

THIS DEED is

made the 19th day of December 2022

by:

Colbert Developments Limited (Co Reg. No. 11308373) of 47 Butt Road, Colchester, CO3 3BZ (**"the Applicant"**)

and constitutes a planning obligation by unilateral undertaking for the purposes of Section 106 of the 1990 Act for the benefit of and enforceable by the Council

WHEREAS:-

- A. The Council is the Local Planning Authority for the purposes of the 1990 Act for the City of Colchester within which City the Application Site is located
- B. The Applicant is the registered proprietor of the Application Site which freehold titles are registered at HM Land Registry with the following title numbers EX945647, EX539805, EX943073, EX967942 and EX522909 and has an interest in the Application Site within the meaning of Section 106 of the 1990 Act
- C. The Applicant's Agent submitted a planning application which was given planning reference number 220460 by the Council and if the Council grants the Planning Permission (subject to conditions) this will be subject to the Applicant first entering into this unilateral undertaking and covenanting in the manner hereinafter appearing

NOW THIS DEED WITNESETH as follows: -

1. Definitions

- 1.1 In this Deed the following terms shall have the following meanings: -

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

"Application Plan" means the location plan annexed hereto

"Application Site" means the land east of Albert Street, Colchester, CO1 1RU and shown edged red on the Application Plan

"Commencement"

of the Development"	means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the 1990 Act and use in this Deed of the terms "Commence the Development" and "Commencement Date" shall be construed accordingly
"Community Facilities"	means the provision of a building or space where community led activities are carried out for the benefit of the community as shall be agreed with the local planning authority
"Community Facilities Contribution"	means the sum of Eighteen Thousand Eight Hundred and Seventy Eight Pounds and Sixty One Pence (£18,878.61) payable to the Council and which sum shall be increased in accordance with any increase in the RPI figures last published before the date of this Deed and the RPI figures last published before the date the said Community Facilities Contribution is due
"Community Facilities Contribution Purposes"	means the use of Community Facilities Contribution towards the redevelopment of St Peter Church and Church Hall, Phase 1 to equip the Church with redecorated spaces, new kitchen and toilet facilities, café-style tables and chairs, energy-efficient lighting, and a heating system, providing facilities needed for groups. In respect of Phase 2, the contribution will be used to repair/refurb or rebuild the church hall
"Council"	means Colchester City Council, Rowan House, 33 Sheepen Road, Colchester CO3 3WG
"Development"	means the development described in the Planning Application and permitted by the Planning Permission
"Habitats Sites Mitigation Contribution"	means the sum of One Thousand, Two Hundred and Thirty Nine Pounds and Thirty Nine Pence (£1,239.39) which is calculated as 9 x (£137.71) per dwelling which contribution which sum shall be increased in accordance with any increase in the RPI figures last published before the date of this Deed and the RPI figures last published before the date that the Habitats Sites Mitigation Contribution is due

"Habitats Sites Mitigation Contribution Purposes"	means use of the Habitats Site Mitigation Contribution towards Habitats Sites Mitigation
"Habitats Sites Mitigation"	means the mitigation of recreational disturbances of a European designated site as a result of use of the Development and in order to comply with the Conservation of Habitats and Species Regulation 2017
"Notice of Commencement"	means notice in writing to advise of the date that Commencement of the Development occurred
"Open Space Sport and Recreational Contribution"	means the sum of Forty Three Thousand, One Hundred and Thirteen Pounds and Seventy Five Pence (£43,113.75) which sum shall be increased in accordance with any increase in the RPI figures last published before the date of this Deed and the RPI figures last published before the date that the Open Space Sport and Recreation Facilities Contribution is due
"Open Space Sport and Recreational Contribution Purposes"	means the use of Open Space Sport and Recreational Facilities towards (a) the provision and /or improvement and/or maintenance of Open Space Sport and Recreational Facilities in the vicinity of the Application Site and (b) the City Projects
"Planning Application"	means the planning application (including plans, statements and appraisals in support of the said application) submitted by the Applicant's Agent to the Council and which the Council has given planning permission reference number 222460 for a full application for the erection of 9 dwellings comprising 4 x3 bedroom houses, 4x2 bedroom apartments and 1x1 bedroom apartment

“Planning Permission”	means the planning permission (with conditions) granted by the Council in accordance with the Planning Application
“RPI”	means the Retail Price Index published by or on behalf of the Government of the United Kingdom or if the same index shall cease to be published such other index as may be substituted therein

