

Dated 17<sup>th</sup> October 2022

## AGREEMENT

pursuant to Section 106 of the  
Town and Country Planning Act 1990 (as amended)  
relating to land at The Folley, Layer-de-la-Haye,  
Colchester, Essex

Between

Borough of

(1) Colchester City Council

and

(2) Jayne Catherine Gee, Daniel John Watts  
and Jason James Watts

We hereby certify this to be a true copy of the original

17 October 2022  
Date Holmes & Hills LLP

Holmes & Hills LLP  
A12 Commercial Hub, 86 London Rd, Marks Tey, Essex, CO6 1ED

THIS AGREEMENT is made on

17<sup>th</sup> October

2022

**BETWEEN:**

*BOROUGH C*

(1) **COLCHESTER CITY COUNCIL** of Rowan House, 33 Sheepen Road, Colchester, Essex, CO3 3WG (the "Council");

(2) **JAYNE CATHERINE GEE** of Highfields, Cooks Hall Road, East Bergholt, Colchester CO6 3EX and **DANIEL JOHN WATTS** of Larchwood, Hasketon, Woodbridge IP13 6JP and **JASON JAMES WATTS** of Flat 91, Elgin Mansions, Elgin Avenue, London W9 1JN (the "Owner");

**INTRODUCTION:**

(A) For the purposes of the 1990 Act, the Council is the local planning authority 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 Owner is the freehold owner of the Site which is registered at HM Land Registry under title number EX409299 which title is free from encumbrances that would prevent the Owner entering into this Agreement.

(C) The Planning Application has been submitted to the Council and the Council has resolved to grant the Planning Permission subject to the completion of this Agreement.

(D) 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.

(E) 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 fairly and reasonably relate in scale and kind to the Development.

(F) 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 against the Owner and its successors in title.

**NOW THIS AGREEMENT WITNESSES** as follows:

**OPERATIVE PART**

**1. DEFINITIONS**

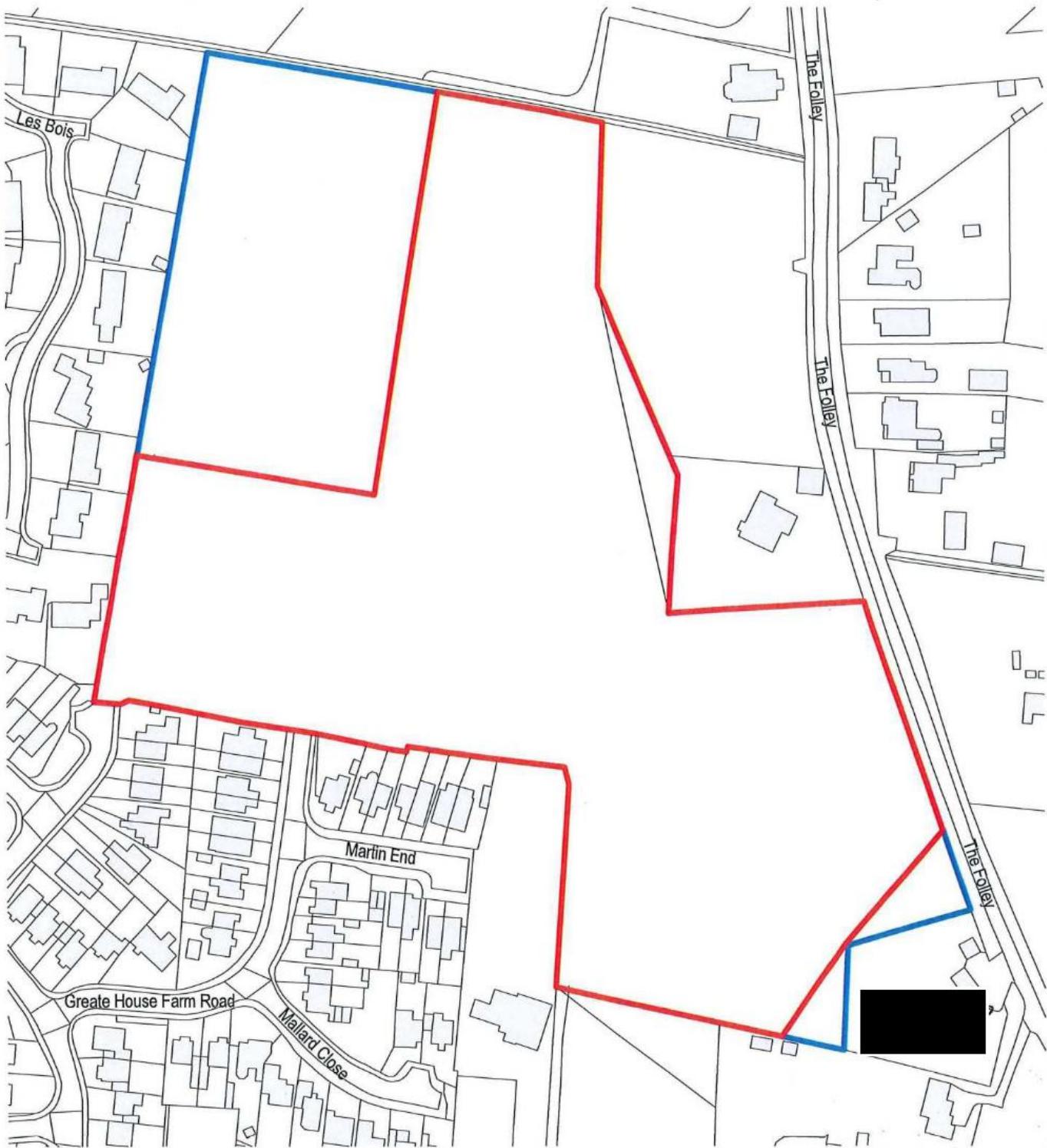
1.1 In this Agreement the following terms and expressions have the following meanings:

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990
<b>"Commencement Date"</b>	subject to Clause 1.2 means the date on which the Commencement of Development occurs
<b>"Commencement of Development"</b>	means subject to clause 1.2 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 " <b>Commence Development</b> " shall be construed accordingly
<b>"Contributions"</b>	means the Community Contribution, the Parks and Recreation Contribution and the RAMS Contribution
<b>"Development"</b>	means outline planning permission for residential development as described in the Planning Application on the Site pursuant to the Planning Permission
<b>"Dwelling"</b>	means a house or self-contained flat or bungalow constructed as part of the Development
<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 either shall replace such index, or as the Council reasonably requires
<b>"Index Linked"</b>	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
<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 4 and " <b>Market Dwelling</b> " shall be construed accordingly
<b>"the Notice of Commencement"</b>	means the written notice advising of the proposed Commencement Date

<b>"Occupation"</b>	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include (i) occupation for the construction of the Development (ii) daytime occupation by workmen involved in the construction of the Development (iii) in so far as such uses are ancillary to the construction of the Development (a) the use of finished buildings for sales purposes for use as temporary offices or for show homes or (b) for the storage of plant and materials or (c) use for security operations; and "Occupied" and "Occupied" shall mutatis mutandis be construed accordingly
<b>"Plan"</b>	means the plan attached to this Agreement
<b>"Planning Application"</b>	means the application for outline planning permission reference 211392 for up to 39 market homes and 16 affordable homes with vehicular access from Greate House Farm Road and The Folley with all other matters reserved
<b>"Planning Permission"</b>	means the planning permission that will be granted for the Development in pursuance of the Planning Application subject to conditions upon the completion of this Agreement
<b>"Reserved Matters"</b>	means the matters reserved for approval in relation to the Planning Permission
<b>"Sterling Overnight Index Average (SONIA) Rate"</b>	means an assessment of the rate of interest the 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
<b>"Site"</b>	means the freehold land on the West side of The Folley, Layer-de-la-Haye shown for identification purposes only edged red on the Plan
<b>"Working Days"</b>	means Monday to Friday inclusive but excluding days which are public holidays

1.2 In this Agreement:

1.2.1 the clause and Schedule headings do not affect its interpretation:

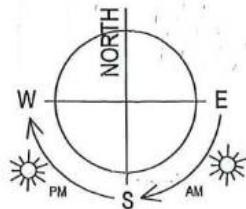


2 Site Location Plan

1 : 1250

0m 25m 50m 75m 100m 125m

VISUAL SCALE 1:1250



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PI	Planning Application	VT	21.04.20
REV	DESCRIPTION	DRW	DATE

CLIENT  
Tollgate Partnership Limited (TPL)

PROJECT  
Layer de la Haye - Masterplan

DRAWING  
Site Location Plan

SCALE  
1 : 1250 @ A3

DRAWN

CHKD

GR

DATE  
20/02/2020

DRAWING NUMBER  
6572-1101-P1

PLANNING

- (a) 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;
- (b) references to any statute or statutory provision include references to:
  - (i) 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
  - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- (c) references to the Site include any part of it;
- (d) references to any party to this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;
- (e) "including" means "including, without limitation";
- (f) 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; and
- (g) if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.

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.

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

2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.

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 of any of its respective 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 or is to be situated) by the Owner to that statutory undertaker.
- 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 one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.6 Subject to the provisions of Schedule 4 insofar as they relate to a Chargee as defined in Schedule 4, a mortgagee 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 and it will not be liable for any breach of the provisions of this Agreement after it has parted with or released its interest in the Site but they will remain liable for any breaches of their obligations in this Agreement occurring before that date.
- 2.7 Other than in relation to paragraph 11 of Schedule 4 the obligations in this Agreement will not be enforceable against the individual owners or occupiers or mortgagees of any Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.
- 2.8 Other than in relation to Schedule 4 the obligations in this Agreement will not be enforceable against an Approved Body as defined in Schedule 4 nor anyone deriving title from such Approved Body.

### **3. COMMENCEMENT DATE**

- 1.1 Save in respect of Clause 7 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.
- 1.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:
  - 1.2.1 site investigations or surveys;
  - 1.2.2 site decontamination;
  - 1.2.3 the clearance of the Site including demolition;
  - 1.2.4 works connected with infilling;
  - 1.2.5 works for the provision or relocation of drainage or mains services to prepare the Site for development together with access roads;

- 1.2.6 erection of fencing or boarding;
- 1.2.7 erection of boards advertising the development;
- 1.2.8 the construction of a temporary site compound or a 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; or
- 1.2.9 the construction of temporary access roads.

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

- 4.1 The Owner covenants with the Council to comply with the Owner's obligations set out in the Schedules to this Agreement.
- 4.2 The Owner covenants with the Council to provide (so far as practical) not less than three months' notice in writing to the Council of the anticipated date of Commencement of the Development and Notice of Commencement to the Council no later than twenty (20) Working Days prior to the Commencement Date.
- 4.3 The Owner covenants with the Council to provide not less than ten (10) Working Days' notice in writing of the intended first Occupation of a Dwelling on the Site and notice in writing every three (3) months thereafter until first Occupation of the last Dwelling indicating the number and type of Dwellings occupied on the Site together with notice in writing of the Occupation of the last Market Dwelling on the Site.
- 4.4 The Council covenants with the Owner to comply with the obligations on the part of the Council set out in the Schedules to this Agreement.
- 4.5 The Council covenants with the Owner to provide written confirmation to the Owner upon request confirming that the Owners various obligations pursuant to this agreement have been complied with upon discharge of the relevant obligation.
- 4.6 The Council covenants with the Owner to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or similar affirmation.
- 4.7 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 their obligations in this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause.
- 4.8 No compensation shall be payable by the 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) and (save where expressly provided otherwise) are to be at the sole expense of the Owner and at no cost to the Council.

