

DATED

26<sup>th</sup> June

2025

(1) TENDRING DISTRICT COUNCIL

AND

(2) JONATHAN ALAN HILLS and TRACY ANGELA HILLS

AND

(3) HILLS RESIDENTIAL CONSTRUCTION LIMITED

AGREEMENT

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Entered into pursuant to the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) and relating to land west of Clacton Road, Elmstead Market Essex CO7 7DF  
Planning Reference: 24/01363/FUL

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THIS AGREEMENT is made on

26<sup>th</sup> June

2025

BETWEEN:

- (1) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton-on-Sea, Essex, CO15 1SE ("**the District Council**");
- (2) **JONATHAN ALAN HILLS and TRACY ANGELA HILLS** of Bridge Mill House, Brook Street, Colchester CO1 2UZ ("**the First Owner**"); and
- (3) **HILLS RESIDENTIAL CONSTRUCTION LIMITED** (Co. Reg. 03919214) whose registered office is at Bridge Mill House, Brook Street, Colchester, Essex, CO1 2UZ ("**the Second Owner**")

together 'the Parties'

#### BACKGROUND

- (A) For the purposes of the 1990 Act (as defined herein), the District Council is the local planning authority for the area within which the Site (as defined herein) is located and is the authority who is entitled to enforce the obligations contained in this Agreement.
- (B) The First Owner is the freehold owner of the majority of the Site (all except for the access into the Site from Clacton Road) and ownership is registered at HM Land Registry under Title Numbers EX823760 and EX898664 free from any encumbrances that would prevent the First Owner from entering into this Agreement.
- (C) The Second Owner is the freehold owner of the access into the Site from Clacton Road (excluding that part which extends into the highway) and ownership is registered at HM Land Registry under Title Number EX898664 free from any encumbrances that would prevent the Second Owner from entering into this Agreement.
- (D) The Planning Application (as defined herein) was submitted to the District Council for the Development (as defined herein) and the District Council has resolved to issue the Planning Permission (as defined herein) subject to the Owner (as defined herein) first entering into this Agreement and providing the covenants herein.
- (E) The District 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.

- (F) The District Council is satisfied that the planning obligations contained in this Agreement comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 in that they are:
- (i) necessary to make the Development acceptable in planning terms;
  - (ii) directly related to the Development; and
  - (iii) fairly and reasonably related in scale and kind to the Development.
- (G) The District Council and the Owner have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the District Council 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:

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990, as amended;
<b>"Commencement Date"</b>	means, subject to clause 3.2, the date on which the Development is Commenced by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act;
<b>"Commencement of Development"</b>	means, subject to clause 3.2, the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and the use in this Agreement of the terms <b>"Commence the Development"</b> and <b>"Commenced"</b> shall be construed accordingly;
<b>"District Council Monitoring Fee"</b>	shall mean a fee of £600.00 (Six Hundred Pounds) due to the District Council under this Agreement towards the District 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;
<b>“Development”</b>	means the development set out in the Planning Application and permitted by the Planning Permission;
<b>“Dwelling”</b>	means a house constructed as part of the Development and the curtilage related thereto and the use in this Agreement of the term <b>“Dwellings”</b> shall be construed accordingly;
<b>“Index”</b>	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as shall replace such index or as the District Council reasonably requires;
<b>“Index Linked”</b>	means increased by applying the RPI All Items Index: Jan 1987 = 100 published by the Office for National Statistics using the formula $A = B \times C \text{ divided by } D$ - where A is the amount actually payable- B is the amount specified as payable – C is the RPI All Items Index two months before the date of payment – and D is the RPI All Items Index two months before the date of this Agreement;
<b>“Market Dwellings”</b>	Means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings as defined in Schedule 3 herein;
<b>“Notice of Commencement”</b>	means notice in writing to advise of the proposed Commencement Date;
<b>“Notice of Occupation”</b>	means notice in writing to advise that the Dwelling to which the notice relates has been Occupied;

<b>"NPPF"</b>	means the National Planning Policy Framework first published in March 2012 and last updated in December 2024 as amended from time to time;
<b>"Occupation"</b>	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 or purposes for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security operations and the use in this Agreement of the terms <b>"Occupy"</b> and <b>"Occupied"</b> and <b>"Occupancy"</b> shall be construed accordingly;
<b>"Owner"</b>	Means the First Owner and the Second Owner together;
<b>"Planning Application"</b>	means the planning application in respect of the Site which the District Council has given the reference <b>24/01363/FUL</b> for the residential development of thirteen (13) Dwellings with associated infrastructure and car parking.
<b>"Planning Permission"</b>	means the planning permission granted in pursuance of the Planning Application;
<b>"Site"</b>	means the land west of Clacton Road, Elmstead Market Essex CO7 7DF and which land is shown for identification purposes only edged red on the Site Plan;
<b>"Sterling Overnight Average (SONIA) Rate"</b>	<b>Index</b> means an assessment of the rate of interest the District 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;

