preparation work remedial or remediation work in respect of any contamination or other adverse ground conditions diversion and laying or removal of services erection of any temporary means of enclosure including fences and hoardings the temporary display of site notices or advertisements and **Commencement** and **Commence** and **Commences** and **Commenced** shall be construed accordingly;

County Council Monitoring Fee means a fee of £550 per obligation due to the County Council under this Deed and for the avoidance of doubt this is a total of £2,750 (two thousand seven hundred and Fifty Pounds) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed

Development means the Development of the Site as set out in the Application and authorised by the Planning Permission;

Dwellings means a house self-contained flat bungalow maisonette or other domestic property constructed or built on Site pursuant to the Planning Permission or created by conversion of an existing building on the Site and reference to **Dwelling** shall mean any one of the Dwellings;

Index Point means All Items Index of Retail Prices (RPI) issued by the Office for National Statistics or any equivalent and reasonable alternative index or comparable measure of price inflation as the Council reasonably requires;

Index Linked where an amount is stated to be paid Index Linked means in relation to the RAMS Contribution the amount shall be increased or decreased by applying the RPI All Items Index Jan 1987 = 100 published by the Office for National Statistics using the formula

$A = B \times C$ divided by D - where A is the amount actually payable- B is the amount specified as payable – C is the RPI All Items Index two months before the date of payment – and D is the RPI All Items Index two months before the date of this Unilateral Undertaking;

Market Dwellings means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings (as defined in Schedule 1)

Notice of Commencement means the written notice the form of which is contained at Appendix 1 of this Undertaking advising of the proposed Commencement Date;

Occupation means occupation of the land or buildings for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and **Occupied** and **Occupied and Occupier** shall be construed accordingly;

Plan means the plan attached to this Unilateral Undertaking with the reference PL0001B and marked Plan;

Planning Permission means the planning permission for the Development granted by the Secretary of State pursuant to the Appeal;

Practical Completion means issue of a certificate of practical completion of the Development by the Owner or the Owner's architect/contract administrator/employer's agent or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect/contract administrator/employer's agent that the Development has been constructed and is available for Occupation;

Healthcare Contribution Index means 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;

Site means the property known as 700 St Johns Road and 762 St Johns Road, and St Johns Nursery Site, Earls Hall Drive, Clacton On Sea, CO16 8BJ shown for identification purposes only edged red on the Plan; and

Working Days means any day from Monday to Friday (inclusive) which is not Christmas Day Good Friday or a statutory Bank Holiday and **Working Day** shall be construed accordingly.

1.2 Interpretation

1.2.1 Where in this Unilateral Undertaking reference is made to any clause paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph or schedule or recital in this Unilateral Undertaking.

1.2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

1.2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed interchangeable in that manner.

- 1.2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 1.2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it.
- 1.2.6 References to any party to this Unilateral Undertaking shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County the successors to their respective statutory functions.
- 1.2.7 The headings and contents list are for reference only and shall not affect construction.
- 1.2.8 The words including and include shall be deemed to be followed by the words without limitation.
- 1.2.9 References in this Unilateral Undertaking to development shall have the meaning given to it by Section 55 of the 1990 Act.

2 **Legal Basis**

- 2.1 This Unilateral Undertaking is made pursuant to Section 106 of the 1990 Act and to the extent that they fall within the terms of Section 106 of the 1990 Act, the obligations contained in this Unilateral Undertaking are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and the County Council against the Owner in respect of the Site.
- 2.2 The Owner enters into the obligations (for itself and its successors in title and persons deriving title from the Owner) with the Council and the County Council with the intent that the obligations contained in this Unilateral Undertaking will bind the Owner's interest in the Site and shall be enforceable not only against the Owner but also against the successors in title of the Owner and any person claiming through or under the Owner an interest or estate in the Site or any part thereof other than where the new owner is an owner occupier or tenant of any of the Dwellings (or to a mortgage or charge holder of any Dwelling or a statutory undertaker or similar utility provider) save for the covenants in Schedule 1 of this Unilateral Undertaking in respect of Affordable Housing Dwellings.

3 **Conditionality**

- 3.1 This Unilateral Undertaking shall come into immediate effect save for the obligations in the Schedules which are conditional upon:
 - 3.1.1 the grant of Planning Permission on Appeal; and
 - 3.1.2 Commencement of the Development.
- 3.2 In the event that the Secretary of State expressly states in his Decision Letter that any individual obligation within this Unilateral Undertaking is not compliant with the Community

Infrastructure Levy Regulations 2010 (as amended) and/or the National Planning Policy Framework 2021 or is immaterial to the grant of Planning Permission and that no weight has been given to the same in reaching his decision then that obligation or those obligation will cease to have effect and shall be void for the purposes of this Unilateral Undertaking and shall have no effect and the Owner shall not be obliged to comply with the terms of that obligation and the remaining clauses will remain in full force and effect PROVIDED THAT severance is achievable.

4 The Owner's Covenants

4.1 The Owner so as to bind the Site covenants with the Council and the County Council:

- 4.1.1 to comply with its obligations set out in this Unilateral Undertaking and the Schedules to this Unilateral Undertaking;
- 4.1.2 to pay to the County Council the Monitoring Fee on Notice of Commencement ;
- 4.1.3 to provide the Notice of Commencement to the Council and the County Council no later than twenty (20) Working Days prior to the Commencement Date using the pro-forma set out in Appendix 1 hereto;
- 4.1.4 to give the County Council and the Council no less than five (5) Working Days' notice of the first Occupation of the Dwellings such notice to be in writing using the pro-forma set out in Appendix 1 hereto; and
- 4.1.5 to give the County Council and the Council no less than five (5) Working Days' notice of the Practical Completion of the Development such notice to be in writing using the pro-forma set out in Appendix 1 hereto;
- 4.1.6 not to encumber or otherwise deal with their interest in the Site or any part or parts thereof in any manner whatsoever whereby the obligations, covenants and undertakings imposed by this Unilateral Undertaking are rendered impossible to carry out;
- 4.1.7 prior to completion of this Unilateral Undertaking to pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this Unilateral Undertaking.
- 4.1.8 to pay to the County Council the County Council Monitoring Fee prior to Commencement

5 Miscellaneous

5.1 The Owner hereby warrants that it is the owner of the freehold of the Site and that no other party has a material interest in the Site.

