

DATED

7th June

2017

(1) TENDRING DISTRICT COUNCIL

(2) ESSEX COUNTY COUNCIL

(3) KEVIN JAMES BRITTON

AGREEMENT

under section 106 Town and Country Planning Act 1990 as amended
relating to land at Brook Park West Clacton on Sea CO15 3TP

THIS AGREEMENT is made on 7th June 2017

BETWEEN:

- (1) **TENDRING DISTRICT COUNCIL** of Council Offices Thorpe Road Weeley CO16 9AJ ("**the Council**"); and
- (2) **ESSEX COUNTY COUNCIL** of County Hall Market Road Chelmsford Essex CM1 1QH ("**the County Council**"); and
- (3) **KEVIN JAMES BRITTON** of Wild Close Oakwood Business Park Stephenson Road West Clacton on Sea CO15 4TL ("**the Owner**")

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council and the County Council are the local planning authorities for the area within which the Site is located and the authorities who are entitled to enforce the obligations contained in this Agreement.
- (B) The County Council is also the local authority for pre-school age education and child care and statutory age education for the area in which the Site is located.
- (C) The Owner is the freehold title absolute owner of the Site title which is registered at HM Land Registry with the Title Number EX679356 and EX62864 and the Site is free from any encumbrances that would prevent the Owner from entering into this Agreement.
- (D) The Planning Application has been submitted to the Council.
- (E) The Council 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 Council is 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 are fairly and reasonably related in scale and kind to the Development.

- (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 (as appropriate) against the Owner and any successors in title

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:

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

"Chartered Landscape Architect" means in relation to schedule 3 and 4 an appropriately qualified landscape architect appointed by the Owner for the purposes of the Development

"Commencement Date" means, subject to clause 3.2, the date of Commencement of the Development

"Commencement of Development" 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) (a-d) of the 1990 Act and "Commence the Development" and "Commenced" shall be construed accordingly;

"Community Infrastructure Levy" 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

"Completed Building" any completed building comprised within the Development which is not a Dwelling

"Contributions" means the Education Contribution and the Health Contribution (all as defined in the

	Schedules);
"Development"	means the development permitted by the Planning Permission;
"Dwelling"	means a house or self contained flat or bungalow constructed as part of the Development;
"Index"	means the RPIJ (being a retail price index measure using a geometric Jevons formula) published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as the Council reasonably requires and for the avoidance of doubt the said RPIJ is benchmarked at March 2007;
"Index Linked"	means increased to reflect any increase in the Index during the period from and including the date of this Agreement to and including the date of actual payment;
"Infrastructure"	means the list of infrastructure projects or types of infrastructure intended to be funded by the Community Infrastructure Levy published by the Council in accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) or where no such list has been published means "infrastructure" as defined in section 216 of the Planning Act 2008 BUT FOR THE AVOIDANCE OF DOUBT this shall not include site specific infrastructure required directly as a result of the Development;
"Market Dwellings"	means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings (as defined in Schedule

2);

"Notice of Commencement"

means a written notice advising of the proposed Commencement Date;

"Occupation"

means beneficial occupation 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 purposes or 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 which is attached to this Agreement;

"Planning Application"

means the hybrid application which the Council has given reference 16/01250/OUT comprising

detailed application for foodstore (A1) hotel (C1) family public house (A3/A4) restaurants (A1/A3/A5) Pickers Ditch major public open space and associated access landscaping car parking and associated works; and

outline application for residential development (C3) of up to 200 units and employment development (B1 a-c) and associated access landscaping car parking and associated works (with all matters reserved except

access) and for the avoidance of doubt for the purposes of this Agreement the term "Planning Application" shall (subject to the written confirmation of the Council to be given prior to the determination of any planning applications that may follow) include any application(s) for reserved matters approval or to vary a condition on the Planning Permission provided that such application(s) shall not change the Unit Mix as defined in Schedule 1 and shall relate substantially to the same development of the Site as is proposed under the aforementioned application reference number;

"Planning Permission"

means the planning permission granted in pursuance of the Planning Application subject to conditions;

"Seven Day LIBID Rate"

means an assessment of the rate of interest the Council and/or the County Council can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow eurocurrency deposits or such other rate as approved by the Council or the County Council as appropriate;

"Site"

means the land at Brook Park West Clacton on Sea Essex shown for identification purposes only edged red on the Plan;

"Working Day(s)"