**“Site Plan”**

means the ‘Location Plan’ drawing numbered 170161/HBG/101- and dated April 2024, a copy of which drawing is annexed hereto as Annex 1;

**“Working Days”**

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

**1.2 In this Agreement:**

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

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

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

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

1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

1.2.4 references to the Site include any part of it;

1.2.5 references to any party in this Agreement shall include the successors in title of that party. In addition, references to the District Council shall include any successor local planning authority exercising planning powers under the 1990 Act;

1.2.6 “including” 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 under that Act are hereby excluded.

## **2. EFFECT OF THIS AGREEMENT**

- 2.1 This Agreement is made pursuant to Section 106 of the 1990 Act and is binding on the Owner and their successors in title. 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 District 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 of the Local Government Act 1972, Section 1 of the 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 District Council of any of its 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.
- 2.5 Nothing in this Agreement prohibits or limits the right to develop any part or the whole 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 of the Site will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site or appoints a receiver or administrative receiver under a security.

2.7 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 save for the covenants and exemptions in Schedule 3 of this Agreement in respect of individual owners, lessees or occupiers or mortgagees or Chargees of the Affordable Housing Dwellings.

### 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; and

3.2.10 the laying out and construction of internal estate roads.

#### **4. OBLIGATIONS OF THE PARTIES**

- 4.1 The Owner so as to bind the Site covenants with the District Council to comply with the obligations set out in this Agreement as well as the Schedules to this Agreement.
- 4.2 The Owner covenants with the District Council to provide a Notice of Commencement to the District Council not less than ten (10) Working Days prior to the expected Commencement Date.
- 4.3 The Owner covenants with the District Council to provide a Notice of Occupation to the District Council not more than ten (10) Working Days after the First (1st) Dwelling has been Occupied and the Sixth (6<sup>th</sup>) Dwelling has been Occupied and any further notices as stipulated in the Schedules to this Agreement.
- 4.4 The District Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.
- 4.5 The District Council covenants with the Owner to act reasonably, properly and diligently in exercising its discretion and discharging its 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 District Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation Provided Always that such notice, consent, approval, authorisation, agreement or other similar affirmation may only be given in writing and only prior to the act or event to which it applies (unless agreed otherwise by the District Council)
- 4.6 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 4.7 Any obligation that prohibits the Owner from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owner to positively carry out those certain events by no later than the number of occupations set out therein unless the context otherwise requires.

- 4.8 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs but they will remain liable for any breaches of this Agreement occurring before that date. For the further avoidance of doubt neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site or part of the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.8.
- 4.9 No compensation shall be payable by the District 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 District Council.
- 4.10 Representatives of the District Council may enter upon the Site at any reasonable time on reasonable prior written notice giving at least three (3) clear days before such entry is required (unless otherwise agreed with the Owner) (and immediately in the event of an emergency provided that the District 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 in relation to any Dwelling on first Occupation of that Dwelling.
- 4.11 Any agreement obligation covenant or Agreement contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or Agreement is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.12 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.13 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent, seal, signature, execution or approval of the owner, lessee or occupier of any Dwelling or their mortgagees or chargees or any receiver appointed by a mortgagee or

chargee or any person deriving title from them shall not be required to vary any part of this Agreement.

- 4.14 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.15 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.16 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the District Council as such and the District Council covenants with the Owner that following the performance of all of the obligations contained in the Agreement the District Council shall at the District Council's expense forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Agreement.
- 4.17 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 District Council shall be entitled to payment of the various financial contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of a contribution and the time period for the return of a contribution shall be extended accordingly.
- 4.18 In the event that a financial contribution or part thereof which is due to be paid to the District Council in accordance with this Agreement is paid later than the date payment is due under the terms of this Agreement then the amount of the financial contribution or part thereof payable by the Owner to the District Council shall in addition include interest at four percent (4%) above the Bank of England base lending rate or such other rate as the District Council deems appropriate and shall accrue on a daily basis from the date payment is due until the date payment of the amount due is received by the District Council.
- 4.19 In addition to the requirement in clause 4.18 above in the event that any sum due to be paid to the District Council by the Owner pursuant to this Agreement shall not be received by the District Council by the date that the sum is due then the Owner hereby covenants to pay to the District Council within ten (10) Working Days of receiving a written request all reasonable costs

that the District Council has incurred as a result of or in pursuance of such late payment including but not limited to District Council Officer time and any legal costs.