- 4.9 Representatives of the Council may enter upon the Site at any reasonable time and on reasonable notice to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with, subject to complying with all health and safety and/or security requirements of the Owner or of any developer carrying out the Development.
- 4.10 Any agreement, obligation, covenant or Agreement contained herein (unless otherwise specified in this Agreement) 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.
- 4.11 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.
- 4.12 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 purchaser tenant or residential occupier of any Dwelling or their mortgagees or any statutory undertaker shall not be required to vary any part of this Agreement.
- 4.13 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.
- 4.14 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 has 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.
- 4.15 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 it will note on the local land charges register when compliance with all of the said obligations has occurred.
- 4.16 In the event that the Owner fails to serve on the Council any of the notices that they are required by the provisions of this Agreement to serve then the 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 Occupation of Dwellings has occurred that would trigger the payment of the relevant Contribution,

and the time period for the return of the relevant Contribution shall be extended accordingly.

4.17 If the Council agrees following an application under section 73 of the 1990 Act to vary or release of any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the Council in determining the application for the new planning permission indicate that consequential amendments are required to this Agreement to reflect the impact of the section 73 application, when a separate deed under section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the new planning permission.

## 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 Planning Permission expires before the Commencement Date

5.2 Where the Agreement comes to an end under Clause 5.1 the Council covenants on the written request of the Owner, to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to 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 delivered by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following address, 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 at: Tollgate Barn, Tollgate West, Stanway, Colchester CO3 8RJ;

6.1.2 for the Council it shall be marked for the attention of the Head of Development Management with Ref: 211392 and sent to the Council's address above;

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 if delivered between 9.00am and 4.00pm on a Working Day, but otherwise at 9.00am on the next Working Day;

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 at 9.00am on the next Working Day.
- 6.4 If a notice, demand or any other communication is served before 9am on a Working Day, it is to be treated as having been served at 9am on that Working Day.
- 6.5 For the avoidance of doubt, purported service by fax or email does not constitute good or proper service for the purpose of this Agreement.

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

- 7.1 Upon completion of this Agreement the Owner covenants to pay to the Council its reasonable and proper legal costs in a sum not to exceed Three Thousand Five Hundred Pounds (£3,500 pounds) (no VAT) in connection with the preparation, negotiation and completion of this Agreement.
- 7.2 Upon completion of this Agreement the Owner covenants to pay to the Council a contribution of Two Thousand Three Hundred and Forty Pounds (£2,340) (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.

## **1 JURISDICTION**

- 1.1 This Agreement is to be governed by and interpreted in accordance with the law of England.

## **2 EXECUTION**

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

## SCHEDULE 1

### COMMUNITY CONTRIBUTION

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

<b>"Community Contribution"</b>	means the sum of One Hundred and Forty Eight Thousand, Seven Hundred and Eleven Pounds and Seventy Five Pence (£148,711.75) Index Linked
<b>"Community Contribution Purposes"</b>	means the use of the Community Contribution towards works to improve the Queen Elizabeth Village Hall to include: <ul style="list-style-type: none"><li>a) upgrading all toilet facilities ( for men and women) ensuring that at least one toilet can be accessed from outside for those using the recreation field; and/or</li><li>b) a hearing loop to be installed inside the hall; and/or</li><li>c) acoustic panels to be erected inside the hall; and/or</li><li>d) the installation of solar panels to on the roof of the hall; and/or</li><li>e) the installation of charging points for electric cars; and/or</li><li>f) the installation of heat pumps</li></ul>

2. The Owner hereby covenants with the Council not to:
  - 2.1. cause or permit the Occupation of any Dwelling unless and until 25% of the Community Contribution has been paid to the Council;
  - 2.2. cause or permit the Occupation of more than 25% of the Dwellings unless and until a further 25% of the Community Contribution (totalling 50% of the Community Contribution) has been paid to the Council;
  - 2.3. cause or permit the Occupation of more than 50% of the Dwellings unless and until an additional 25% of the Community Contribution (totalling 75% of the Community Contribution) has been paid to the Council; and

2.4. cause or permit the Occupation of more than 75% of the Dwellings unless and until a final 25% of the Community Contribution (totalling 100% of the Community Contribution) has been paid to the Council.

3. The Council hereby covenants with the Owner:
  - 3.1. to provide a written form of receipt for payment of each instalment of the Community Contribution on receipt of each part of the Community Contribution pursuant to paragraph 2 above;
  - 3.2. to place each part of the Community Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the Community Contribution Purposes;
  - 3.3. that upon receipt of a request in writing to do so to be received by the Council no sooner than the tenth (10th) anniversary of the date of the final payment of the Community Contribution to the Council (made pursuant to paragraph 2.4 above) to return to the party who deposited the Community Contribution the unexpended part of the Community Contribution together with interest accrued calculated at the SONIA Rate from the date of payment until the date the unexpended part is actually repaid on the unexpended part;
  - 3.4. where at the tenth (10th) anniversary of the date of the final payment of the Community Contribution to the Council (made pursuant to paragraph 2.4 above) a legally binding contract has been entered into by the Council in respect of the Community Contribution Purposes the Council shall be entitled to utilise the Community Contribution to make payment under such contract; and
  - 3.5. that upon receipt of a written request(s) from the Owner the Council shall provide the Owner with a statement confirming whether the Community Facilities Contribution has been spent and if the Community Facilities Contribution has been spent in whole or in part outlining how the Community Facilities Contribution has in whole or in part been spent.