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, plans, permissions, regulations, instruments or other subordinate legislation made under that statute or statutory provision or given thereunder or deriving validity therefrom;
 - 1.2.3.3 such Specification Code of Practice or General Direction as is issued under statutory authority or by Secretary of State
- 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. In addition, references to the Council shall include any successor local planning authority exercising planning powers under the 1990 Act and references to the County Council shall include any successor to its functions;
- 1.2.6 "including" and its derivatives means "including, without limitation;
- 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 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. 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 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, Section 1 Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 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 or against anyone whose only interest in the Site is in the nature of the benefit of an easement, covenant or licence.
- 2.5 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.
- 2.6 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 PROVIDED THAT subject to paragraph 5.3 of Schedule 2 (i) any mortgagee, receiver or administrative receiver shall only be liable for any breach that itself has caused whilst mortgagee in possession and shall not be liable

for any pre-existing breach but (ii) any sale by any mortgagee, receiver or administrative receiver shall itself be subject to any pre-existing breach and such breach shall subject to clause 2.4 and 2.7 be binding on any successor in title to the relevant mortgagee, receiver or administrative receiver.

- 2.7 The obligations in this Agreement will not be enforceable against the individual owners, lessees or occupiers of any 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.
- 2.8 The obligations in this Agreement will not be enforceable against the Approved Body (as defined in Schedule 2) save for the provisions of Schedule 2.

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 the Schedules to this Agreement.
- 4.2 The Owner covenants with the Council to provide Notice of Commencement to the Council not less than three (3) Working Days prior to the Commencement Date.
- 4.3 The Owner covenants with the Council and the County 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 County Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.
- 4.6 The Council and the County Council covenant with the Owner to act reasonably, properly promptly 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 and where appropriate the County 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 where required prior to the act or event to which it applies (unless agreed otherwise by the Council and/or the County Council, as applicable).
- 4.7 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.

- 4.8 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 or unless otherwise agreed by the Council or the County Council, as applicable.
- 4.9 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 grant or 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 4.9
- 4.10 No compensation shall be payable by the Council or 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 or the County Council.
- 4.11 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 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 County and 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:
- 4.11.1 in relation to any Dwelling or Completed Building, on first Occupation of that Dwelling or Completed Building; and
- 4.11.2 in relation to all other parts of the Site, on the first Occupation of the last Dwelling and/or Completed Building on the Site to be Occupied.
- 4.12 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 such person separately.

- 4.13 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.
- 4.14 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 any statutory undertaker with an interest in the Site and the owner, lessee or occupier of any Dwelling or any Completed Building 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.
- 4.15 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.
- 4.16 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.
- 4.17 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.

- 4.18 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed.
- 4.19 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/or 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.
- 4.20 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

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 electronic 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 or such alternative address as may be notified by the Owner to the Council and County Council in writing;

- 6.1.2 for the Council it shall be marked to the attention of the Head of Planning at the Council address previously stated Ref 16/01250/OUT;
- 6.1.3 for the County Council relating to the Education Contribution it shall be marked for the S106 Officer Strategic Development (EGD) County Hall Chelmsford CM1 1QH;
- 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;
 - 6.2.3 if sent by recorded delivery, at the time delivery was signed for; or
 - 6.2.4 if sent by electronic mail, in the absence of evidence of delay, at the time the message was sent.
- 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 statutory undertakers, individual purchasers/lessees, occupiers and mortgagees of Dwellings or Completed Buildings and their successors in title the Owner shall give to the County Council within one (1) 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. COSTS OF THIS AGREEMENT

- 7. Upon completion of this Agreement the Owner covenants to pay:
 - 7.1 to the Council its reasonable and proper legal costs in the sum of £3250 (Three Thousand Two Hundred and Fifty Pounds) (no VAT) in connection with the preparation, negotiation and completion of this Agreement
 - 7.2 to the County Council its reasonable and proper legal costs in the sum not to exceed £930.16 (no VAT) in connection with the negotiation and completion of this

Agreement, such figure to include the professional and technical costs of the County Council's Strategic Development staff.

- 7.3 Upon Commencement of Development the Owner covenants to pay to the Council a contribution of £2100 (Two Thousand One Hundred Pounds) (no VAT) towards the 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 Agreement

8. DETERMINATION OF DISPUTES

- 8.1 Subject to clause 8.7, 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 8. 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.
- 8.2 For the purposes of this clause 8 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.
- 8.3 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 8.4.
- 8.4 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).

8.5 The Specialist is to act as an independent expert and:

8.5.1 each party may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;

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

8.5.3 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;

8.5.4 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;

8.5.5 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

8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.

8.6 Responsibility for the costs of referring a dispute to a Specialist under this clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs will be decided by the Specialist.

8.7 This clause 8 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.

9. COMMUNITY INFRASTRUCTURE LEVY

9.1. 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

1990 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.