5.2 No provisions of this Unilateral Undertaking shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 nor does it confer or purport to confer any right to enforce any of the terms and provisions of this Unilateral Undertaking to any person who is not a party or successor in title or statutory successor to a party hereto.

- 5.3 This Unilateral Undertaking shall be registrable as a Local Land Charge by the Council and County Council.
- 5.4 Insofar as any clause or clauses of this Unilateral Undertaking are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Unilateral Undertaking.
- 5.5 This Unilateral Undertaking shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement Date.
- 5.6 No person will be liable for any breach of the terms of this Unilateral Undertaking occurring after the date on which they part with their entire interest in the Site save that they will remain liable for any breaches of this Unilateral Undertaking occurring before that date.
- 5.7 Nothing in this Unilateral Undertaking shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Unilateral Undertaking.
- 5.8 No compensation shall be payable by the Council or the County Council to any party to this Unilateral Undertaking or their successors in title and assigns arising from the terms of this Unilateral Undertaking and unless specified otherwise in this Unilateral Undertaking 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 successors in title to the Owner and at no cost to the Council or the County Council.
- 5.9 Without prejudice to any statutory rights of entry the Owner shall permit the Council and the County Council and its authorised employees and agents upon reasonable written notice of not less than 72 hours to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed.
- 5.10 Save for the restrictions on Occupation and use set out herein and the covenants in Schedule 1 of this Unilateral Undertaking in respect of Affordable Housing Dwellings, this Unilateral Undertaking shall not be enforceable against any individual owner or occupier of the Dwellings or their mortgagee or chargee.

6 Mortgagee liability and Consent

- 6.1 No future mortgagee shall have any liability under this Unilateral Undertaking unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.
- 6.2 The Mortgagee shall not be personally liable for any past breach of the obligations in this Unilateral Undertaking nor liable to the payment of monies unless the breach of the obligations is committed at a time when the Mortgagee is in possession of all the Site.
- 6.3 No Mortgagee shall be liable for any breach of a covenant, restriction or obligation contained in this Unilateral Undertaking after parting with all of its interest in the Site.
- 6.4 The Mortgagee consents to the terms of this Deed and acknowledges that subject as provided by this Deed the Mortgagee's interest in the Site shall be bound by the covenants restrictions and obligations contained in this Deed but without liability on the Mortgagee's

part save in the event that the Mortgagee becomes successor in title to the Owner at any time before the Owner has fully performed all its obligations under this Deed

7 **Waiver**

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

8 **Change In Ownership**

Otherwise than in relation to transfers to utility companies the Owner shall give to the Council and the County Council within 1 (one) month of the Owner disposing of any part of the Site other than a Dwelling written notice of the name and address of the person to whom the Site or any part has been transferred.

9 **Interest**

If any payment due under this Unilateral Undertaking is paid late, Interest will be payable from the date payment is due to the date of payment.

10 **VAT**

10.1 All consideration given in accordance with the terms of this Unilateral Undertaking shall be exclusive of any value added tax properly payable.

11 **Jurisdiction**

11.1 This Unilateral Undertaking is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the Courts of England.

12 **Notices**

12.1 In this clause:

12.1.1 **the Council's address** means the address of the Council shown on the first page of this Unilateral Undertaking or such other address as the Council may from time to time notify to the Owner and its successors as being its address for service for the purposes of this Unilateral Undertaking;

12.1.2 **the County Council's address** means the address of service for the County Council shown in clause 12.2.3 or such other address as the County Council may from time to time notify to the Owner and its successors as being its address for service for the purposes of this Unilateral Undertaking;

12.1.3 **the address of the Owner** means the address shown on the first page of this Unilateral Undertaking or such other address as it may have from time to time notified to the Council as being its address for service for the purposes of this Unilateral Undertaking.

12.2 Any notice or other communication given or made in accordance with this Unilateral Undertaking shall be in writing and:

- 12.2.1 may (in addition to any other effective mode of service) be delivered personally or sent by registered or recorded delivery or prepaid first class letter post or its equivalent; and
- 12.2.2 shall in the case of a notice or other communication to the Council be served on the Council at the Council's address addressed to its Head of Planning with reference 21/01000/FUL and via email to obligations@tendringdc.gov.uk marked for the attention of the S106 Officer;
- 12.2.3 shall in the case of a notice or other communication to the County Council be served to the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH AND to development.enquiry@essex.gov.uk and
- 12.2.4 shall in the case of a notice or other communication to the Owner be served on the Owner at the Owner's registered address.