## SCHEDULE 2

### PARKS AND RECREATION CONTRIBUTION

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

**"Parks and Recreation Contribution"** means the sum of Three Hundred and Fourteen Thousand Nine Hundred and Seventeen Pounds and Forty Pence (£314,917.40) Index Linked

**"Parks and Recreation Purposes"** means the use of the Parks and Recreation Contribution towards:

1) works to improve/enhance/provide facilities at the New Cut Recreation Field, New Cut, Layer-de-la-Haye including:

- a) the provision of at least two new pieces of play equipment on the play area opposite Layer de la Haye Village Hall; and/or
- b) the provision of a fence around the play area opposite Layer de la Haye Village Hall to keep out dogs; and/or
- c) the provision of a wooden assault course around the perimeter of the recreation ground
- d) the provision of picnic tables and benches; and/or
- e) the provision of a new 'teenager pod'; and/or
- f) improvement works to re-surface and mark-out the basket ball court; and/or
- g) improvement works to resurface the entrances to the multi-sports

and/or

2) works to improve/enhance Maltings Green, Layer-de-la-Haye including:

- a) improvement works to the pond; and/or
- b) the provision of signage such as a new fingerpost; and/or
- c) the provision of new perimeter bollards

2. The Owner hereby covenants with the Council not to:

- 2.1. cause or permit the Occupation of any Dwelling unless and until 25% of the Parks and Recreation Contribution has been paid to the Council;

- 2.2. cause or permit the Occupation of more than 25% of the Dwellings unless and until a further 25% of the Parks and Recreation Contribution (totalling 50% of the Parks and Recreation Contribution) has been paid to the Council;
- 2.3. cause or permit the Occupation of more than 50% of the Dwellings unless and until an additional 25% of the Parks and Recreation Contribution (totalling 75% of the Parks and Recreation Contribution) has been paid to the Council; and
- 2.4. cause or permit the Occupation of more than 75% of the Dwellings unless and until a final 25% of the Parks and Recreation Contribution (totalling 100% of the Parks and Recreation Contribution) has been paid to the Council.

3. The Council hereby covenants with the Owner:
  - 3.1 to provide a written form of receipt for each payment of the Parks and Recreation Contribution on receipt of each part of the Parks and Recreation Contribution pursuant to paragraph 2 above;
  - 3.2 to place each part of the Parks and Recreation Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the Parks and Recreation Purposes;
  - 3.3 that upon receipt of a request in writing to do so to be received by the Council no sooner than the tenth (10th) anniversary of the date of the final payment of the Parks and Recreation Contribution to the Council (pursuant to paragraph 2.4 above) to return to the party who deposited the Parks and Recreation Contribution the unexpended part of the Parks and Recreation Contribution together with interest accrued calculated at the SONIA Rate from the date of payment until the date the unexpended part is actually repaid on the unexpended part;
  - 3.4 where at the tenth (10th) anniversary of the date of the final payment of the Parks and Recreation Contribution to the Council (pursuant to paragraph 2.4 above) a legally binding contract has been entered into by the Council in respect of the Parks and Recreation Purposes the Council shall be entitled to utilise the Parks and Recreation Contribution to make payment under such a contract; and
  - 3.5 that upon receipt of a written request(s) from the Owner the Council shall provide the Owner with a statement confirming whether the Parks and Recreation Contribution has been spent and if the Parks and Recreation Contribution has been spent in whole or in part outlining how the Parks and Recreation Contribution has in whole or in part been spent.

### SCHEDULE 3

#### OPEN SPACE AND AMENITY AREAS

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

<b>"Amenity Areas"</b>	means those areas within the Site comprising areas that are to be laid to grass and/or landscaped and/or hardstanding as shown on the Amenity Areas Plan and provided in accordance with the Amenity Areas Specification excluding such areas that are or are to be publicly maintainable highway or Open Space or to be within the curtilage of Dwellings or to be maintained by owner-occupiers of Dwellings
<b>"Amenity Areas Certificate"</b>	means a certificate or certificates in writing relating to the Amenity Areas issued by the Council that confirms that the Amenity Areas have been laid out in accordance with the approved Amenity Areas Specification
<b>"Amenity Areas Management Plan"</b>	means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Amenity Areas including for the avoidance of doubt provisions for the rectification of any defects in any area of the Amenity Areas until the completion of the relevant transfer of the Amenity Areas to the Management Company and FOR THE AVOIDANCE OF DOUBT the Amenity Areas Management Plan may be combined with the Open Space Management Plan
<b>"Amenity Areas Plan"</b>	means a plan showing the exact location of the Amenity Areas FOR THE AVOIDANCE OF DOUBT the Amenity Areas Plan may be combined with the Open Space Plan
<b>"Amenity Areas Specification"</b>	means a specification(s) to be approved in writing by the Council for the laying out of the Amenity Areas of the Site and FOR THE AVOIDANCE OF DOUBT the Amenity Areas Specification may be combined with the Open Space Specification