- 9.2. The Council and the County Council warrant to the Owner in relation to any relevant infrastructure as defined by regulation 123 of the Community Infrastructure Levy Regulations 2010 as amended which is provided for or funded by this agreement that since 6 April 2010 no more than four obligations pursuant to section 106 of the Act have been entered into which provide for such infrastructure project or type of infrastructure.

10. 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.

11. EXECUTION

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

SCHEDULE 1

Education Contribution

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

“Early Years and Childcare Contribution” means the Early Years and Childcare Pupil Product multiplied by the cost generator of thirteen thousand nine hundred and thirty pounds sterling (£13,930) adjusted by the percentage change in build costs from the Education Index Point prevailing at April 2016 to the Education Index Point prevailing at the date the payment is due to be made

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

“Early Years and Childcare Purposes” means the use of the Early Years and Childcare Contribution towards the provision of facilities for the education and/or care of children between the ages of 0 to 4 (both inclusive) including those with special educational needs within St Mary's Ward 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 and the Primary Education Contribution to which sums the Relevant Education Indexation shall be added

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

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

“Education Purposes” means the Early Years and Childcare Purposes and the Primary Education Purposes

“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

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

"Primary Education Contribution" means the Primary Pupil Product multiplied by the cost generator of twelve thousand two hundred and eighteen pounds sterling (£12,218.00) adjusted by the percentage change in build costs from the Education Index Point prevailing at April 2016 to the Education Index Point prevailing at the date the payment is due to be made

"Primary Education Purposes" means the use of the Primary Education Contribution towards a project for the education and/or care of children between the ages of 4 to 11 (both inclusive) including those with special educational needs at Cann Hall Primary School and/or the construction of a new primary school on part of the land known as Hartley Garden Village including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Primary Education Contribution

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

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

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

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

"Relevant Education Indexation" means the amount that the Owner shall pay with and in addition to each part of the Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Education Contribution being paid and multiplying this amount by the percentage change shown in the Education Index between the Education Index Point pertaining to April 2016 and the Education Index Point pertaining to the date the payment is due to be made to the County Council

"Relevant General Indexation" means the amounts that the Owner shall pay with and/or agree in addition to each part of the fee or sum set out under clause 4.4 and

4.8 of this schedule that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change shown in the General Index between the Index Point pertaining to April 2016 and the date payment is made 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 covenants with the County Council
 - 2.1 to serve on the County Council not less than three (3) months prior to Commencement of Development of any Dwellings a notice stating the expected Commencement Date and the Unit Mix of any Dwellings comprised in the Development and in the event that the Unit Mix constructed or to be constructed as the Development should at any time differ from the Unit Mix notified to the County Council then the Owner shall serve on the County Council a further notice stating the revised Unit Mix within fourteen (14) Working Days of the revised Unit Mix being decided
 - 2.2 to serve on the County Council notice of first Occupation of a Dwelling with one (1) month thereof and on a six (6) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings
 - 2.3 not to Occupy (or allow cause or permit the Occupation of) more than 50 Dwellings prior to depositing fifty percent (50%) of the Education Contribution with the County Council
 - 2.4 to pay fifty percent (50%) of the Education Contribution to the County Council prior to the Occupation of 50 Dwellings
 - 2.5 not to Occupy (or allow cause or permit the Occupation of) more than 100 (one hundred) Dwellings unless and until a further twenty five percent (25%) of the Education Contribution has been paid to the County Council
 - 2.6 to pay a further twenty five percent (25%) of the Education Contribution to the County Council prior to the Occupation of 100 (one hundred) Dwellings

- 2.7 not to Occupy (or allow cause or permit the Occupation of) more than 150 (one hundred and fifty Dwellings unless and until a further (and final) twenty five percent (25%) of the Education Contribution has been paid to the County Council
- 2.8 to pay a further (and final) twenty five percent (25%) of the Education Contribution to the County Council prior to the Occupation of 150 (one hundred and fifty) Dwellings
3. The County Council hereby covenants with the Owner:
- 3.1 Within two (2) months of receipt of the written notice given pursuant to Paragraph 2.1 of this Schedule to inform the Owner of the amount (or revised amount) of the Education Contribution due at the expected date of payment under Paragraphs 2.3 – 2.6 of this Schedule 1
- 3.2 To place the Education Contribution when received into an interest bearing account and to utilise the same solely for the Early Years and Childcare Purposes and Primary Education Purposes as appropriate
- 3.3 That upon receipt of a request in writing to do so to be received by the County Council no sooner than the tenth (10th) anniversary of the first Occupation of the first Dwelling and provided that the Owner has served notice of first Occupation with the County Council in accordance with Paragraph 2.2 above, to return to the party who deposited the Education Contribution any part of the Education Contribution that remains unexpended when such request in writing is received (together with interest accrued at the Seven Day LIBID Rate on the unexpended part) Provided Always that where a legally binding contract or obligation has been entered into by the County Council prior to the tenth (10th) anniversary of the first Occupation of the first Dwelling to make a payment in respect of the Early Years and Childcare Purposes and Primary Education Purposes the unexpended part of the Education Contribution shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid (if any) shall not include such payment
- 3.4 That upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of the first Occupation of the first Dwelling the County Council shall provide the Owner with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent

4. It is hereby agreed and declared:
 - 4.1 In the event that the Owner fails to serve notice as set out in Paragraph 2.1 of this Schedule then the County Council may calculate the amount of the Education Contribution based on an estimate of the Unit Mix as it sees fit acting reasonably and demand and enforce payment of the Education Contribution at any time after the date that the Education Contribution become payable under this Agreement
 - 4.2 In the event that the Unit Mix to be constructed as the Development does not match the Unit Mix on which the Education Contribution paid was based the Owner shall pay to the County Council within twenty (20) Working Days of the change in Unit Mix becoming apparent any amount pertaining to the difference between the Education Contribution paid and the Education Contribution pertaining to the Unit Mix to be constructed as part of the Development and any such amount shall from the date payment is received by the County Council form part of the Education Contribution
 - 4.3 In the event that the Education Contribution or part thereof is paid later than the dates for payment as specified in this Schedule 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 was due and the Education Index Point prevailing at the date of payment multiplied by the Education Contribution or part thereof due or if greater an amount pertaining to interest on the Education Contribution or part thereof due calculated at the Seven Day LIBID Rate from the date payment is due until the date payment of the amount due is received by the County Council
 - 4.4 In addition to the requirement of 4.3 above in the event that any sum due to be paid by the Owner to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owner hereby covenants to pay to County Council within ten (10) Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) plus Relevant General Indexation for each and every letter sent to the Owner pursuant to the debt
 - 4.5 In the event that the Education Contribution is overpaid by the Owner (because the Unit Mix to be constructed as the Development does not match the Unit Mix on

which the Education Contribution was based or otherwise) then the County Council shall be under no obligation to return any such overpaid sum or sums in whole or in part if in good faith the County Council have spent the Education Contribution or have entered into a legally binding contract(s) or obligation(s) to spend the Education Contribution in accordance with Paragraph 3.2 of this Schedule PROVIDED THAT the County Council shall otherwise be under an obligation to return any such overpaid sum or sums in whole or in part if the Owner notifies the County Council of such overpayment within ten (10) Working Days of such overpayment having been made to the County Council

- 4.6 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owner and received by the County Council within two (2) months of receipt by the Owner of the County Council's statement referred to in Paragraph 3.4 and shall clearly state the grounds on which the expenditure is disputed
- 4.7 In the event that no written request is received by the County Council from the Owner pursuant to Paragraph 3.4 or no valid dispute is raised by the Owner pursuant to Paragraph 4.6 above the Owner shall accept that the Education Contribution has been spent in full on Early Years and Childcare Purposes Primary Education Purposes as appropriate
- 4.8 The County Council may utilise up to two percent (2%) of the total amount of the Education Contribution received under this Agreement to a maximum of two thousand pounds sterling (£2,000) plus Relevant General Indexation for the purposes of monitoring and managing the administration of the Education Contribution and for the avoidance of doubt such purposes are agreed by the Owner to form part of the definition of use of the Education Contribution

SCHEDULE 2

Affordable Housing

Part One

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

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

"Affordable Housing Dwellings" means eighteen (18) Dwellings to be transferred to the Council the location of which are shown on the Affordable Housing Plan;

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

"Affordable Housing Plan" means the plan to show the size, mix and the location within the Site of the Affordable Housing Dwellings to be transferred to the Council

"Chargee" 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;

"Housing Needs Register"	means the register maintained by the Council or its nominee for Persons in Housing Need;
"Persons In Housing Need"	means a person or persons registered on the Housing Needs Register;
"Protected Tenant"	means any tenant who has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling;
"Social Rented Housing"	means housing which is owned by local authorities and/or private registered providers (as defined in Section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime;
"Specification"	means a specification for the design and construction of the Affordable Housing Dwellings to be transferred to the Council and which specification shall include the fixtures and fittings to be used;