12.3 Notices shall not be sent by email or DX unless otherwise stated in this Unilateral Undertaking.

13. Planning permissions granted pursuant to S73 of the 1990 Act

13.1 If any new planning permission(s) are granted by the Council pursuant to Section 73 of the 1990 Act unless otherwise agreed between the Parties in writing, with effect from the date that the new planning permission is granted pursuant to Section 73 of the 1990 Act :

13.1.1 the obligations in this Unilateral Undertaking shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent planning permission(s) in respect of the Site granted pursuant to Section 73 of the 1990 Act and the Site itself without the automatic need to enter into any deed of variation or new agreement pursuant to Section 106 of the Act;

13.1.2 the definitions of Application, Development and Planning Permission in this Unilateral Undertaking shall be construed to include references to any applications under Section 73 of the Act, the planning permission(s) granted thereunder and the development permitted by such subsequent planning permission(s); and

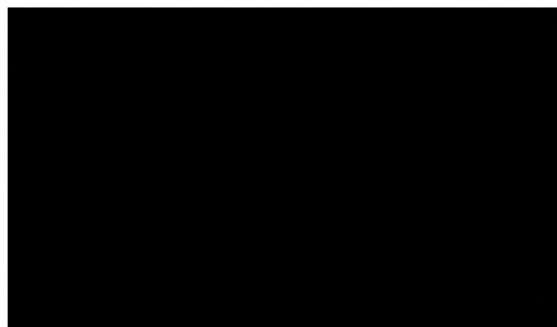
provided that nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are materially different to those contained in this Unilateral Undertaking and required pursuant to a determination under Section 73 of the Act whether by way of a new deed or supplemental deed pursuant to S106 of the Act

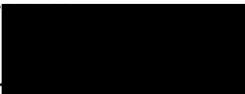
This Unilateral Undertaking has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a DEED by)
 KELSWORTH LIMITED)

acting by a director

In the presence of



Witness Signature: 

Witness Name: Witness Signature

Witness Name : Dawn Elliott
Address : Coach House, 9 Church Hill, Epping, CM16 4RA
Occupation : PA.....

Witness Address:

.....

Witness Occupation:

SCHEDULE 1

Affordable Housing

Part One

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

“Affordable Housing”	means housing provided to Qualifying Persons in Housing Need whose needs are not met by the market with eligibility determined with regards to local incomes and local house prices (for the area of Clacton) 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 and comprising Shared Ownership dwellings.
“Affordable Housing Dwellings”	Means the 18 (eighteen) Dwellings to be provided as Affordable Housing pursuant to the Affordable Housing Scheme
“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 the Affordable Housing Scheme
“Affordable Housing Scheme”	Means a scheme approved by the Council to provide 18 (eighteen) of the Dwellings to be constructed, transferred (to an Approved Body) and used as Affordable Housing and which scheme shall include the Affordable Housing Plan which for the avoidance of doubt shall comprise Shared Ownership Dwellings
“Approved Body”	Means a private registered provider as defined in Section 80 of the Housing and Regeneration Act 2008 and which private registered provider is: a) approved by the Council and (b) regulated by Homes England

“Capital Receipts”	means proceeds from Staircasing less the Approved Body's cost of acquisition, build, management, sale, the redemption of any mortgage and reasonable legal fees
“Chargee”	Means any mortgagee or chargee (or any receiver or manager (including an administrative receiver or any other administrator however appointed) appointed by such mortgagee or charge) of the whole or any part of the Affordable Housing Dwellings
“Help to Buy Agent”	Means an Agent appointed by Homes England to help provide Help to Buy schemes across England.
“Homes England”	The government's housing, land and regeneration agency set up to fund and regulate the provision of Affordable Housing in England and any successor body
“Housing Need”	Means being in need of Affordable Housing and registered as such by the Council or Approved Body and unable to afford suitable housing at local open market prices either to rent or buy
“Housing Needs Register”	Means the register maintained by the Council or its nominee for Qualifying Persons in Housing Need
“Protected Tenant”	Means any tenant who: (a) Has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 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) Is a 100% staircase
“Qualifying Person”	Means a person who is registered on the Housing Needs Register who is entitled to be nominated in priority to be determined by the Council in accordance with its relevant policies for the allocation of Affordable Housing or other person who is approved by the Council in writing and “Qualifying Persons” should be construed accordingly.
“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.
“Shared Ownership Dwelling”	Means an Affordable Housing Dwelling to be let on a Shared Ownership Lease to Qualifying Persons in Housing Need registered with their local Help to Buy Agent and whose gross household income does not exceed £80,000 (eighty thousand pounds) 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 and to be disposed of pursuant to shared ownership arrangements such arrangements to:

	<p>(a) Comprise of a sale of an initial equity share of up to eighty percent (80%) of the full market value of the Affordable Housing Dwelling (or such other percentage as is agreed in writing by the council); and</p> <p>(b) Allow the owner to acquire the remaining equity share in the relevant Affordable Housing Dwelling through Staircasing to achieve full 100% ownership;</p> <p>And the use in this Unilateral Undertaking of the term “Shared Ownership Dwellings” shall be construed accordingly</p>
“Shared Ownership Lease”	<p>means a lease of over 990 years substantially in the form of the Homes England model shared ownership lease from time to time where:-</p> <p>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):-</p> <p>i) within the district of Tendring</p> <p>ii) within the neighbouring councils areas within the county of Essex</p> <p>iii) within the rest of England</p> <p>subject to any contrary requirements within the Regulator of Social Housing capital funding guide</p>
“Staircasing”	<p>Means the process by which a lessee of Shared Ownership Dwelling becomes a 100% Staircaser;</p>
“100% Staircaser”	<p>Means a lessee of an Affordable Housing Dwelling under a shared ownership arrangement who has acquired 100% of the equity in the said Affordable Housing Dwelling.</p>

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

1.1 Not to Commence the Development unless and until:

1.1.1 the Affordable Housing Scheme has been submitted to the Council for approval and the Council has approved the said Affordable Housing Scheme in writing PROVIDED THAT where the Council fail to give notice of approval or rejection with reasons of the Affordable Housing Scheme within 1 month of receipt by the Council of the full Affordable Housing Scheme the same shall be deemed to be approved on expiry of the 1 month period PROVIDED FURTHER that the said 1 month period shall commence after each rejection by the Council of the Affordable Housing Scheme; and

1.1.2 the identity of the Approved Body has been submitted to the Council for approval and the Council has approved the Approved Body in writing PROVIDED THAT where the Council fail to give notice of approval or rejection with reasons of the identity of the Approved Body

within 1 month of receipt by the Council of the identity of the Approved Body the same shall be deemed to be approved on expiry of the 1 month period PROVIDED FURTHER that the said 1 month period shall commence after each rejection by the Council of the identity of the Approved Body.