## **5. TERMINATION OF THIS AGREEMENT**

- 5.1 This Agreement will come to an end if: (a) the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date; or (b) the Planning Permission expires.
- 5.2 Where the Agreement comes to an end under clause 5.1 the District Council shall at the District Council's expense, on the written request of the Owner, vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise record the fact that it has come to an end and no longer affects the Site.

## **6. NOTICES**

- 6.1 Any notice, demand or any other communication served under this Agreement will be effective only if in writing and delivered by mail by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following or to such other address as one party may notify in writing to the others at any time as its address for service:
- 6.1.1 for the Owner to the respective addresses set out above.
- 6.1.2 for the District Council at their address set out above and marked: (a) for the attention of the Head of Planning and Building Control AND by email to [obligations@tendringdc.gov.uk](mailto:obligations@tendringdc.gov.uk) marked for the attention of the S106 Officer; and (b) with the reference for the Planning Permission;
- 6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.2.1 if delivered by hand, at the time of delivery;
- 6.2.2 if sent by post, on the second Working Day after posting; or
- 6.2.3 if sent by recorded delivery, at the time delivery was signed for.

- 6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 6.4 Otherwise than in relation to individual purchasers, occupiers and mortgagees of Dwellings and their successors in title, the Owner shall give to the District Council within one month of the Owner disposing of any part of the Site written notice of the name and address of the person or persons to whom the Site or part thereof has been transferred provided that this obligation shall cease and determine on the first Occupation of the last Dwelling at the Site.

## **7. COSTS OF THIS AGREEMENT**

- 7.1 Upon completion of this Agreement, the Owner covenants to pay:
- 7.1.1 to the District Council its reasonable and proper legal costs in a sum not to exceed Three Thousand Eight Hundred and Fifty Pounds £3,850.00 (no VAT) in connection with the negotiation and completion of this Agreement; and
- 7.1.2 to the District Council prior to Commencement of Development the District Council Monitoring Fee.

## **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 (10) 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 twenty (20) 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 fifteen (15) 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 twenty (20) Working Days from the last submission of evidence.
- 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 District 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.

**10. JURISDICTION**

- 10.1 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. SECTION 73**

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

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

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

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

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

PROVIDED THAT nothing in this clause shall fetter the discretion of the District Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this



Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new Agreement or supplemental deed pursuant to Section 106 or Section 106A of the 1990 Act.

**12. DATA PROTECTION**

12.1 The signatories to this Agreement acknowledge and agree that information as to compliance with obligations pursuant to this Agreement (including as to whether or not contributions have been paid) may be passed to:

12.1.1 persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that the recipients of such information may then disseminate it further;

12.1.2 any person when so required in order to comply with statutory requirements including but not limited to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

**13. EXECUTION**

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

## **SCHEDULE 1 - RAMS CONTRIBUTION**

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

<b>"Natura 2000"</b>	has the meaning ascribed to it in section 3(1) of the Conservation and Habitats and Species Regulations 2017;
<b>"RAMS"</b>	means the Essex Coast Recreation Disturbance Avoidance and Mitigation Strategy (RAMS) in relation to Essex Coast Natura 2000 European Designations Supplementary Planning Document adopted by the Council;
<b>"RAMS Contribution"</b>	means the sum of One Hundred and Sixty Nine Pounds and Forty Five Pence (£169.45) per Dwelling, and which sum shall be Index Linked which for thirteen (13) Dwellings is Two Thousand Two Hundred and Two Pounds and Eighty Five Pence (£2,202.85) Index Linked as set out in the RAMS towards the RAMS Contribution Purposes;
<b>"RAMS Contribution Purposes"</b>	means the use of the RAMS Contribution towards the funding of strategic off-site measures identified by the RAMS to mitigate any increased use as a result of the Development in particular the Colne Estuary Ramsar and SPA.

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

- 2.1 To notify the District Council prior to the Commencement of the Development to allow the calculation of the RAMS Contribution.
- 2.2 Not to Commence the Development or cause or permit the Commencement of the Development unless and until the RAMS Contribution has been paid to the District Council.
- 2.3 Payments shall be marked for the attention of the Section.106 Officer, Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE or via email at [obligations@tendringdc.gov.uk](mailto:obligations@tendringdc.gov.uk).