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

- 2.1 Not to Commence the Development in respect of any Dwellings unless and until the Affordable Housing Plan has been submitted to the Council and the Council has approved the said Affordable Housing Plan in writing PROVIDED THAT where the Council fail to give notice of approval or rejection with reasons of the Affordable Housing Plan within 2 months of receipt by the Council of the Affordable Housing Plan the same shall be deemed to be approved on expiry of the 2 month period PROVIDED FURTHER that the said 2 month period shall recommence after each rejection by the Council of the Affordable Housing Plan

2.2 Not to Commence the Development in respect of any Dwellings unless and until the Specification for the Affordable Housing Dwellings has been submitted to the Council for approval

2.3 Not to first Occupy (or allow, cause or permit the first Occupation of) more than twenty five percent (25%) of the Market Dwellings unless and until the Specification for the Affordable Housing Dwellings has been approved by the Council in writing PROVIDED THAT where the Council fail to give notice of approval or rejection with reasons of the Specification within 2 months of receipt by the Council of the full Specification the same shall be deemed to be approved on expiry of the 2 month period PROVIDED FURTHER that the said 2 month period shall recommence after each rejection by the Council of the Specification

2.4 Not to first Occupy (or allow, cause or permit the first Occupation of) more than fifty percent (50%) of the Market Dwellings unless and until the Affordable Housing Dwellings have been:

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

2.4.2 transferred (freehold) to the Council for the Affordable Housing Price Provided that the expression "transferred" shall mean a transfer of the freehold interest that has been unconditionally released for completion by the Owner Provided Further that the transfer of the Affordable Housing Dwellings to the Council shall include the provisions contained in Part Two of this Schedule 2.

3. (Subject always to paragraph 4 of this Schedule 2) the Affordable Housing Dwellings shall be Occupied for no purpose other than as Affordable Housing.

4. It is Hereby Agreed and Declared:

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

4.1.1. 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 thereby, including an administrative receiver) acting pursuant to any event of default has first complied with the provisions of paragraph 4.2 of this Schedule

4.1.2. a Protected Tenant;

4.1.3. any person or body deriving title through or from any of the parties mentioned in paragraphs 4.1.1 – 4.1.2 of this Schedule above.

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

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

4.2.2. and shall have used reasonable endeavours over a period of twelve weeks from the date of the written notice to dispose of the Affordable Housing Dwelling(s) to another private registered provider (as defined in Section 80 of the Housing and Regeneration Act 2008) 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;

4.2.3. if such disposal has not taken place within the twelve 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 shall be with vacant possession.
- B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Council shall be prepared by the Owner and the Owner shall pay the Council's reasonable costs of transferring 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.

C. The transfer deed shall contain (inter alia):

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 repair and maintenance of the common parts of the Development once it is completed and the preservation of the appearance and condition thereof.
4. the matters contained at Annex 2.

SCHEDULE 3

Pickers Ditch Open Space

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

“Equipped Play Area”	means an equipped play area within the Pickers Ditch Land
“Pickers Ditch Completion Certificate”	means a certificate or certificates in writing issued by a Chartered Landscape Architect that confirms that the Pickers Ditch Land has been laid out in accordance with the Pickers Ditch Specification and in the case of the Equipped Play Area shall be issued by a ROSPA certified play inspector
“Pickers Ditch Land”	means the land identified on the Pickers Ditch Plan which shall include but not be limited to an Equipped Play Area and recreational open space which is to be used for no purpose other than for public open space to provide a recreational and amenity facility for members of the public in perpetuity
“Pickers Ditch Maintenance Contribution”	means the sum of Seventy Five Thousand Pounds (£75,000.00) for the purposes of the management and maintenance of the Pickers Ditch Land
“Pickers Ditch Management Plan”	means a management plan prepared by the Owner to include details of ongoing maintenance and management of the Pickers Ditch Land and to be approved in writing by the Council
“Pickers Ditch Plan”	means the plan identifying the Pickers Ditch Land

**"Pickers Ditch
Specification"**

means the specification for the laying out, profiling, clearing, planting, landscaping and decontaminating the Pickers Ditch Land including the Equipped Play Area 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