1.2 Not to first Occupy (or allow, cause or permit the first Occupation of) more than forty percent (40%) of the Market Dwellings unless and until not less than fifty percent (50%) of the Affordable Housing Dwellings referred to in the Affordable Housing Scheme have been:

1.2.1 constructed and are available to be Occupied for their intended purpose, and;

1.2.2 transferred to the Approved Body and for the purposes of this Schedule 1 only the expression "transferred" shall mean a transfer of the freehold interest (of any house or block of flats containing only Affordable Housing Dwellings) or leasehold interest (of any flat in a block that contained one or more Market Dwellings) that comprises the Affordable Housing Dwellings or an Undertaking for sale or lease signed with the Affordable Housing Provider that has been unconditionally released for completion by the Owner Provided Always that any transfer of the Affordable Housing Dwellings to the Approved Body shall include the provisions contained in Part Two of Schedule 1.

1.3 Not to first Occupy (or allow, cause or permit the first Occupation of) more than eighty percent (80%) of the Market Dwellings unless and until not less than one hundred percent (100%) of the Affordable Housing Dwellings referred to in the Affordable Housing Scheme have been:

1.3.1 constructed and are available to be Occupied for their intended purpose, and;

1.3.2 transferred to the Approved Body and for the purposes of this Schedule 1 only the expression "transferred" shall mean a transfer of the freehold interest (of any house or block of flats containing only Affordable Housing Dwellings) or leasehold interest (of any flat in a block that contained one or more Market Dwellings) that comprises the Affordable Housing Dwellings or an Undertaking for sale or lease signed with the Approved Body that has been unconditionally released for completion by the Owner Provided Always that any transfer of the Affordable Housing Dwellings to the Approved Body shall include the provisions contained in Part Two of Schedule 1.

2. (Subject always to paragraph 3.1 of this Schedule 1) the Affordable Housing Dwellings shall be occupied for no purpose other than as Affordable Housing

3. It is Hereby Agreed and Declared

3.1 The obligations and restrictions contained in this Schedule 1 shall not bind:

3.1.1 a Chargee (or any receiver appointed by such Chargee) of the whole or part of the Affordable Housing Dwellings PROVIDED THAT such Chargee (or any receiver, including an administrative receiver) acting pursuant to any event of default has first complied with the provisions of paragraph 3.2 of this Schedule;

3.1.2 A Protected Tenant;

3.1.3 Any mortgagee or charge of an occupier of a Shared Ownership Dwelling lawfully exercising the mortgage protection provision within a lease;

- 3.1.4 Any person or body deriving title through or from any of the parties mentioned in paragraphs 3.1.1-3.1.3 of this Schedule 1 above.
- 3.2 Any Chargee claiming the protection granted by paragraph 3.1 of this Schedule 1 above must first:
- 3.2.1 give written notice to the Council of the intention to dispose of the Affordable Housing Dwelling;
- 3.2.2 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(s) to another Approved Body 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, interests and costs and expenses incurred by the Chargee in respect of the mortgage or charge;
- 3.2.3 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 Undertaking 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 the monies outstanding under the charge or mortgage.

Part Two

1. The transfer of the Affordable Housing Dwellings to the Approved Body (as appropriate) shall be with vacant possession.
2. The transfer deed for the transfer of the Affordable Housing Dwellings to the Approved Body shall be prepared by the Owner and the Owner shall pay the Approved Body's reasonable costs of transferring all of the Affordable 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 purposes 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; and
 - 3.4 A provision whereby Capital Receipts received from Staircasing is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re-invest such Capital Receipts 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 2

Part 1 Education Contribution

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

Completion Notice means the notice served by the Owner on the County Council pursuant to paragraph 2.5

Early Years and Childcare Contribution means the Early Years and Childcare Pupil Product multiplied by the cost generator of £17,268 (seventeen thousand two hundred and sixty eight pounds sterling) to which the Relevant Education Indexation shall be added;

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

Early Years and Childcare Purpose means the design (including feasibility work) and or delivery and or provision of facilities for the education and/or care of children between the ages of 0 to 5 (both inclusive) including those with special educational needs within St Osyth ward and or within a 3 mile radius of the Development and including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Early Years and Childcare Contribution

Education Contribution means the Early Years and Childcare Contribution

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

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

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

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

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

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

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

Notice of Commencement means the written notice served pursuant to paragraph 2.3

Payment Notice means a written notice advising of a proposed payment served pursuant to paragraph 2.4

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

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

Qualifying Housing Units means the Qualifying Houses and Qualifying Flats;

Relevant Education Indexation means the amounts that the Owner shall pay with and/or agree in addition to each part of the Contribution paid that shall in each case equal a sum calculated by taking the amount of the Contribution being paid and multiplying this amount by the percentage change in the Education Index between the Education Index point pertaining to January 2020 and Education Index Point pertaining to the date payment is made to the County Council;

Relevant General Indexation means the amounts that the Owner shall pay with and/or agree in addition to each part of the fee or sum set out in paragraph 7 of this part 1 of Schedule 2 that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change in the General Index between the General Index point pertaining to January 2020 and the date payment is made to the County Council;

Sterling Overnight Index Average (SONIA) Rate means an assessment of the rate of interest the 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

Triggers means when the Education Contributions are or part thereof are due to be paid to the County Council