## **SCHEDULE 2 - OPEN SPACE CONTRIBUTION**

1. In this Schedule 2 the following words and expressions shall have the following meanings:

<b>“Committed”</b>	means subject to a contract or other legally binding obligation;
<b>“Open Space Contribution”</b>	means the sum of Forty Three Thousand Seven Hundred and Thirty Eight Pounds (£43,738.00), which sum shall be Index Linked to be used towards the Open Space Contribution Purpose;
<b>“Open Space Contribution Purpose”</b>	means the use of the Open Space Contribution towards the improvement and/or maintenance of the play area and open space known as Charity Fields in the district of Tendring

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

- 2.1 To notify the District Council prior to first Occupation of Sixth (6<sup>th</sup>) Dwelling to allow the calculation of the Open Space Contribution; and
- 2.2 Not allow cause or permit the Occupation of more than Six (6) of the Dwellings forming part of the Development unless and until the Open Space Contribution has been paid to the District Council.
- 2.3 Payments shall be marked for the attention of the Section 106 Officer, Tendring District Council, Town Hall, Station Road, Clacton-on-Sea, Essex, CO15 1SE or via email at [obligations@tendringdc.gov.uk](mailto:obligations@tendringdc.gov.uk)

3. The District Council hereby covenants with the Owner:

- 3.1 to provide a written form of receipt for payment of the Open Space Contribution on receipt of the Open Space Contribution pursuant to paragraphs 2.2 above;
- 3.2 place the Open Space Contribution when received into an interest-bearing account with a clearing bank and to utilise the Open Space Contribution towards the Open Space Contribution Purposes;

3.3 that upon receipt of a request in writing to do so to be received by the District Council no sooner than the fifth (5th) anniversary of the date of the first payment to the District Council to return to the party who deposited the Open Space Contribution the unexpended part (excluding monies spent or Committed) of the Open Space Contribution together with interest accrued calculated at the SONIA Rate from the date of payment until the date the unexpended part is actually repaid;

3.4 that upon receipt of a written request(s) from the Owner the District Council shall provide the Owner with a statement confirming whether the Open Space Contribution has been spent and if the Open Space Contribution has been spent in whole or in part outlining how the Open Space has in whole or in part been spent.

### **SCHEDULE 3 - AFFORDABLE HOUSING: PART ONE**

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

<b>“Affordable Housing”</b>	means housing provided to a Person in Housing Need whose needs are not met by the market with eligibility determined with regard to local incomes and local house prices in accordance with the definition of “Affordable Housing” set out in Annex 2 of the National Planning Policy Framework (“NPPF”);
<b>“Affordable Housing Accommodation Schedule and Plan”</b>	means (1) the accommodation schedule; and (2) the plan named ‘Proposed Site Plan’ with drawing number 170161/HBG/102/A annexed hereto at Annex 2, which together show the location, size, plot numbers and tenure of the Affordable Housing Dwellings;
<b>“Affordable Housing Contribution”</b>	means the sum of Forty-Nine Thousand Nine Hundred and Fifty Nine Pounds (£49,959.00), which sum shall be Index Linked to be used towards the Affordable Housing Contribution Purpose;
<b>Affordable Housing Contribution Purpose”</b>	means the use of the Affordable Housing Contribution towards the provision of Affordable Housing in the district of Tendring;
<b>“Affordable Housing Dwellings”</b>	means the three (3) two-bedroom Dwellings comprising two (2) Affordable Housing for Rent and one (1) Shared Ownership Housing to be provided in accordance with the Affordable Housing Scheme and “Affordable Housing Dwelling” shall be construed accordingly;

<b>“Affordable Housing for Rent”</b>	means Affordable Housing Dwellings rented by an Approved Body to Persons in Housing Need and has the meaning ascribed to it in paragraph (a) or paragraph (b) of the definition of Affordable Housing at Annex 2 of the NPPF;
<b>“Affordable Housing Scheme”</b>	means the scheme approved by the District Council to provide for the Affordable Housing Dwellings to be constructed, transferred to an Approved Body and used as Affordable Housing as shown on the Affordable Housing Accommodation Schedule and Plan;
<b>“Approved Body”</b>	means a private registered provider within the meaning of Section 80 of the Housing and Regeneration Act 2008 and which private registered provider is: (a) approved by the District Council in writing; and (b) regulated by the Homes England for the purposes of providing Affordable Housing;
<b>“Capital Receipts”</b>	means proceeds from additional equity shares purchased through Staircasing in tranches of at least five percent (5%) obtained by the Approved Body through Shared Ownership less the Approved Body's costs of acquisition, build, management, sale, the redemption of any mortgage and reasonable legal fees;
<b>“Chargee”</b>	means any mortgagee or chargee of the Approved Body or the successors in title to such mortgage or chargee or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a