1. The Owner hereby covenants with the Council:
 - 1.1 Prior to Commencement of the Development of any Dwelling or prior to the expiration of 30 months from the date of Commencement of Development on the Site which ever is the sooner
 - 1.1.1 to submit the Pickers Ditch Plan the Pickers Ditch Specification and the Pickers Ditch Management Plan to the Council for approval and
 - 1.1.2 to offer to transfer the Pickers Ditch Land to the Council for One Pound with the Owner paying the Council's reasonable legal fees for such transfer up to a limit of One Thousand Five Hundred Pounds (£1500.00)
 - 1.2 Not to Commence Development of any Dwellings unless and until the Council has approved in writing the Pickers Ditch Plan the Pickers Ditch Specification and the Pickers Ditch Management Plan PROVIDED THAT where the Council fail to give notice of approval or rejection with reasons of the Pickers Ditch Plan the Pickers Ditch Specification and the Pickers Ditch Management Plan within 2 months of receipt by the Council of the Pickers Ditch Plan the Pickers Ditch Specification and the Pickers Ditch Management Plan the same shall be deemed to be approved on expiry of the 2 month period PROVIDED FURTHER that the said 2 month period shall recommence after each rejection by the Council of the Pickers Ditch Plan the Pickers Ditch Specification and the Pickers Ditch Management Plan .
 - 1.3 Prior to the first Occupation of more than 50% of the Dwellings or prior to the expiration of 36 months from the date of Commencement of Development on the Site which ever is the sooner
 - 1.3.1 physically set out the Pickers Ditch Land on the Site in accordance with the approved Pickers Ditch Specification and provide the Pickers Ditch Completion Certificate(s) to the Council; and

1.3.2 transfer the Pickers Ditch Land to the Council free of encumbrances and with all necessary easements and vacant possession and the Council shall subject to paragraph 1.3.3 below from the date of completion of the said transfer manage and maintain the Pickers Ditch Land in perpetuity Provided Always that the Owner shall maintain the Pickers Ditch Land in accordance with the Pickers Ditch Management Plan until such time as the said transfer has been completed

1.3.3 pay the Pickers Ditch Land Maintenance Contribution to the Council

2. The Owner shall include in any transfer pursuant to this Schedule 3:

2.1 a covenant not to permit the Pickers Ditch Land to be utilised for any other purpose other than as recreation and amenity land by the general public

2.2 a covenant by the Council to maintain the Pickers Ditch Land in perpetuity in accordance with the Pickers Ditch Management Plan; and

2.3 the reservation of such rights as deemed necessary by the Owner (acting reasonably) at the time of the transfer

3. The Council hereby covenants with the Owner:

3.1 to use reasonable endeavours to complete the transfer of the Pickers Ditch Land expeditiously

3.2 to manage and maintain the Pickers Ditch Land in accordance with the Pickers Ditch Management Plan in perpetuity from the date of the said transfer;

3.3 provide a written form of receipt for payment by the Owner of the Pickers Ditch Land Maintenance Contribution on receipt of the Pickers Ditch Land Maintenance Contribution;

3.4 place the Pickers Ditch Land Maintenance Contribution when received from the Owner into an interest bearing account with a clearing bank and to utilise the same for the management and maintenance of the Pickers Ditch Land;

3.5 upon receipt of a written request from the Owner the Council shall provide the Owner with a statement confirming whether the Pickers Ditch Land Maintenance Contribution has been spent and if the Pickers Ditch Land Maintenance

Contribution has been spent in whole or in part outlining how the Pickers Ditch
Land Maintenance Contribution has in whole or in part been spent.

SCHEDULE 4

Open Space

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

- “Management Company”** means a company established or engaged for inter alia the purpose of managing the Open Space Land
- “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)
- “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 Land”** means the land identified on the Open Space Plan as being open space land (other than the Pickers Ditch Land) required by and incidental to residential development on the Site which shall include recreational open space which is to be used for no purpose other than for public open space to provide a recreational and amenity facility for members of the public in perpetuity
- “Open Space Land Maintenance Contribution”** means a sum calculated in accordance with Annex 1 for the purposes of the management and

maintenance of the Open Space Land

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

“Open Space Plan” means the plan identifying the Open Space Land

“Open Space Specification” means the specification for the laying out, profiling, clearing, planting, landscaping and decontaminating 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

1. The Owner hereby covenants with the Council:
 - 1.1 With the submission of the first application for reserved matters approval containing any Dwellings
 - 1.1.1 to submit the Open Space Plan to the Council for approval and
 - 1.1.2 to offer to transfer the Open Space Land to the Council for One Pound with the Owner paying the Council's reasonable legal fees for such transfer up to a limit of One Thousand Five Hundred Pounds (£1500.00)
 - 1.2 Not to Commence Development in relation to any Dwelling on the Site unless and until the Council has approved in writing the Open Space Plan PROVIDED THAT where the Council fail to give notice of approval or rejection with reasons of the Open Space Plan within 2 months of receipt by the Council of the Open Space Plan the same shall be deemed to be approved on expiry of the 2 month period PROVIDED FURTHER that the said 2 month period shall recommence after each rejection by the Council of the Open Space Plan .
 - 1.3 Prior to the first Occupation of the first Dwelling on the Site to be Occupied to submit the Open Space Specification and the Open Space Management Plan to the Council for approval