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

2. The Owner hereby covenant with the County Council:
 - 2.1 to pay fifty percent (50%) of the Education Contribution to the County Council prior to Commencement of Development and not to Commence the Development until fifty percent (50%) the Education Contribution have been received by the County Council;
 - 2.2 to pay the remaining fifty percent (50%) of the Education Contribution to the County Council prior to the first Occupation of a Dwelling and not to Occupy any Dwelling (or cause or allow any Dwelling to be Occupied) until the County Council has received payment of the remaining fifty (50%) percent of the Education Contributions and 100% of the Education Contribution has thereby been paid;
 - 2.3 to serve on the County Council the Notice of Commencement not less than three (3) months prior to Commencement/ Implementation stating the expected Commencement Date an estimate of the Triggers and any further information stipulated in the Schedules to this Deed

- 2.4 to serve on the County Council the Payment Notice between sixty (60) and thirty (30) Working Days prior to the date that each and any payment is due to be made to the County Council under this Deed stating the date that such payment becomes due and any further information stipulated in the Schedules to this Deed
- 2.5 to serve on the County Council the Completion Notice within 30 Working Days of all Dwellings being Occupied for the first time stating the date that the last Dwelling was Occupied for the first time and any further information stipulated in the Schedules to this Deed and for the avoidance of doubt any dispute regarding any notice to be served under this Deed may be resolved through the 2 mechanisms set out in [Clause 8] of this Deed.
- 2.6 to serve on the County Council notice of Occupation of the first Dwelling within 1 (one) month thereof and on a 6 (six) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings the Unit Mix of Dwellings that are completed but not Occupied the Unit Mix of Dwellings that are under construction and the Unit Mix of Dwellings where construction work has yet to start at the time the notice is served
3. The Notice of Commencement shall in addition to that information stipulated in paragraph 2.3 to this Deed state the Unit Mix and in the event that the Unit Mix constructed or to be constructed should at any time differ from the Unit Mix notified to the County Council then the Owner shall serve on the County Council a further notice stating the revised Unit Mix within ten (10) Working Days of the revised Unit Mix being decided and in the further event that the Owner fails to serve any notice set out in this Paragraph 3 of this Schedule the County Council may estimate and determine the Unit Mix as it sees fit acting reasonably.
- 4 The Payment Notice shall state the Unit Mix on which the payment is to be based.
- 5 The Completion Notice shall state the final Unit Mix.
- 6 In the event that the Education Contribution is paid later than dates set out in paragraph 2.1 and 2.2 then the amount of the Education Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the date payment is due and the Education Index Point prevailing at the date of actual payment multiplied by the Education Contribution due or if greater an amount pertaining to interest on the Education Contribution or part thereof due calculated at the SONIA Rate from the date of payment is due until the date payment of the Education Contribution is received by the County Council
- 7 In addition to the requirement of 6 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 covenant to pay to County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) plus the Relevant General Indexation for each and every letter sent to the Owner pursuant to the debt.
- 8 In the event that the Unit Mix to be constructed on the Development does not match the Unit Mix on which the Education Contribution or part thereof paid was based the Owner hereby 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 Education Contribution paid and the amount of the Education Contribution that would have been

payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Education Contribution.

Part 2 Library Contribution

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

“Library Contribution Purposes” means the use of the Library Contribution towards the upgrading of existing facilities at Clacton library and /or West Clacton library to include, but not limited to, additional furniture, technology and stock

“Library 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

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

“Relevant Library Indexation” means the amount that the Owner shall pay with and in addition to the Library Contribution paid that shall in each case equal a sum calculated by taking the amount of the Library Contribution being paid and multiplying this amount by the percentage change shown in the Library Index between the Library Index Point pertaining to April 2020 and the date of the most recent Library Index Point published in relation to the date the payment is due to be made to the County Council

2. The Owner hereby covenants with the County Council:
 - 2.1 To pay the Library Contribution to the County Council prior to Commencement of the Development and not Commence the Development (or allow, cause or permit) Commencement of 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 SONIA 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 is 20 working days from date 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 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.

SCHEDULE 3

Open Space

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

“Equipped Play Area” means a play area on the Site of at least the standard required for a Locally Equipped Area of Play as defined in the Council’s Supplementary Planning Document “Provision of Recreational Open Space for New Development” published in May 2008

“Open Space Specification” means the specification for; (a) the laying out, profiling, clearing, planting and landscaping of the Open Space Land and generally for ensuring that the said land is fit for its intended purpose as recreational and amenity land to be enjoyed by members of the public; and the specification and or details of the play equipment to be provided within the Equipped Play Area

“Open Space Land” means the land identified on the Open Space Plan and equating to at least ten percent (10%) of the Site as shown on Drawing No. PL100 Rev. P (attached to this Unilateral Undertaking at Appendix 2 which shall include but not be limited to an Equipped Play Area and recreational open space land which is to be used for no purpose other than for public open space land to provide a recreational and amenity facility for members of the public in perpetuity

“Open Space Plan” means the plan identifying the Open Space Land and any water or drainage features on the Land

“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 and in the case of the Equipped Play Area shall be issued by a ROSPA certified play inspector

“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 (not to be unreasonably withheld) for the ongoing management and maintenance of the Open Space Land

“Management Company” means such other body as the Owner may elect as being responsible for the maintenance of the Open Space Land as approved by the Council (such approval not to be unreasonably withheld or delayed) established for inter alia the purpose of managing and

maintaining the Open Space Land in accordance with the approved Open Space Management Plan and funded for that purpose by the Owner and its successors in title and the Occupiers of the Dwellings

“**Nominated Body**” means one of the following as determined by the Owner;

- a) the Management Company
- b) such other body as the Owner may elect as being responsible for the maintenance of the Open Space Land as approved by the Council (such approval not to be unreasonably withheld or delayed)