<b>"Council's Nominee"</b>	means Layer de la Haye Parish Council
<b>"Management Company"</b>	means:
	<ul style="list-style-type: none"> <li>(i) a private limited company established or appointed for inter alia the purpose of managing and maintaining the Open Space and/or any part of the Amenity Areas; and/or</li> <li>(ii) any statutory undertakers which are to take on the management of any areas of the Open Space (and/or any part of the Amenity Areas) in accordance with their statutory functions; and/or</li> <li>(iii) any Approved Body (as defined in Schedule 4) in relation to any areas of Open Space and/or any part of the Amenity Areas to be provided in areas marked for Affordable Housing (as defined in Schedule 4) on the Affordable Housing Plan (as defined in Schedule 4)</li> </ul>
<b>"Open Space "</b>	means the areas of land to comprise areas of the Site to be shown on the Open Space Plan which shall include the informal and casual open space all of which shall be laid out in accordance with the approved Open Space Specification
<b>"Open Space Completion Certificate"</b>	means a certificate or certificates in writing relating to the Open Space issued by the Council that confirms that the Open Space has been laid out in accordance with the approved Open Space Specification
<b>"Open Space Final Certificate"</b>	means a certificate or certificates in writing issued by the Council that confirms that the Open Space has been maintained and remedial works completed to the reasonable satisfaction of the Council
<b>"Open Space Plan"</b>	means a plan showing the location of the Open Space
<b>"Open Space Maintenance Sum"</b>	means the sum of Ninety One Thousand Nine Hundred and Ninety Seven Pounds and Thirty Four Pence (£91,997.34) Index Linked

<b>"Open Space Management Plan"</b>	means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Open Space including for the avoidance of doubt provisions for the rectification of any defects in any area of the Open Space until the completion of the relevant transfer of the Open Space to the Management Company
<b>"Open Space Specification"</b>	means a specification to be approved in writing by the Council for the laying out of the Open Space
<b>"Relevant Documents"</b>	means the Amenity Areas Plan, the Amenity Areas Specification and the Amenity Areas Management Plan and the Open Space Plan, the Open Space Specification and the Open Space Management Plan
<b>2.</b> The Owner hereby covenants with the Council to submit the Relevant Documents to the Council along with the first application of Reserved Matters approval and not to Commence the Development unless and until the Relevant Documents have been approved by the Council.	
<b>3.</b> The Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Relevant Documents within two months of receipt in full of the Relevant Documents by the Council.	
<b>4.</b> The Owner hereby covenants with the Council not to permit the Occupation of more than 50% of the Dwellings unless and until all of the Open Space has been provided in accordance with the approved Open Space Plan and the Open Space Specification and the Council has issued the Open Space Completion Certificate.	
<b>5.</b> The Owner hereby covenants with the Council not to permit the Occupation of more than 90% of the Dwellings unless and until the Amenity Areas have been provided in accordance with the approved Amenity Areas Plan and the Amenity Areas Specification and the Council has issued the Amenity Areas Certificate.	
<b>6.</b> The Owner hereby covenants with the Council to maintain the Amenity Areas in accordance with the Amenity Areas Management Plan and the Open Space in accordance with the Open Space Management Plan following the issue of the relevant Amenity Areas Completion Certificate or the relevant Open Space Completion Certificate as appropriate or until such time as the transfer described in paragraph 11 have been completed and any remedial works to the Open Space as reasonably identified by the Council pursuant to paragraph 8 below have been carried out and completed.	
<b>7.</b> The Owner further covenants with the Council that within 20 Working Days of the issue of the Open Space Completion Certificate to offer to transfer the Open Space to:	

- 7.1 the Council's Nominee for the sum of £1.00 (one pound) and if the Council's Nominee does not accept the Open Space within 1 month of the offer; secondly
- 7.2 to the Council for the sum of £1.00 (one pound).
8. Upon the expiry of 1 year from the issue of the relevant Open Space Completion Certificate the Owner shall invite the Council in writing to inspect the Open Space and identify any remedial works reasonably required to be carried out on the Open Space.
9. Within 3 months of receipt of any list of remedial works required to be carried out on the Open Space or within the next planting season where this is later and appropriate the Owner shall complete the said remedial works and invite the Council in writing to inspect the Open Space and issue the Open Space Final Certificate.
10. The Owner covenants with the Council:
  - 10.1 that following the issue of the Open Space Final Certificate it shall either transfer the Open Space for the consideration of One Pound (£1) free of encumbrances and with all necessary easements and vacant possession to:
    - 10.1.1 the Council's Nominee following acceptance of the offer made pursuant to paragraph 7.1 above; or
    - 10.1.2 the Council following their acceptance of the offer made pursuant to paragraph 7.2; or
    - 10.1.3 in the event that the Council's Nominee or the Council do not agree to accept a transfer of the Open Space within 1 month of the date of the offer referred to above at paragraphs 7.1 or 7.2 above (as relevant) the Owner shall transfer the Open Space to a Management Company for the sum of £1.00 (one pound).'  
with the reasonable legal fees for such transfer being the responsibility of the Owner;
  - 10.2 in the event that the Open Space is transferred to the Council or the Council's Nominee to pay the Open Space Maintenance Sum to the Council for the Council to either pass on to the Council's Nominee or use itself (as the case may be) on or prior to completion of such transfer; and
  - 10.3 to transfer the Amenity Areas to the Management Company for the consideration of One Pound (£1) free of encumbrances and with all necessary easements and vacant possession who shall from that date manage and maintain the Amenity Areas for the life of the Development.
11. The Owner further covenants with the Council to include the following provisions in any transfers of the Amenity Areas and the Open Space to the Council or the Council's Nominee and/or the Management Company:
  - 11.1 a covenant only to permit the Amenity Areas to be utilised as grassed areas and/or parking areas and or roads and the Open Space to be utilised by the public as open areas for recreation in accordance with this Agreement; and

- 11.2 a covenant to maintain the Amenity Areas for the life of the Development in accordance with the Amenity Areas Management Plan and the Open Space for the life of the Development in accordance with the Open Space Management Plan; and
- 11.3 a covenant not to transfer the Amenity Areas or the Open Space into the individual ownership of the owners of the Dwellings; and
- 11.4 a covenant by the Management Company and if appropriate the Council or the Council's Nominee to comply with the provisions of this Agreement; and
- 11.5 an obligation by the Management Company that should the Council so require for the Management Company to enter into a direct covenant with the Council to perform the obligations set out in paragraphs 11.1, 11.2, 11.3 and 11.4 of this Schedule.