	Housing Administrator of the whole or any part of the Affordable Housing Dwellings
<b>“Homes England”</b>	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body;
<b>“Housing Administrator”</b>	has the meaning ascribed to it in Section 101 of the Housing and Planning Act 2016;
<b>“Housing Needs Register”</b>	means the register maintained by the District Council or its nominee of the Approved Body for Persons in Housing Need;
<b>“Nomination Rights”</b>	means the ability for the District Council to nominate one hundred percent (100%) of the occupants on the first letting of the Affordable Housing for Rent and one hundred percent (100%) of the occupants of subsequent lettings of Affordable Housing for Rent in accordance with the Affordable Housing Scheme, unless otherwise agreed in writing by the District Council;
<b>“NPPF”</b>	means the National Planning Policy Framework December 2024 (or any successor policy) issued by H M Government;
<b>“Persons In Housing Need”</b>	means a person or persons registered on the Housing Needs Register or such other person considered by the District Council or the Approved Body to be in housing need having regard to their income and local house prices and rents and for Shared Ownership Housing a person or persons who are eligible households in accordance with the Homes England Capital Funding Guide (as amended from time to time);

**“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;

(;

**“Shared Ownership Housing”**

means Affordable Housing Dwellings part sold and part let to eligible households in accordance with the terms of the Shared Ownership Lease;

**“Shared Ownership Lease”**

means a lease of over Nine Hundred and Ninety (990) years substantially in the form of the Homes England model shared ownership lease from time to time whereby no less than tenpercent (10%) and no more than seventy five percent (75%) on first purchase of the equitable interest in the Shared Ownership Housing is purchased by a lessee upon completion of such lease and/or raised by a mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to acquire up to one hundred percent (100%) equity share at some future date and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the



equity retained by the Approved Body at the date of the grant of the Shared Ownership Lease or such other figure permitted by Homes England from time to time and where Capital Receipts received 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 as set out in this Schedule 3 subject to any contrary requirements within the Homes England Capital Funding Guide;

**“Staircasing”**

means the purchase of additional equity shares in an Affordable Housing Dwelling under shared ownership or shared equity arrangement excluding the purchase of the initial equity share in the Affordable Housing Dwelling;

**“100% Staircaser”**

means a lessee of an Affordable Housing Dwelling under a Shared Ownership Housing or shared equity arrangement who has acquired one hundred percent (100%) of the equity in the said Affordable Housing Dwelling through the initial equity share purchased and the purchase of additional equity shares in an Affordable Housing Dwelling;

2. The Owner hereby covenants with the District Council, as follows:
  - 2.1 Not to first Occupy (or allow, cause or permit the Occupation of) more than fifty percent (50%) of the Market Dwellings unless and until the identity of the proposed Approved Body has been submitted to and approved by the District Council in writing and the Affordable Housing Dwellings referred to in the approved Affordable Housing Scheme have been:
    - 2.1.1 constructed and in a serviced condition and are available to be Occupied for their intended purpose; and
    - 2.1.2 transferred to the Approved Body and for the purposes of this Schedule only the expression "transferred" shall mean a transfer of the freehold interest (of any house or

block of flats) or leasehold interest (of any House or flat in a block that also contains one or more Market Dwellings) that comprises the Affordable Housing Dwellings or an agreement for sale or lease agreed 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 be subject to the provisions contained in Part Two of this Schedule 3.

- 2.2 The Approved Body that acquires the Shared Ownership Housing must invest any Capital Receipts it receives into further Affordable Housing schemes in the district of Tendring unless otherwise agreed in writing by the District Council and subject to any contrary requirements with the Homes England Capital Funding Guide PROVIDED that if after a period of two (2) years from receipt of such Capital Receipts it has not been possible to use such funds within the district of Tendring then to use such funds within any other locality agreed in writing with the District Council for Affordable Housing and if requested to do so to attend an annual meeting with the District Council's housing representative to review any Capital Receipts received by the Approved Body in that year and to discuss how and where they are to be reinvested.
- 2.3 The Approved Body shall enter into a nomination agreement in a form to be agreed with the District Council in respect of the Affordable Housing for Rent to secure the Nomination Rights prior to the first Occupation of the Affordable Rented Housing or such later date to be agreed in writing with the District Council with both Parties acting reasonably.
- 2.4 The Affordable Housing Dwellings shall be Occupied for no purpose other than as Affordable Housing save as for the provisions contained in paragraph 2.5 of this Schedule 3.
- 2.5 The Owner confirms and acknowledges that without prejudice to paragraph 2.4 the obligations and restrictions contained in this Schedule 3 shall not bind:
- 2.5.1 a Protected Tenant;
  - 2.5.2 a 100% Staircaser
  - 2.5.3 any mortgagee or chargee of a Protected Tenant or 100% Staircaser
  - 2.5.4 any person or body deriving title through or from any of the parties mentioned in clauses 2.5.1 to 2.5.3;
  - 2.5.5 a Chargee of the Approved Body of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such Chargee PROVIDED THAT:

- 2.5.5.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Dwellings; and
- 2.5.5.2 such Chargee shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Dwellings to another Approved Body or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses 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
- 2.5.5.3 if such disposal has not completed within the three (3) month period, the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely.