1. The Owner hereby covenants with the Council;

- 1.1 To submit the Open Space Plan to the Council for approval prior to the Commencement of Development;
- 1.2 Not to Commence Development unless and until the Council has approved in writing the Open Space Plan PROVIDED THAT where the Council fails to give notice of approval or rejection with reasons of the Open Space Plan within 2 (two) months of receipt by the Council of the Open Space Plan the same shall be deemed to be approved on expiry of the 2 (two) month period PROVIDED the Open Space Plan complies with the definition set out earlier in this Schedule if the Council reject the Open Space Plan the Owner shall submit a revised Open Space Plan to overcome the reasons for rejection and the said 2 (two) month period shall recommence after each revised submission to the Council of the Open Space Plan;
- 1.3 Not to allow the Occupation of the first Dwelling on the site to be Occupied unless and until the Council has approved in writing the Open Space Specification and Open Space Management Plan PROVIDED THAT where the Council fails to give notice of approval or rejection with reasons of the Open Space Specification and Open Space Management Plan within 3 (three) months of receipt by the Council of the Open Space Specification and Open Space Management Plan the same shall be deemed to be approved on expiry of the 3 (three) month period PROVIDED the Open Space Specification and Open Space Management Plan complies with the definitions set out earlier in this Schedule if the Council reject the Open Space Specification and Open Space Management Plan the Owner shall submit a revised Open Space Specification and Open Space Management Plan to overcome the reasons for rejection and the said 3 (three) month period shall recommence after each revised submission to the Council of the Open Space Specification and Open Space Management Plan;
- 1.4 Not to first Occupy or allow cause or permit to be first Occupied any more than eighty percent (80%) of the Dwellings unless and until the Open Space Land has been physically set out on the Site in accordance with the approved Open Space Plan and Open Space Specification and the Council has received the Open Space Completion Certificate(s)
- 1.5 To maintain the Open Space Land following the issue of the Open Space Completion Certificate(s) in accordance with the approved Open Space Management Plan until such time as the transfer described in paragraph 1.7 of this Schedule to the Nominated Body.
- 1.6 To provide the Council with full details of the proposed Nominated Body for approval by the Council (such approval not to be unreasonably withheld or delayed).
- 1.7 Not to Occupy or cause or permit to be Occupied any more than ninety (90%) of the Dwellings unless and until the Open Space Land has been transferred to the Nominated

Body free of encumbrances and with all necessary easements and vacant possession who shall from that date manage and maintain the Open Space Land in perpetuity in accordance with the approved Open Space Management Plan

2. The Owner shall include in any transfer to the Nominated Body pursuant to this Schedule 3;
 - 2.1 a covenant only to permit the Open Space Land to be utilised solely as recreation and amenity land by the general public
 - 2.2 a covenant to maintain the Open Space Land in perpetuity in accordance with the Open Space Management Plan; and
 - 2.3 a covenant not to transfer the Open Space Land into the individual ownership of the owner or owners of any of the Dwellings
3. The Owner shall furnish a copy of the transfer referred to in paragraphs 1.7 and 2 of this Schedule 3 to the Council.
4. In the event that the Open Space Land is transferred to a Nominated Body it shall be funded through contributions from purchasers or lessees of the whole or any part of the Site and the Owner shall include in the transfer or lease to the purchasers or lessees of the whole or any part of the Site including Dwellings an obligation to contribute an annual amount to the Nominated Body which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Nominated Body to discharge its obligations under Paragraph 2 of this Schedule 3.

SCHEDULE 4

Health Contribution

1. In this Schedule 4 unless the context requires otherwise the following words and expressions shall have the following meanings:

“**Healthcare Contribution**” means the sum of £109,900 Index Linked;

“**Healthcare Contribution Purposes**” means the provision of healthcare facilities at Clacton Community Practice including branches at Nayland Road and Kennedy Way;; and

“**NHS England**” means the national commissioning authority for health services in England (or its successor body from time to time).
2. 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 Healthcare Contribution; and
 - 2.2 not to Occupy or allow or permit or cause to be Occupied more than fifty percent (50%) of the Dwellings prior to depositing the Healthcare Contribution with the Council.

SCHEDULE 5

Recreational Disturbance, Avoidance & Mitigation Contribution (RAMS)

1. In this Schedule 5 unless the context requires otherwise the following words and expressions shall have the following meanings:

“**Natura 2000**” has the meaning ascribed to it in section 3(1) of the 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 £137.71 (One Hundred and Thirty Seven Pounds and Seventy One Pence) Index Linked per Dwelling as approved pursuant to the Planning Permission which for 180 (one hundred and eighty) Dwellings us £24,787.80 (twenty four thousand seven hundred and eighty seven pounds and eighty pence) Index Linked as set out in the RAMS ti 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 Colne Estuary SPA and Ramsar site designated primarily to protect waders & wildfow

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

- 2.1 To notify the Council before Commencement of the Development to allow the calculation of the RAMS Contribution; and

- 2.2 Not to Commence the Development or cause or permit the Development to be Commenced unless and until the said RAMS Contribution has been paid to the Council

SCHEDULE 6

Live / Work Units

1. In this Schedule 6 unless the context requires otherwise the following words and expressions shall have the following meanings:

“Live/Works Units Plan” means Drawing No. PL 1030 Rev. K attached to this Unilateral Undertaking at Appendix 3

“Live/Work Units” means the buildings identified on Live/Works Units Plan to be provided as purpose-built employment space on the Site as part of the Development

“Marketed” means advertised for sale or let for a minimum period of at least one week.

