

Dated

2024

TENDRING DISTRICT COUNCIL

-and-

TAYLOR WIMPEY UK LIMITED

-and-

ESSEX COUNTY COUNCIL

**DEED OF VARIATION OF OPEN SPACE SCHEDULE
UNDER SECTION 106A
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

relating to land to the north of Cockaynes Lane Alresford Essex

THIS DEED OF VARIATION is dated

2024

PARTIES:

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE (“the Council”); and
- (2) **TAYLOR WIMPEY UK LIMITED** of (Co. Reg. No.01392762) whose registered office is at Gate House Turnpike Road High Wycombe Buckinghamshire HP12 3NR (“the Owner”); and
- (3) **ALRESFORD PARISH COUNCIL** of The Pavillion Ford Lane Alresford Colchester CO7 8AT (“the Transferee”)
- (4) **ESSEX COUNTY COUNCIL** of County Hall Market Road Chelmsford Essex CM1 1QH (“the County Council”)

together referred to as ‘the Parties’

INTRODUCTION

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- (B) The Owner is the freehold owner of the land registered H M Land Registry under title number EX961636 free from any encumbrances that would prevent the Owner from entering into this Deed.
- (C) Planning permission was granted by the Council on 27 March 2018 for the Development under reference 18/00367/FUL subject to conditions and the Original Agreement.
- (D) Schedule 3 of the Original Agreement relates to Open Space Land requiring the Owner to transfer the Open Space Land to the Council with the Open Space Maintenance Contribution and the Open Space Play Equipment Contribution to the Council with the Council to simultaneously transfer the Open Space Land to Alresford Parish Council.
- (E) The Council has requested to vary the Original Agreement in that to transfer

the Open Space Land with the Open Space Maintenance Contribution and the Open Space Play Equipment Contribution to Alresford Parish Council and the Owner and the County Council have agreed to vary the Original Agreement on the terms set out in this Deed in relation to the Site.

- (F) The obligations in the Original Agreement that are varied by this Deed are enforceable by the Council against the Owner and their successors in title.
- (G) The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed.

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Indexed Linked	means increased to reflect any increase in the Index during the period from and including the date of the S106 Agreement to and including the actual date of payment of the contribution being on 3 July 2023;
Open Space Land	means the area of the Site upon which the open space is identified on the plan attached to this deed;
Open Space Contribution Maintenance	being £38,555 Indexed Linked being the total sum of £49,274.27;
Open Space Play Equipment Contribution	being the sum of £51,260.63 Indexed Linked;
Original Agreement	an agreement dated 11 September 2019 made under Section 106 of the 1990 Act between the Council (1); Essex County Council (2) and Taylor Wimpey UK

Limited (3) in respect of the Planning Permission containing planning obligations enforceable by the Council;

Plan Open Space Conveyance Plan CA dated December 2021;

Site means the land to the north of Cockaynes Lane Alresford Essex and which land is shown edged red for identification purposes only as edged red on the attached Plan.

2. LEGAL BASIS

- 2.1 This Deed is supplemental to and varies the Original Undertaking and is made pursuant to Section 106 and 106A of the 1990 Act and the covenants and obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act enforceable by the Council and to the extent that any obligations contained in this Deed are not planning obligations within the meaning of the 1990 Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this Deed are entered into by the Owner with the intention that they bind the interests held by the Owner in the Site and their respective successors and assigns.
- 2.3 The Owner warrants that they have full power to enter into this Deed and there is no other person save for as recited in this Deed whose consent is necessary to make this Deed binding on the Site.
- 2.4 The terms and conditions of the Original Agreement shall remain in full force and effect except as varied by this Deed.

3. VARIATION

- 3.1 The Parties agree that the Original Agreement is varied in the manner specified in Schedule 1 to this Deed.
- 3.2 This Deed comes into effect immediately upon simultaneous completion of this Deed and the transfer of the Open Space Land as referred to in Schedule 3 of the Original Agreement.

4. OTHER PROVISIONS

- 4.1 On completion of this Deed the Owner will pay the Council's reasonable legal costs in connection with this Deed.
- 4.2 On completion the Council shall register this Deed in its Register of Local Land Charges.
- 4.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission.
- 4.4 A person who is not a party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed
- 4.5 If any provision of this Deed shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed to be affected or impaired.
- 4.6 Words and expressions defined in the Original Agreement shall, unless the context or the express terms of this Deed otherwise require, bear the same

meaning in this Deed.

5. JURISDICTION

- 5.1 This Deed shall be governed by and construed in accordance with the laws of England and each of the parties hereby submits to the exclusive jurisdiction of the English Courts.

Schedule 1
Variation of the Original Agreement

- 1 The Parties agree that following paragraphs of the Original Agreement shall be varied as follows:
 - 1.4.3 The Open Space Maintenance Contribution and the Open Space Play Equipment Contribution have been paid to the Council and the Council will transfer these to Alresford Parish Council upon completion of the Open Space Land to the Parish Council.

- 2 Paragraph 2 where references are made to the Council, these shall be replaced by Alresford Parish Council.

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

THE COMMON SEAL of)
TENDRING DISTRICT)
COUNCIL was hereunto affixed)
to this Deed in the presence of:)

Head of Services

SIGNED as a **DEED** by
TAYLOR WIMPEY UK LIMITED
Acting by its attorney

in the presence of:

Witness Signature:

Witness Name:

Address: 730 Waterside Drive, Aztec West, Almondsbury,
Bristol, BS32 4UE

THE COMMON SEAL of)
ESSEX COUNTY COUNCIL)
was hereunto affixed)
to this Deed in the presence of:)

Attesting Officer

THE COMMON SEAL of)
ALRESORD PARISH COUNCIL)
was hereunto affixed)
to this Deed in the presence of:)