2. INTERPRETATION AND LEGAL EFFECT

- 2.1 The covenants in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act in respect of which:
 - (a) The Applicant is the owner of the freehold titles to the Application Site which Application Site is free from any third-party interests and encumbrances other than those referred to in the charges registers
 - (b) The Council is the Local Planning Authority entitled to enforce the provision of this Deed and the covenants contained in this Deed shall be so enforceable
 - (c) This Deed shall be binding on all successors and assigns in title of the Applicant and any persons claiming under or through them
 - (d) This Deed has been executed as a Deed and shall be registered by the Council as a local land charge against the Application Site in accordance with Section 106(11) of the Act
- 2.2 This Deed is made pursuant to Section 106 of the Act and all other powers enabling the parties to enter into such a Deed
- 2.3 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval
- 2.4 This Deed has immediate effect, but the covenants contained herein shall take effect upon the date that the Council issues the Planning Permission
- 2.5 If the Planning Permission shall expire before the Commencement of the Development or shall at any time be revoked this Deed shall forthwith determine and cease to have effect but without prejudice to any of the covenants that arise to be performed prior to any such expiration or revocation and any contribution already paid to the Council shall forthwith be returned to the Applicant (or his nominated person)

- 2.6 No person shall be liable for a breach of a covenant in this Deed unless they hold an interest in the Application Site or held such an interest at the date of the breach

3. THE APPLICANT'S COVENANTS

The Applicant HEREBY COVENANTS AND UNDERTAKES with the Council that the Applicant will:-

- 3.1 Pay to the Council the Community Facilities Contribution before the Commencement of the Development and shall not Commence the Development unless and until the Community Facilities Contribution has been paid to the Council PROVIDED THAT the Community Facilities Contribution is given on condition that;
- 3.1.1 the Council will only use the Community Facilities Contribution towards Community Facilities Contribution Purposes
- 3.1.2 the Applicant shall be entitled to request in writing that the Council return to the Applicant any unused part the Community Facilities Contribution (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the Council received the said Community Facilities Contribution
- 3.2 Pay to the Council the Open Space Sport and Recreational Facilities Contribution before the Commencement of the Development and shall not commence the Development unless and until the Open Space Sport and Recreational Facilities Contribution has been paid to the Council PROVIDED THAT the Open Space Sport and Recreational Facilities Contribution is given on the condition that;
- 3.2.1 the Council will use the Open Space Sport and Recreational Facilities Contribution towards the Open Space Sport and Recreational Facilities Contribution Purposes.
- 3.2.2 the Council will use no more than thirty five percent (35%) of the Open Space Sport and Recreational Facilities Contribution towards the Borough Projects
- 3.2.3 the Applicant shall be entitled to request in writing that the Council return to the Applicant any unused part the Open Space Sport and Recreational Facilities Contribution (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the Council received the said Open Space Sport and Recreational Facilities Contribution
- 3.3 Pay to the Council the Habitats Sites Mitigation Contribution before the Commencement of the Development and shall not Commence the Development unless and until the Habitats Sites Mitigation Contribution has been paid to the Council PROVIDED THAT the Habitats Sites Mitigation Contribution is given on condition that;

- 3.1.1 the Council will only use the Habitats Sites Mitigation Contribution towards Habitats Sites Mitigation Contribution Purposes
- 3.1.2 the Applicant shall be entitled to request in writing that the Council return to the Applicant any unused part the Habitats Sites Mitigation Contribution (plus interest that has accrued on that unused part) on the tenth (10th) anniversary of the date that the Council received the said Habitats Sites Mitigation Contribution
- 3.4 Serve on the Council a Notice of Commencement (marked for the attention of the Council's Section 106 Compliance Officer) not more than (7) days after Commencement of the Development has occurred.

4. FEES

- 4.1 The Applicant has already paid to the Council the sum of £400 (Four Hundred Pounds) towards the Council's administration costs and the cost of monitoring the performance of the planning obligations that the Applicant is required to observe and perform pursuant to the terms of this Deed should Planning Permission be granted. If Planning Permission is not granted the Applicant will be entitled to a refund of the £400 (Four Hundred Pounds) monitoring fee.
- 4.2 The Applicant has already paid to the Council the sum of £500 (Five Hundred Pounds) for the Council's reasonable and proper legal costs together with all disbursements incurred in connection with its approval and registration of this Deed.