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

- 2.1 Not to first Occupy (or allow, cause or permit the first Occupation of) more than seventy five percent (75%) of the Dwellings unless the Live/Work Units have been:

- 2.2 constructed and are available for their intended purpose; and

- 2.3 have been actively Marketed

SCHEDULE 7

Highways and Transportation

1. In this Schedule 7 unless the context requires otherwise the following words and expressions shall have the following meanings:

PART 1 SUSTAINABLE TRANSPORT CONTRIBUTION

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

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

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

Sustainable Transport Contribution means the sum of £104,000 (One hundred and four thousand pounds sterling) payable to the County Council to which sum the Relevant Sustainable Transport Indexation shall be added;

Sustainable Transport Contribution Purposes means the use of the Sustainable Transport Contribution towards procurement towards the local bus services operating on St Johns Road to serve the development and shall include the reimbursement of capital funding for such provision made by the County Council in anticipation of the receipt of the Sustainable Transport Contribution

Relevant Sustainable Transport Indexation means the amount that the Owner shall pay with and in addition to the Sustainable Transport Contribution paid that shall equal a sum calculated by taking the amount of the Sustainable Transport Contribution being paid and multiplying this amount by the percentage change shown in the General Index between the Index Point pertaining to April 2021 and the Index Point pertaining to the date the payment is made to the County Council;

2. The Owner hereby covenants with the County Council:

- 2.1 to pay the Sustainable Transport Contribution to the County Council prior to first Occupation of any Dwellings on the Development and not to cause permit or allow first Occupation of any Dwellings on the Development] unless and until the Sustainable Transport Contribution has been paid to the County Council in full (100%)

- 2.2 In the event that the Sustainable Transport Contribution is paid later than dates set out in paragraph 2.1 above of this Schedule then the amount of the Sustainable Transport Contribution or part thereof payable by the Owners shall in addition include either an amount equal to any percentage increase in build costs shown by the General Index between the General Index Point prevailing at the date the payment is due and the General Index Point prevailing at the date of actual payment to the County Council multiplied by the Sustainable Transport Contribution due or if greater an amount pertaining to interest on the Sustainable Transport Contribution (or the part thereof) due calculated at the SONIA Rate from the date that the payment is due until the date payment of the Sustainable Transport 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) for each and every letter sent to the Owner pursuant to the debt.

2.4 The County Council may utilise up to two percent (2%) of the total amount of the Sustainable Transport Contribution due under this Agreement to a maximum of Two Thousand Four Hundred Pounds (£2,400) plus the Relevant Sustainable Transport Indexation for the purposes of scheme validation, programming, commissioning of works, scheme monitoring including site visits and meetings, budget control, governance and for the avoidance of doubt such purposes are agreed by the Owner to form part of the definition of use of the Sustainable Transport Contribution Purpose;

PART 2 RESIDENTENTIAL TRAVEL PLAN MONITORING FEE

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

Annual Traffic Counts means the collection of travel data from all entry and exit points to the Development including pedestrian and cycle routes leading to a service or amenity where a lower traffic generation rate has been agreed based on the fact that there will be travel planning measures in place to reduce the modal share travelling by car;

Relevant Sustainable Travel Indexation means the amount that the Owner shall pay with and in addition to each part of the Residential Travel Plan Monitoring Fee paid that shall in each case equal a sum calculated by taking the amount of the Residential Travel Plan Monitoring Fee being paid and multiplying this amount by the percentage change shown in the Sustainable Travel Index between the Index Point pertaining to April 2021 and the date payment is made to the County Council

Residential Travel Information Pack means a specific district or borough tailor-made booklet aimed at promoting the benefits of sustainable transport in support of the objective to secure a modal shift from the private car and increase the use of sustainable modes of travel and shall contain the following:

- (a) guidance and promotional material on the use of sustainable modes of travel;
- (b) details on walking, cycling, trains, buses, park & ride, taxis, car sharing, car clubs, electric vehicles, school transport and personalised journey planning services;
- (c) reference to travel websites, resources and support services for each mode of travel, information provided by the County and the Council;
- (d) details of local travel campaigns and networking/support groups; and
- (e) to include Travel Vouchers for use with the relevant local public transport operator;

Residential Travel Plan means a working plan to include all measures to ensure sustainable means of travel are available to residents of the Development in accordance with the requirements of the National Planning Policy Framework and shall include but not be limited to such Residential Travel Plan Measures as stated in the 'Travel Plan Template' and amended and supplemented from time to time under the provisions of this Deed and the Annual Traffic Counts reviews;

Residential Travel Plan Co-Ordinator means a member of staff appointed by the Owner with appropriate skills and budgetary provision and resources to fulfil the role of the Residential Travel Plan Co-ordinator as described in the job description(s) stated in the Residential 'Travel Plan Template';

Residential Travel Plan Monitoring Fee means a non-refundable annual payment of £1,596 (one thousand five hundred and thirty three pounds sterling) plus Relevant Sustainable Travel Indexation payable towards the monitoring by the County of the implementation of the Residential Travel Plan to ensure that (a) monitoring is conducted in line with Residential Travel Plan monitoring protocols and (b) the

Residential Travel Plan remains an "active" document with the overarching aim to secure a modal shift from the private car and increase the number of people using sustainable modes of travel;

Residential Travel Plan Template means the template appended to this Deed;

Sustainable Travel 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

Sustainable Travel Index Point means a point shown on the Sustainable Travel Index indicating a relative cost at a point of time;

Travel Vouchers shall mean tickets/passes/ vouchers or other means of accessing transport or journey planning information as agreed with the County including the following as a minimum (six scratchcard bus tickets per household OR season ticket voucher) and/or (incentives for rail travel with the local rail operator) for each eligible member of the household AND access to an online tool to generate personalised travel plans using a home and destination postcode to provide details of different travel modes/options travel routes/maps and timetable information).