- 12. In the event that the Open Space is transferred to the Council and the Council receives the Open Space Maintenance Sum the Council covenants with the Owner only to utilise the Open Space Maintenance Sum for the purpose of maintaining the Open Space in accordance with the Open Space Management Plan.
- 13. The Owner shall furnish a copy of the completed transfer(s) (as referred to in paragraph 11) to the Council in relation to the Amenity Areas and the Open Space (in the event that it is transferred to a Management Company) and shall inform the Council in writing of the contact details of any Management Company.
- 14. The Owner shall include in each transfer or lease of a Dwelling an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Amenity Areas and in the event that the Open Space is transferred to the Management Company the Open Space.

## SCHEDULE 4

### AFFORDABLE HOUSING

#### Part One

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

**"Affordable Housing"** means affordable housing as described in Annex 2 of the NPPF

**"Affordable Housing Dwellings"** means 30% of the Dwellings provided in accordance with the Affordable Housing Scheme and in accordance with Nationally Described Space Standards and with all houses and ground floor flats to comply with Building Regulations 2015 Part M(4) Category 2 and all Affordable Housing Dwellings that are wheelchair accessible to comply with Building Regulations 2015 Part M(4) Category 3(2b)

**"Affordable Housing For Rent"** has the meaning ascribed to it in paragraph a) of the definition of affordable housing at Annex 2 of the NPPF

**"Affordable Housing Scheme"** means a scheme and plan to:

- a) Identify the location of the Affordable Housing Dwellings on the Site
- b) Identify the size of the Affordable Housing Dwellings
- c) Identify the exact Affordable Housing Tenure of the Affordable Housing Dwellings
- d) provide a list of Approved Bodies who will be approached to take a transfer of the Affordable Housing Dwellings

**"Affordable Housing Tenure"** means no less than 80% of the Affordable Housing Dwellings as Affordable Rented Dwellings and no more than 20% of the Affordable Housing Dwellings as Shared Ownership Dwellings unless otherwise agreed in writing with the Council with the actual number to be provided in each category of tenure being rounded up or down to the nearest whole number

<b>"Affordable Rented Dwelling(s)"</b>	mean an Affordable Housing Dwelling that is provided as Affordable Housing For Rent
<b>"Approved Body"</b>	means either a registered provider within the meaning of section 80 of the 2008 Act as approved by the Council in writing (such approval not to be unreasonably withheld or delayed) and which is recognised by Homes England (or future equivalent) for the purposes of providing Affordable Housing or the Council if it has purchased (or proposes to purchase) any of the Affordable Dwellings and is acting in such capacity or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a housing association
<b>"Capital Receipts"</b>	means proceeds from Staircasing less the Approved Bodies cost of acquisition, build, management, sale, the redemption of any mortgage and reasonable legal fees
<b>"Chargee"</b>	any mortgagee or chargee (or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any administrator howsoever appointed or any such person appointed under any security documentation to enable a mortgagee or a chargee to realise its security) of the Approved Body or of the owner (excepting the Owner) or successors in title to such mortgagee or charge and/or a Housing Administrator of the whole or any part of the Affordable Housing Dwellings that have been transferred to an Approved Body
<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 Council or its nominee or an Approved Body for Persons in Housing Need
<b>"Local Connection"</b>	means that the Person in Housing Need has one of the following connections to the relevant area: a) the Person in Housing Need or a member of their household have resided in the Parish for

not less than 3 years during the previous 5 year period; or

b) they have an immediate adult relative (including a parent, sibling, or adult child) who is currently a resident of the Parish, and has been so for at least five years before the date of application; or

c) the Person in Housing Need or a member of their household currently:

- (i) reside in the Parish and have done so for at least 6 of the last 12 months; and
- (ii) must be permanently employed in the Parish and have worked in the Parish for at least 6 of the last 12 months; or

d) the Person in Housing Need or a member of their household has an offer of permanent employment (not for a term less than 12 months) within the Parish for which personal attendance within the Parish is a main/ primary requirement of their employment. The work must not be short-term (less than 12 months) or marginal in nature (less than 16 hours' a week), be ancillary to work in another parish or district; or voluntary work.