- 1.4 Not to allow the Occupation of the first Dwelling on the Site to be Occupied unless and until either

1.4.1 the Council has approved the Open Space Specification and the Open Space Management Plan in writing PROVIDED THAT where the Council fail to give notice of approval or rejection with reasons of the Open Space Specification and the Open Space Management Plan within 1 months of receipt by the Council of the full Open Space Specification and the full Open Space Management Plan the same shall be deemed to be approved on expiry of the 1 month period PROVIDED FURTHER that the said 1 month period shall recommence after each rejection by the Council of the Open Space Specification and the Open Space Management Plan and

1.4.2 subject to paragraph 1.8 the Council has indicated whether or not it will accept a transfer of the Open Space Land;

- 1.5 Not to first Occupy or allow cause or permit to be first Occupied any more than 80% of the Dwellings unless and until 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 Open Space Completion Certificate(s)

- 1.6 To maintain the Open Space Land in accordance with the Open Space Management Plan for one year following the issue of the Open Space Completion Certificate(s) or until such time as the transfer described in paragraph 1.7 or 1.8.2 has been completed

- 1.7 In the event that the Council agrees to accept a transfer of the Open Space Land:

1.7.1 to transfer the Open Space Land to the Council free of encumbrances and with all necessary easements and vacant possession and the Council shall subject to paragraph 1.7.2 below from the date of completion of the said transfer manage and maintain the Open Space Land in perpetuity

1.7.2 on completion of the transfer referred to in paragraph 1.7.1 above to pay the Open Space Land Maintenance Contribution to the Council

- 1.8 In the event the Council declines to accept a transfer of the Open Space Land or fails to respond to the offer made pursuant to paragraph 1.1.2 within 3 months of receipt of the said offer the Owners shall:

1.8.1 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); and

1.8.2 following approval by the Council of the Nominated Body (or their failure to respond within 3 months of provision of the details in Paragraph 1.8.1 above) to transfer the Open Space Land to the Nominated Body free of encumbrances and with all necessary easements reservations covenants and with vacant possession who shall from that date manage and maintain the Open Space Land in perpetuity

2. The Owner shall include in any transfer pursuant to this Schedule 3:
 - 2.1 a covenant by the transferee only to permit the Open Space Land to be utilised solely as recreation and amenity land by the general public
 - 2.2 a covenant by the transferee to maintain the Open Space Land in perpetuity in accordance with the Open Space Management Plan; and
 - 2.3 a covenant by the transferee 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(s) referred to in paragraph 1.8 above (as appropriate) to the Council
4. In the event the Nominated Body is the Management Company and that Management Company shall be funded through contributions from purchasers or lessees of the whole or any part of the Site the Owner shall include in the transfer or lease to the purchasers or lessees of the whole or any part of the Site (other than the Council in relation to the Affordable Housing Dwellings) an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees shall be sufficient to enable the Management Company to discharge its obligations under Paragraph 2 of this Schedule 3
5. The Council hereby covenants with the Owner:
 - 5.1 to use reasonable endeavours to confirm in writing whether it shall accept a transfer of the Open Space Land within 40 Working Days of receiving written notice informing them of the Owner's offer pursuant to paragraph 1.1.2 above and in any event (provided the Council has been given 20 Working Days notice of first

Occupation of a Dwelling) to make such confirmation 20 Working Days prior to Occupation of the first Dwelling on the Site to be Occupied

- 5.2 in the event that the Council agrees to accept a transfer of the Open Space Land to use reasonable endeavours to complete the transfer of the Open Space Land expeditiously
- 5.3 in the event that the Open Space Land is transferred to the Council to manage and maintain the Open Space Land in perpetuity as public open space in accordance with the Open Space Management Plan from the date of the transfer;
- 5.4 provide a written form of receipt for payment by the Owner of the Open Space Land Maintenance Contribution on receipt of the Open Space Land Maintenance Contribution;
- 5.5 place the Open Space Land Maintenance Contribution when received from the Owner into an interest bearing account with a clearing bank and to utilise the same for the management and maintenance of the Open Space Land;
- 5.6 upon receipt of a written request from the Owner the Council shall provide the Owner with a statement confirming whether the Open Space Land Maintenance Contribution has been spent and if the Open Space Land Maintenance Contribution has been spent in whole or in part outlining how the Open Space Land Maintenance Contribution has in whole or in part been spent.