1. The Owner hereby covenants with the County Council:

1.1 prior to the Occupation of the Development to formulate and submit to the County Council for approval a Residential Travel Plan and not to cause or allow first Occupation of the Development prior to the Residential Travel Plan being approved in writing by the County Council;

1.2 to appoint a Residential Travel Plan Co-ordinator prior to first Occupation of the Development and not to cause or allow Occupation of the Development prior to the appointment of a Residential Travel Plan Co-ordinator and to notify the County Council of the identity and contact details of the Residential Travel Plan Co-ordinator as soon as an appointment is confirmed;

1.3 to continue to employ a Residential Travel Plan Co-ordinator for the period until a minimum of one year after the Final Occupation of the Development and in the event of a vacancy occurring in the post during that period to re-appoint within a maximum period of two months of the vacancy occurring and to notify the County Council as soon as the appointment is confirmed;

1.4 to use all reasonable endeavours to ensure that the Residential Travel Plan Co-ordinator fulfils their duties in accordance with the duties specified in the job description of the Residential Travel Plan Co-ordinator stated in the approved Residential Travel Plan;

1.5 not to change the responsibilities or role of the Residential Travel Plan Co-ordinator without prior written approval of the County Council;

1.6 to implement the Residential Travel Plan in a timely manner and at its own expense and to comply in all respects with the requirements of the Residential Travel Plan for a period of one year after the Final Occupation of the Development;

1.7 to pay the first annual Residential Travel Plan Monitoring Fee to the County Council prior to first Occupation of the Development and not to allow any Occupation of the Development until the Travel Plan Monitoring Fee has been paid to the County Council and in the case of late payments interest will be payable by the Owner from the date payment is due to the date payment is made on which late sums interest shall accrue under the SONIA Rate;

- 1.8 to pay the annual Residential Travel Plan Monitoring Fee to the County Council on each subsequent anniversary following the first annual payment until one year after the Final Occupation of the Development and in the case of late payments interest will be payable by the Developer and or the Owner from the date payment is due to the date payment is made on which late sums interest shall accrue under the SONIA Rate;
- 1.9 to submit raw data collected as part of the Annual Traffic Count no later than two months from completion of the Annual Traffic Count to which the data relates; and
- 1.10 in the event that any of the Annual Traffic Counts and the Targets are not carried out by the Owner pursuant to the Residential Travel Plan the County Council shall on written notice to the Owner be entitled to conduct such Annual Traffic Counts as are necessary to discharge the requirements of the Residential Travel Plan and **furthermore** on receipt of an appropriate invoice or request for payment from the County acting reasonably the Owner hereby agrees to pay the costs arising from such surveys.

Travel Information Packs

2. The Owners further hereby covenant with the County Council:
 - 2.1 to submit a draft Residential Travel Information Pack (including Travel Vouchers) to the County Council for written approval prior to first Occupation of a Dwelling and not to cause or allow first Occupation of a Dwelling prior to the Residential Travel Information Pack (including Travel Vouchers) being submitted to and approved in writing by the County Council; and
 - 2.2 to provide the first occupier of each Dwelling with an approved Residential Travel Information Pack and Travel Vouchers prior to Occupation of any Dwelling and not to cause or permit Occupation of any Dwellings on the Development unless and until the Owners have provided the first occupiers with an approved Residential Travel Information Pack and Travel Voucher at the expense of the Owner.

PART 3 HIGHWAY WORKS

1. The Owner hereby covenants with the County Council so as to bind their interest in the Land/Site:

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

“Highways Act” means the Highways Act 1980

“Highway Works” means the following highway works carried out as indicated on drawings SK09 and SK11 appended hereto:

(a) the upgrade three closest bus stops on St Johns Road nearest to the St Johns Road site access/ shared cycleway/ footway onto St Johns Road as follows:

(i)North Side: outside house nos. 750/ 752; Stop Name: Earls Hall;

(ii)South Side: (within lay-by) opposite house nos. 734/736; Stop Name: Earls Hall;

(iii)North Side; outside house no. 692; Stop Name, Rouse Lane;

(b) the provision/upgrade of a 3-metre-wide shared footway/ cycleway and associated tactile paving on the north side of St Johns Road from its junction with Earls Hall Drive eastwards to the main vehicular access to the site and beyond to tie in with the proposed footway/ cycleway for the Rouses Farm development south of St Johns Road (17/01229/OUT);

and including any necessary alterations to and reinstatements of existing highways and statutory undertakers equipment to the provision of or alteration to street lighting road signs drainage structures traffic signals related accommodation and any other works normally associated with the construction of a highway or required as a result of the County Council's inspections

“Highway Works Agreement(s)” means an agreement or agreements entered into under section 38 and section 278 of the Highways Act (and all other relevant enabling powers that the County Council may reasonably require to be used) to regulate the carrying out of, the dedication of and the adoption of the Highway Works and these agreement(s) may include but not be limited to:

- (a) the securing of a bond to ensure that third party funds are available to complete the Highway Works to the satisfaction of the County Council in the event that the Owner fails to do so;
- (b) the payment of the works inspection fees, maintenance fees, special orders fees, supervision fees and any other such reasonable fees as Highways England and/or the County Council shall require;
- (c) the payment of the legal and other fees associated with the drafting negotiating and completion of the Highway Works Agreement;
- (d) the preparation and advance approval of works drawings and traffic management measures;
- (e) the certification and maintenance of the Highway Works;
- (f) the regulating of the issue of a works licence to enable the Highway Works to be carried out;
- (g) the securing of an indemnity or bond relating to both Land Compensation Act 1973 matters and Noise Insulation Regulations 1975 as amended by the Noise Insulation (Amendment) Regulations 1988 (SI 1988/2000) and any other indemnity or bond for liability issues as the County Council shall reasonably require;
- (h) clauses dealing with dedication of land as public highway;
- (i) the standards and procedures for carrying out the Highway Works; and
- (j) traffic regulation orders and statutory processes

2. The Owner hereby covenants with the County Council:

2.1 to enter into a Highway Works Agreement for the Highway Works prior to Commencement or such other timescale as shall be agreed in writing with the County Council; and

2.2 not to Occupy allow cause or permit to be Occupied any Dwellings unless and until the Highway Works have been properly completed in accordance with the Highway Works Agreement and the relevant certificate confirming such completion has been issued under the provisions of the Highway Works Agreement.