### **SCHEDULE 3 - AFFORDABLE HOUSING: PART TWO**

- A. The transfer of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession.
- B. The transfer deed shall contain:
1. a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;
  2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development and the beneficial use and enjoyment of the remainder of the Site;
  3. such other covenants and reservations as the Owner may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof;

4. covenants by way of indemnity that the Approved Body (the Transferee) is to observe and perform the incumbrances, covenants and restrictions contained or referred to in this Agreement and in the title register of the Approved Body in so far as they relate to the Affordable Housing Dwellings in particular Schedule 3 – Affordable Housing and keep the Owner (the Transferor) indemnified against all proceedings, costs, claims and expenses arising from any failure to do so.

### **SCHEDULE 3 - AFFORDABLE HOUSING: PART THREE**

3. The Owner hereby covenants with the District Council as follows:
  - 3.1 To notify the District Council prior to the first Occupation of fifty percent (50%) of the Market Dwellings to allow the calculation of the Affordable Housing Contribution.
  - 3.2 Not to first Occupy (or allow, cause or permit the Occupation of) more than fifty percent (50%) of the Market Dwellings unless and until the Affordable Housing Contribution has been paid to the District Council.
  - 3.3 Payments shall be marked for the attention of the Section.106 Officer, Town Hall, Station Road, Clacton on Sea, Essex, CO15 1SE or via email at [obligations@tendringdc.gov.uk](mailto:obligations@tendringdc.gov.uk).

## ANNEX ONE - SITE PLAN

**ANNEX TWO - AFFORDABLE HOUSING ACCOMMODATION SCHEDULE AND  
PLAN**

Blue Barn Farm, Land to the West of Clacton Road, Elmstead Market - Accommodation Schedule

Plots	House Type	Beds	B/P	Sqm	Sqft	House Type	Tenure	Part M4(2) Compliant	Expected OMV Price
1	The Raven	4	4b/7p	116.5	1258	House	Private	Yes	£415,068
2	The Elmstead	3	3b/5p	109.8	1185	House	Private	Yes	£391,197
3	The Osprey	2	2b/4p	79.1	854	House	Private	Yes	£281,818
4	The Osprey	2	2b/4p	79.1	854	House	Private	Yes	£281,818
5	The Osprey	2	2b/4p	79.1	854	House	Private	Yes	£281,818
6	The Osprey	2	2b/4p	79.1	854	House	Rented	Yes	£281,818
7	The Osprey	2	2b/4p	79.1	854	House	Rented	Yes	£281,818
8	The Osprey	2	2b/4p	79.1	854	House	Shared Ownership	Yes	£281,818
9	The Ardleigh	2	2b/4p	100.4	1084	Bungalow	Private	Yes	£357,706
10	The Elmstead	3	3b/5p	109.8	1185	House	Private	Yes	£391,197
11	The Elmstead	3	3b/5p	109.8	1185	House	Private	Yes	£391,197
12	The Elmstead	3	3b/5p	109.8	1185	House	Private	Yes	£391,197
13	The Raven	4	4b/7p	116.5	1258	House	Private	Yes	£415,068

Private Mix

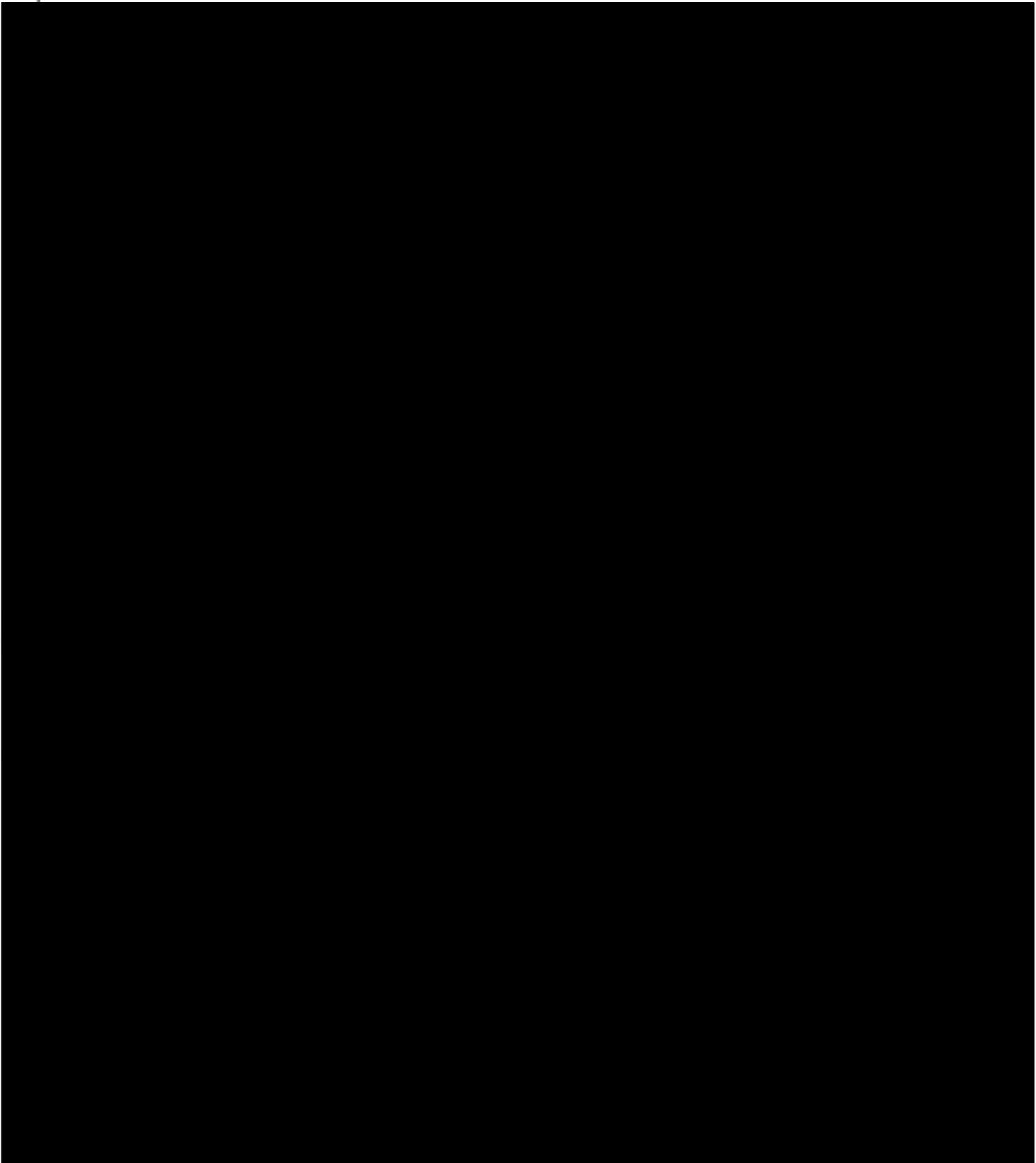
Beds	Number
2	4
3	4
4	2
Total	10

Affordable Mix

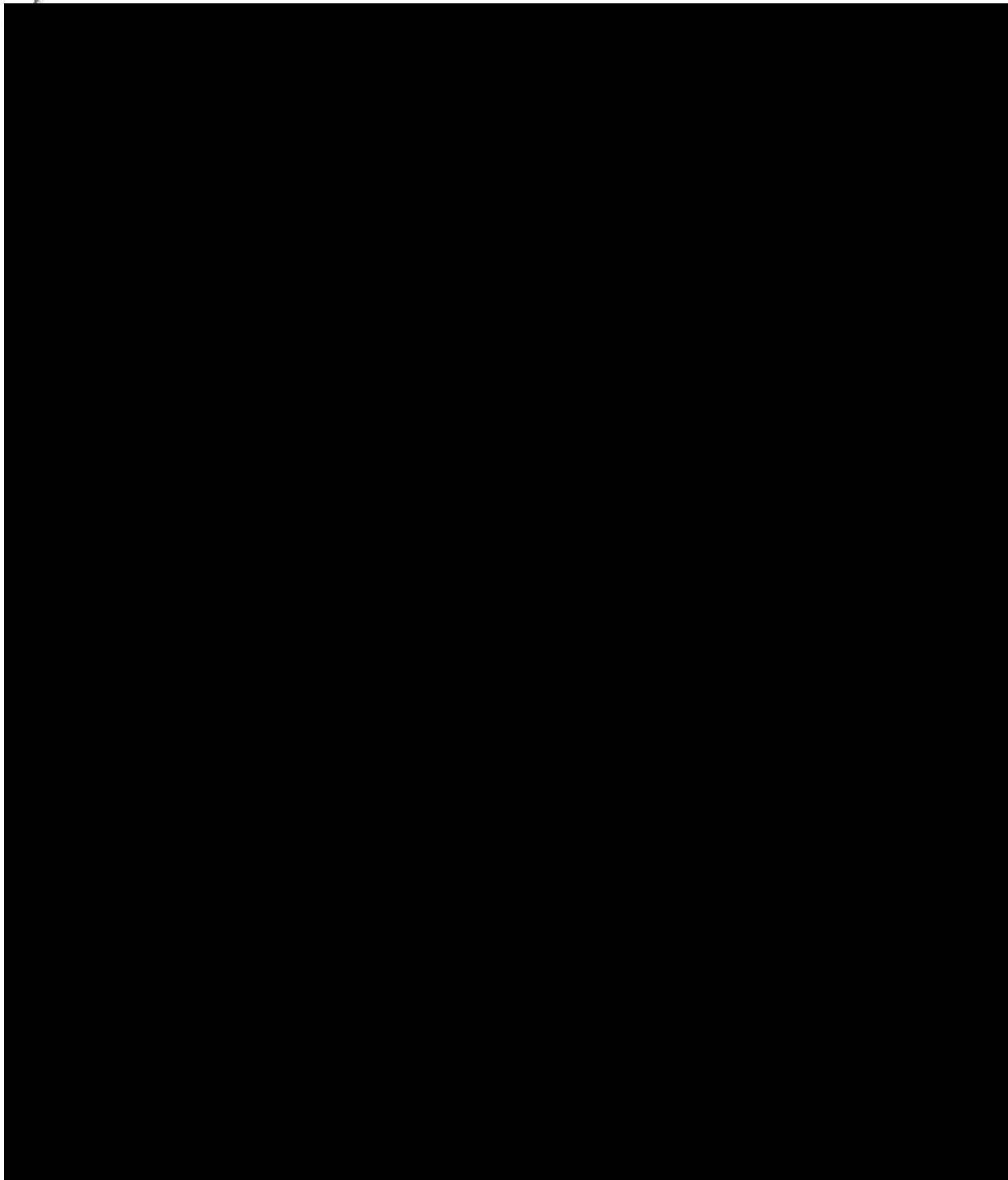
Beds	Number
2	3
Total	3

Overall Mix

Beds	Number
2	6
3	5
4	2
Total	13









# LOCATION PLAN



Bridge Mill House, Brook Street, Business Center, Colchester, Essex, CO1 2UZ

Project: Rural/urban development on Land West of Clacton Road, Essex	
Drawing Title: LOCATION PLAN	
Project Ref / Drawing No: 170161/HBG/101/-	
Date: APRIL 2014	Scale: unless otherwise stated 1:1250 @ A3

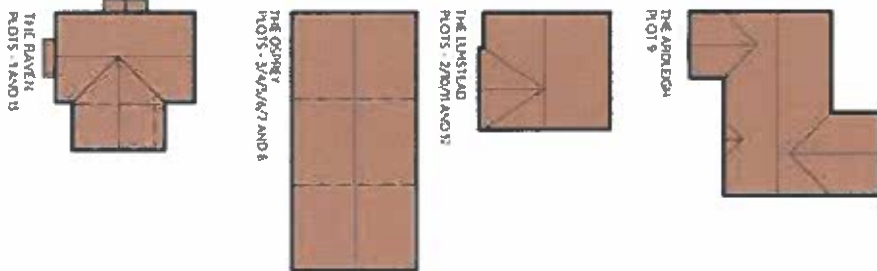




Additional proposed  
footpath link to island  
following completion  
of S276 works on  
adjacent  
development



PROPOSED SITE PLAN  
SCALE BARS  
1:500  
5m 10m 15m 20m 25m 30m 35m 40m



PROPOSED ROOF PLANS  
SCALE BARS  
1:500

AFFORDABLE UNITS  
○



Bridge Mill House, Brook Street, Business Center, Colchester, Essex, CO1 2UZ, 01206 798 666

Project Residential development on Land West of Clacton Road, Elmstead Market, Essex	
Drawing title PROPOSED SITE PLAN	
Project Ref / Drawing No 170161/HBG/102/A	
Date MARCH 2024	Scale - unless otherwise stated 1:500 @ A3

Rev A 01/03/24  
Rev Date  
Amended