**"Neighbouring Parish"**

means any of the following parishes within the city of Colchester:

- a) Abberton and Langenhoe;
- b) Layer Breton,
- c) Birch;
- d) Great and Little Wigborough,
- e) Peldon,
- f) Salcott-cum-Virley; or
- g) Layer Marney;

**"NPPF"**

means the National Planning Policy Framework 2021 (or any successor policy thereto) issued by H M Government

**"Nomination Rights"**

the ability for the Council to nominate 100% of the occupants on the first letting of the Affordable Housing Dwellings and 100% of the occupants of subsequent lettings of the Affordable Rented Dwellings

<b>“Parish”</b>	means the parish of Layer-de-la-Haye or if paragraph 9.1 of this Schedule applies Parish shall mean a Neighbouring Parish
<b>“Persons In Housing Need”</b>	means a person or persons registered on the Housing Needs Register or such other person considered by the Council or the Approved Body to be in housing need having regard to their income and local house prices and rents such persons are to be on bands A-C of the Housing Needs Register for the first let of the Affordable Housing Dwellings provided as Affordable Housing for Rent
<b>“Protected Tenant”</b>	means any tenant who: <ul style="list-style-type: none"> <li>(a) has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual or voluntary right) in respect of a particular Affordable Housing Dwelling</li> <li>(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling</li> <li>(c) has been granted a shared ownership lease by the Approved Body and has become a 100% Staircaser</li> </ul>
<b>“Regulator of Social Housing”</b>	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body
<b>“Shared Ownership”</b>	means Dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with terms in the Regulator of Social Housing capital funding guide and to individual who is not currently a homeowner
<b>“Shared Ownership Dwellings”</b>	means the Affordable Housing Dwellings provided as Shared Ownership
<b>“Shared Ownership Lease”</b>	means a lease from the Regulator of Social Housing’s model Designated Protected Area (“DPA”) leases that restricts Staircasing to either: <ul style="list-style-type: none"> <li>a) 80% equity; or</li> </ul>

b) 100% equity if the lessee of the Shared Ownership Dwelling covenants to sell back their Shared Ownership Dwelling to the Approved Body or Approved Body's nominee at market value

and the Approved Body shall re-invest such Capital Receipt in Affordable Housing (in order of priority):

i) within the city of Colchester

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

iii) within the rest of England

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

**"Staircasing"**

means the process by which a lessee of Shared Ownership dwelling acquires up to a maximum of 80% of the equity of the said Shared Ownership Dwelling or 100% equity in accordance with the Shared Ownership Lease

**"100% Staircaser"**

means a lessee of an Affordable Housing Dwelling under a Shared Ownership or shared equity arrangement who has acquired 100% (one hundred per cent) of the equity in the said Affordable Housing Dwelling

**"2008 Act"**

means the Housing and Regeneration Act 2008

The Owner hereby covenants with the Council as follows:

- 2 To submit the Affordable Housing Scheme to the Council with the first application for Reserved Matters approval and not to Commence Development unless and until the Affordable Housing Scheme has been approved by the Council taking account of the needs of Persons in Housing Need.
- 3 To construct the Affordable Housing Dwellings in accordance with the approved Affordable Housing Scheme.
- 4 Not to permit the Occupation of:
  - 4.1 more than 50% of the Market Dwellings unless and until 50% of the Affordable Housing Dwellings to be provided have been constructed and are available for Occupation and have been transferred to an Approved Body (unless such a transfer is not required pursuant to the Affordable Housing Scheme); and

4.2 more than 80% of the Market Dwellings unless and until all of the Affordable Housing Dwellings to be provided have been constructed and are available for Occupation and have been transferred to an Approved Body (unless such a transfer is not required pursuant to the Affordable Housing Scheme).

5 For the purposes of this Schedule only the expression "transfer" or "transferred" shall mean a transfer of the freehold or grant of a lease with a term of not less than 125 years of 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 and which transfer or grant shall be subject to the provisions of Part Two of this Schedule (unless otherwise agreed with the Council).

6 That Affordable Housing Dwellings shall be Occupied for no other purpose than as Affordable Housing and shall be Occupied in accordance with the Nomination Rights (but subject to the provisions of paragraph 8 below).

7 To serve on the Council notice in writing not less than 14 days after the first Occupation of 45% and 75% of the Market Dwellings.

8 that subject to paragraphs 9, 10 and 11.1 below the grant or assignment of the first tenancy or lease of each Affordable Rented Dwelling and the first sale/purchase of the Shared Ownership Dwellings shall be restricted to a Person in Housing Need with a Local Connection to the parish of Layer-de-la-Haye;

9 that subject to paragraph 11.1 if nobody satisfies the requirements of paragraph 8 above then the grant or assignment of the first tenancy or lease of each Affordable Rented Dwelling shall be made to a Person in Housing Need with a Local Connection to one of the following areas (in order of priority from paragraphs 9.1 to 9.2):

9.1 a Neighbouring Parish; and

9.2 if no Person in Housing Need satisfies paragraph 9.1, Colchester.

10 that subject to paragraph 11.1 if nobody satisfies the requirements of paragraph 8 above then the grant or assignment of the first sale of each Shared Ownership Dwelling shall be made to a Person in Housing Need with a Local Connection to one of the following areas (in order of priority from paragraphs 10.1 to 10.2):

10.1 a Neighbouring Parish; and

10.2 if no Person in Housing Need that satisfies paragraph 10.1, the city of Colchester; and

10.3 if no Person in Housing Need that satisfies paragraph 10.1 and 10.2 has been found within 6 weeks of the Shared Ownership Dwelling being available for purchase, the Shared Ownership Dwelling can be marketed to individuals who do not have a Local Connection to the Parish, Neighbouring Parish or the city of Colchester.

11 It is Hereby Agreed and Declared:

11.1 The Affordable Housing obligations and restrictions contained in this Agreement (including for the avoidance of doubt this Schedule) shall not bind:

- 11.1.1 a Chargee of the whole or part of the Affordable Housing Dwellings PROVIDED THAT such Chargee on enforcement of security has first complied with the provisions of paragraph 11.2 of this Schedule; or
- 11.1.2 a Protected Tenant; or
- 11.1.3 any mortgagee or chargee or receiver of a Protected Tenant; or
- 11.1.4 any mortgagee or chargee or receiver of an occupier of an Affordable Housing Dwelling; and
- 11.1.5 any person or body deriving title through or from any of the parties mentioned in paragraphs 11.1.1- 11.1.4 above.