5. INDEXATION OF CONTRIBUTIONS

- 5.1 All financial contributions payable to the Council shall be Index Linked
- 5.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Applicant in writing.

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 6.1 It is hereby acknowledged that it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights that arise under the said 1999 Act are hereby excluded PROVIDED THAT for the avoidance of any doubt this clause 6.1 does not apply to the Council.

7. DETERMINATION OF DEED

This Deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Applicant; or
- (c) is quashed following a successful legal challenge.

8. LOCAL LAND CHARGE

8.1 This Deed is a local land charge and shall be registered as such by the Council.

9. INTEREST ON LATE PAYMENT

9.1 If any contribution due pursuant to this Deed has not been paid to the Council prior to or on the due dates for payment, the Applicant shall pay the Council interest on the contribution or relevant part thereof at the rate of two percent (2%) above the base lending rate of Barclays Bank PLC (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the actual dates of the payments.

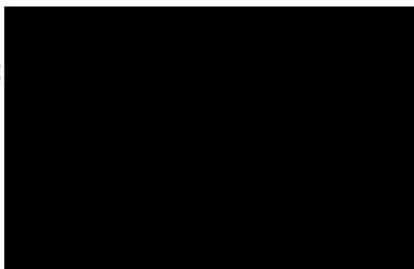
10. GOVERNING LAW

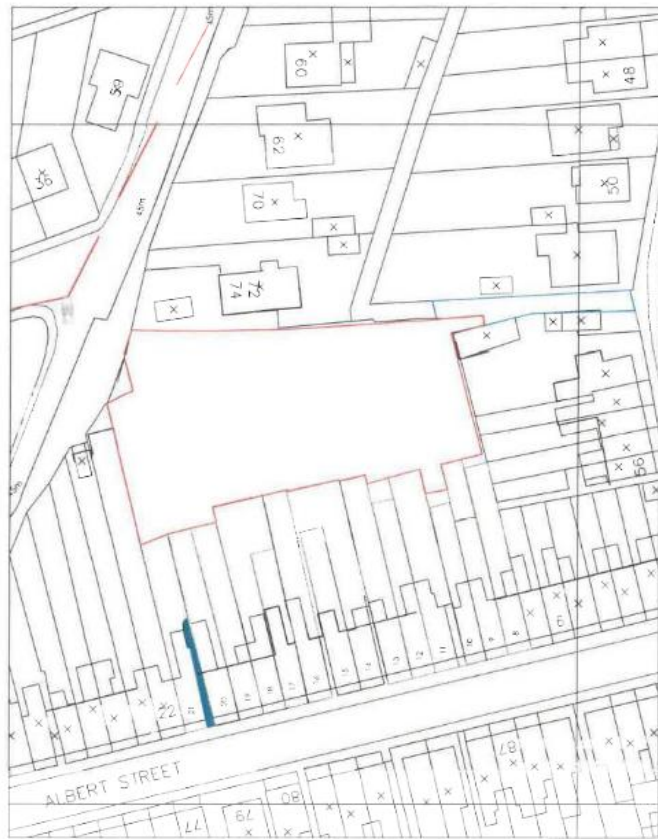
10.1 This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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

Executed as a deed by
Colbert Developments Limited
in the presence of:

Direct





The following ecological enhancements:

- 1 integral bird box per building
- 1 integral bat box per new building
- 5 no fence mounted bird boxes
- 1 invertebrate box per unit

Exact locations to be agreed with Open Spaces

Site Area 0.127 Hectare (1270 sq m)	<p>Proposal</p> <ul style="list-style-type: none"> • 4 x 3 bed terraced houses 108 sq m each • 4 x 2 bed apartments 66 sq m each • 1 x 1 bed apartment 46 sq m each <p>Total amenity for site 423 sq m</p>
-------------------------------------	---

Note:
Drawing used for information only.
All statutory and landward contents to be agreed prior to any works being undertaken.
Do not construct from this drawing.
No part of this drawing should be scaled. For dimensions and information relating to this drawing, please refer to the relevant planning application and/or planning conditions.
This drawing should not be used for any other purpose without the written consent of the relevant authority.

C8GB Design Ltd.

Planning Drawing

Client	Concord Development, LLC
Project	Bullhorn Ford
Drawing Title	Site Area Plan Houses 200.01
Project No.	13160
Scale	1:200 & 1/2
Date	Feb. 2011
Drawn by	200.01
Rev. C	rev. C