SCHEDULE 5

Health Contribution

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

"Healthcare Contribution" means the sum of Three Hundred and Forty Six Pounds and Ninety Six Pence for each Dwelling Index Linked

"Healthcare Contribution Purposes" means capital expenditure in relation to refurbishment or extension or improvements to or relocation of the NHS England Great Clacton Medical practice

"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 not to Occupy or allow or permit or cause to be Occupied

- 2.1 more than fifty (50) of the Dwellings prior to depositing the Healthcare Contribution relating to 50% of the Dwellings as shall receive reserved matters approval with the Council;

- 2.2 more than one hundred of the Dwellings prior to depositing the Healthcare Contribution relating to 75% of the Dwellings as shall receive reserved matters approval with the Council; and

- 2.3 more than one hundred and fifty of the Dwellings prior to depositing the Healthcare Contribution relating to 100% of the Dwellings as shall receive reserved matters approval with the Council

3. The Council hereby covenants with the Owner to:

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

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

- 3.2.1 apply the Healthcare Contribution solely for the Healthcare Contribution Purpose;

- 3.2.2 provide full details of the expenditure of the Healthcare Contribution on demand to the Council or the Owner;

- 3.2.3 return any unspent part of the Healthcare Contribution together with interest accrued to the Council after the expiry of five 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).

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

- 3.4 following receipt of a written request not to be made prior to the expiration of five years from the date of receipt by the Council of the Healthcare Contribution to repay to the party who paid the Healthcare Contribution any unspent monies of the Healthcare Contribution held by the Council or received by the Council pursuant to

paragraph 3.2.3 together with interest accrued within 28 Working Days of receipt of the aforementioned written request;

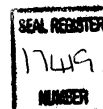
3.5 in the event that the document in the form required by paragraph 3.2 is not received following the expiry of five years from the date of receipt of the Healthcare Contribution by the Council then the Council's obligation to pay the Healthcare Contribution to NHS England shall cease absolutely and the Council shall refund to the party who paid the Healthcare Contribution the unexpended contribution within 28 Working Days of receipt of a written request from the Owner to do so.

4. The Owner acknowledges that the Council shall not be responsible for how the Healthcare Contribution is utilised but in the event that NHS England does not comply with paragraph 3.2.3 above for the return of any unspent part of the Healthcare Contribution the Council agrees to use reasonable endeavours to secure the return from NHS England of any unspent monies so that they can be returned to the party that paid the Healthcare Contribution

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

Candia B Tuxenbach

Authorised Signatory



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

J. Mansfield

Attesting Officer

36852



SIGNED as a DEED by KEVIN JAMES

BRITTON in the

presence of:-

) 
)

Witness Signature



Witness Name

MATTHEW SWAIN

Witness Address

GROVE HOUSE
LT. CLACTON
ESSEX CO16 9NX

Witness Occupation

ACCOUNTANT

ANNEX 1

OPEN SPACE LAND MAINTENANCE CONTRIBUTION

The Open Space Land Maintenance Contribution will be calculated by multiplying the number of Dwellings of each type (by bedrooms) as set out below:

Size of Dwelling	Amount of Contribution per Dwelling
1 bedroom	£330.00
2 bedroom	£495.00
3 bedroom	£660.00
4 bedroom	£825.00

ANNEX 2

MATTERS SUBJECT TO WHICH THE AFFORDABLE HOUSING DWELLINGS ARE TO BE TRANSFERRED

1. All local land charges whether registered before or after the date of this Deed and whether actually registered or not and all things capable of registration as such if not actually registered whether coming into existence before or after the date of this Deed.
2. All notices, orders, demands, proposals or requirements served or made by any government department or agency, public or local authority or body, statutory undertaker, utility provider or other competent person or body.
3. All charges, notices, orders, restrictions, agreements, conditions, contraventions or other matters arising under planning or highways statutes affecting the Affordable Housing Dwellings and any orders or regulations made under those or other statutes.
4. All public or private rights of way, easements, watercourses, quasi or reputed easements, rights, exceptions or rights of adjoining owners or other similar matters.
5. Without prejudice to the generality of paragraph 3 of this schedule all necessary easements for the use of such pipes, cables, drains and other items that may run below the surface of the Affordable Housing Dwellings.
6. All matters revealed or that might reasonably be expected to be revealed by inspection or by searches and enquiries that would have been made on behalf of a prudent purchaser of Affordable Housing Dwellings.
7. All overriding interests listed in Schedule 3 to the Land Registration Act 2002 or are preserved by the transitional provisions of Schedule 12 to that Act.
8. All conveyancing costs to be paid by the Owner.
9. Such other covenants and reservations as the Owner may reasonably require