11.2 Any Chargee claiming the protection granted by paragraph 11.1 above must first:

- 11.2.1 give written notice to the Council of its intention to dispose of the Affordable Housing Dwelling;
- 11.2.2 use reasonable endeavours over a period of eight weeks from the date of such written notice to complete the transfer of the Affordable Housing Dwelling to another registered provider 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.

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.

11.3 If such disposal referred to in paragraph 11.2.2 above has not completed within such eight 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.

## **Part Two**

- A. The transfers of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession
- B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Approved Body shall be prepared by the Owner to the Approved Body and shall contain:
  - 1. a grant by the Owner to the Approved Body 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 as the Owner may reasonably require for the maintenance of the Development once it is completed and the preservation of the appearance thereof
4. a provision whereby Capital Receipt received from Staircasing is to be retained by the Approved Body and the Approved Body shall re-invest such Capital Receipt in Affordable Housing (in order of priority);-
  - i) within the city of Colchester
  - ii) within the neighbouring councils' areas within the county of Essex
  - iii) within the rest of England

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

## SCHEDULE 5

### RAMS CONTRIBUTION

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

<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 a recreation avoidance and mitigation strategy in relation to Essex Coast Natura 2000 European Designations (in particular the Colne Estuary Special Protection Area (SPA) and Ramsar site, the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, Abberton Reservoir Estuary Special Protection Area (SPA) and Ramsar site, the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar Site and the Essex Estuaries Special Area of Conservation (SAC))
<b>"RAMS Contribution"</b>	means the sum of One Hundred and Thirty Seven Pounds and Seventy One Pence (£137.71) per Dwelling Index Linked
<b>"RAMS Contribution Purposes"</b>	means the use of the RAMS Contribution towards the funding of strategic 'off-site' measures identified by the adopted RAMS to mitigate any increased use as a result of the Development at Essex Coast Natura 2000 European Designations (in particular the Colne Estuary Special Protection Area (SPA) and Ramsar site, the Blackwater Estuary Special Protection Area (SPA) and Ramsar site, Abberton Reservoir Estuary Special Protection Area (SPA) and Ramsar site, the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar Site and the Essex Estuaries Special Area of Conservation (SAC))

2. The Owner hereby covenants with the Council to pay to the Council the RAMS Contribution prior to Commencement of Development and the Owner shall not Commence Development nor permit the Commencement of Development until the RAMS Contribution has been paid to the Council.
3. The Council hereby covenants with the Owner to:
  - 3.1 provide a written form of receipt for payment of the RAMS Contribution on receipt of the said contribution;

- 3.2 place the RAMS Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the RAMS Contribution Purposes.

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

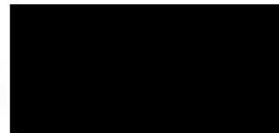
EXECUTED as a DEED by affixing )  
THE COMMON SEAL of )  
COLCHESTER CITY COUNCIL )  
in the presence of: *John M. A.*

[Redacted]  
Authorised Signatory

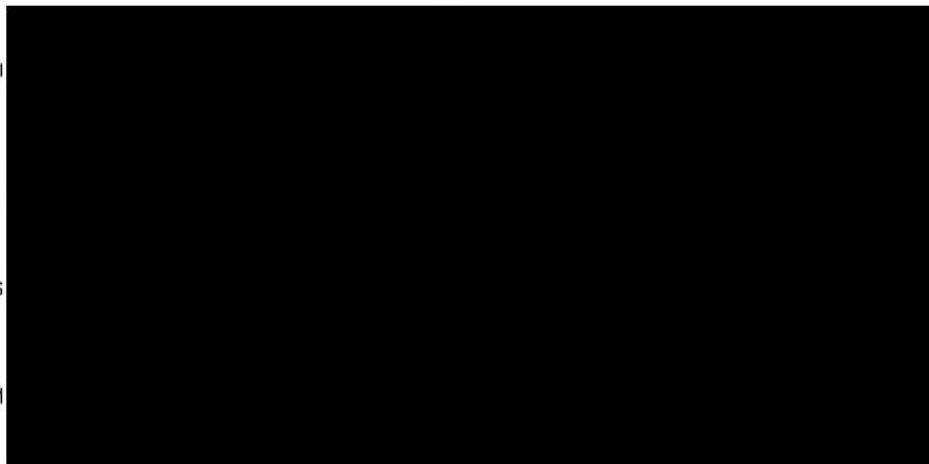


240122

SIGNED as a DEED by )  
JAYNE CATHERINE GEE )  
in the presence of: )



Witness signature:

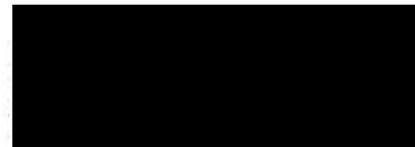


Witness name:

Witness address:

Witness occupation:

**SIGNED as a DEED by**  
**DANIEL JOHN WATTS**  
in the presence of:



Witness signature:

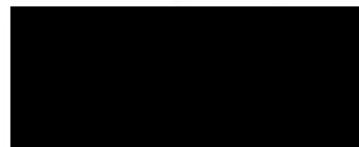
Witness name: JK

Witness address:

ESSE

Witness occupation:

**SIGNED as a DEED by**  
**JASON JAMES WATTS**  
in the presence of:



Witness signature:

Witness name:

Witness address:

Witness occupation:

