

THIS AGREEMENT is made the 8th day of November Two Thousand and Eleven **BETWEEN:**

- (1) COLCHESTER BOROUGH COUNCIL of Town Hall, High Street, Colchester, Essex CO1 1FR ("**the Council**")
- (2) TAYLOR WIMPEY DEVELOPMENTS LIMITED (Co Reg No: 643420) of Gate House Road Buckinghamshire Wycombe HP12 3NR ("**the Developer**")
- (3) WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Colchester, Essex, CO7 9AB ("**WTC**")

WHEREAS:

- A. The Council is the local planning authority for the purposes of the Act for the area within which the Site is located and is the relevant planning authority by whom the planning obligations contained in this Agreement are enforceable.
- B. The Developer is the registered proprietor of the Site under Title Number EX350392
- C. The Developer has submitted the Planning Application to the Council and Planning Permission may be granted subject to certain conditions PROVIDED THAT the Developer first enters into this Agreement and covenants in the manner hereinafter appearing

NOW THIS AGREEMENT WITNESSETH as follows:

1. DEFINITIONS

- 1.1 In this Agreement where the context so admits the following expressions shall have the following Meanings:

"Act" means the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991

"Affordable Housing Contribution" means a sum of money to be agreed in writing with the Council in lieu of the Developer being required to make the Affordable Housing Units available for the purposes of Rented Affordable Housing

"Affordable Housing Transfer" means the standard form of transfer used by Registered Providers and which in any event

shall include the provisions contained in the Second Schedule

“Affordable Housing Units”

means the 2 dwellings known as plots 97 and 98 (which are identified as such on the Site Layout Plan and which form part of the Development) to be used for the purposes of Rented Affordable Housing

“Blue Land”

means the area of land within the Site shown coloured light blue and dark blue on the Site Layout Plan

“Blue Land Landscaping Scheme”

means a scheme (including plans and drawings) for the laying out and planting of the Blue Land for use by members of the public as an area for recreation

“Business Units”

means those units comprised in the Development to be used for the purposes of: (a) Class A1 of the Use Classes Order (retail use); and (b) Class B1 of the Use Classes Order (business use space) and which units (including the relevant car parking spaces) are to be constructed on the Blue Land

“Car Park Land”

means all that land coloured orange on the Site Layout Plan which land is to be used as a public car park (with or without charge)

“Car Park Lease”

means the form of lease set out in Appendix 1 hereto relating to the Car Park Land

“Compound Licence”

means a bare licence granted by the Council for the use of the Play Area Land as a site compound and which will include (amongst other things) provisions that the licensee will have in place public liability insurance of not less than £10million and will indemnify the Council for any claims made against it while the said Play Area Land is being used (or is capable of being used) as a site compound

“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 Act and “Commence the Development” shall mutatis mutandis be construed accordingly

“Completion”	means completion of a building with all Drainage Systems and Service Installations connected such that the building concerned is ready and available to be occupied for its intended purpose
“Contributions”	means the First Contribution and the Second Contribution
“Date of Completion”	means the date that the Development has been substantially completed as evidenced by the Date of Completion Notice
“Date of Completion Notice”	means the notice to be served on the Council to advise of the Date of Completion
“Development”	means the development permitted by the Planning Permission
“Dinghy Park Land”	means all that land coloured purple on the Site Layout Plan which land is to be used as a parking facility for boats and their trailers
“Dinghy Park Lease”	means the form of lease set out in Appendix 1 hereto relating to the Dinghy Park Land
“Drainage”	means the disposal of foul and surface water
“Drainage Systems”	means any sewers drains pipes manholes culverts soakaways channels watercourses and other conduits and systems necessary for Drainage and all ancillary apparatus and equipment
“Final Occupation”	means occupation of the 32 nd residential dwelling comprised within the Development PROVIDED THAT in the event that it becomes clear to the Council that the Developer is deliberately failing to complete dwellings comprised within the Development to escape obligations linked to completion of those dwellings then Final Occupation shall mean occupation of the final dwelling comprised within Phase 3A
“First Contribution”	means the sum of FORTY FIVE THOUSAND POUNDS (£45,000)

“First Contribution Purposes”

means the use of the First Contribution towards: (a) providing and installing playground facilities on the Play Area Land; and (b) the provision of hard and soft landscaping materials and the carrying out of hard and soft landscaping works to the Play Area Land

“Housing Needs Register”

means the statutory register maintained by the Council of persons identified in need for housing in the borough of Colchester

“Index”

means the Retail Prices Index published by the Government of the United Kingdom or any other replacement index

“Interim Landscaping Land”

means a 3 metre (minimum) deep strip of land along the south side of the Blue Land (and which may incorporate some of the Blue Land)

“Interim Landscaping Works”

means: (a) the erection of site hoarding along the northern edge of the Interim Landscaping Land; (b) the painting of a mural on the south side of the site hoarding (i.e. the side in public view when looking from the Dinghy Park Land); (c) the grassing of the Interim Landscaping Land; and (d) the planting of a hedge along the southern most edge of the Interim Landscaping Land

“Method Statement”

means the method statement for the construction of the Development relating to:
(1) the means of removing demolition rubble and contaminated land from the Site
(2) the means of bringing construction materials onto the Site
(3) the means of constructing the foundations
(4) the timing, routing and type of construction traffic
and which method statement shall include the matters contained in the First Schedule

“Notice of Commencement”

means the notice to be served on the Council to advise that the Commencement

of the Development will occur within 14 days of the date of the said notice

“Notice of Occupation”

means the notice to be served on the Council to advise that 16 of the Open Market Units (i.e. those comprised in Phase 3A) have been Occupied

“Occupation”

means occupation for the purposes permitted by the Planning Permission other than the construction of the Development and shall not include day time occupation by workmen involved in the construction of the Development or insofar as such uses are ancillary to the construction of the Development, the use of finished buildings for sale purposes, for use as temporary offices or for the storage of plant and materials and the expressions “Occupation” and “Occupy” and “Occupied” shall be construed accordingly

“Open Market Units”

means the residential dwellings (other than the Affordable Housing Units) comprised in the Development and the expression “Open Market Unit” shall be construed accordingly

“Original Consent”

means together: (a) the planning permission granted pursuant to the planning application O/COL/01/1799 for the Site and the other phases of the development at the former Cooks Shipyard site; and (b) the reserved matters approval granted pursuant to the application 072701 for 32 residential dwellings to be constructed on the Site

“Permissive Rights of Way”

means those routes coloured yellow on the Site Layout Plan being routes proposed as permissive rights of way for pedestrians, but subject to vehicular rights to enable access to the Business Units and the Dinghy Park Land

“Persons In A Housing Need”

means a person or persons registered on the Borough Council’s Housing Needs Register

“Phase 3A”	means the plots identified on the Site Layout Plan as plots 67 – 78 (inclusive) and plots 93 – 96 (inclusive)
“Planning Application”	means the full planning application submitted by the Developer (and given the reference 091559 by the Council) seeking planning permission for the erection of 32 no. dwellings, commercial units (within Class A1 (Retail) of the Use Classes Order and Class B (Business) of the Use Classes Order), garages, off street parking, roads and footpaths, public open space, foul and surface water drainage and hard and soft landscaping
“Planning Permission”	means the conditional planning permission for the development described generally in the Planning Application
“Play Area Clearance Works”	means works for the complete clearance and restoration of the Play Area Land and such works will include: (a) the removal of all equipment and materials stored on the said Play Area Land whilst being used as a site compound; (b) the removal of all contaminated material including contaminated soil; and (c) landscaping
“Play Area Clearance Works Bond”	means a bond that the Council can call on to provide the necessary funds to carry out all or any of the Play Area Clearance Works in the event that the Developer fails to carry out the said Play Area Clearance Works in accordance with the terms of clause 5.10 of this Agreement
“Play Area Land”	means all that land shown coloured light pink on the Site Layout Plan which land is to be used as public amenity land and a children’s play area
“Protected Tenant”	means a tenant of the Rented Affordable Dwellings who acquires a leasehold or freehold interest in the whole of or part of such Dwelling from a Registered Provider pursuant to a statutory right

“Registered Provider”	means a registered provider who is: (a) registered with the Homes and Communities Agency under the provisions of the Housing & Regeneration Act 2008; and (b) nominated or approved by the Council
“Rented Affordable Dwellings”	means residential dwellings to be used as Rented Affordable Housing
“Rented Affordable Housing”	means housing that is: (a) wholly rented; (b) made available to Persons In A Housing Need via a Registered Provider; (c) remains permanently accessible to people who for whatever reason cannot afford to buy or rent a suitable home at prevailing market prices (unless an occupier has exercised the statutory right to acquire), and (d) is let at affordable rent in accordance with such rent as may be agreed with a Registered Provider
“Second Contribution”	means the sum of TWENTY ONE THOUSAND EIGHT HUNDRED AND FORTY SEVEN POUNDS FIFTY PENCE (£21,847.50)
“Service Installations”	means conduits culverts channels pipes outlets mains wires cables optic fibres ducts flues poles ventilation shafts electricity substations gas governors and all and any other ancillary equipment and apparatus for the conduct of Services
“Services”	means the supply of water gas electricity telephone telecommunications cable television (if available) and all other appropriate services other than Drainage
“Site”	means all that land edged red on the Site Layout Plan being part of the land at the former Cooks Shipyard and the former Gas Works, Wivenhoe
“Site Layout Plan”	means the drawing annexed at Appendix 2

“Use Classes Order” means the Town and Country Planning (Use Classes) Order 1987, as amended

1.2 where the context so requires:

- (a) A reference in this Agreement to an Act of Parliament or any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same
- (b) Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa
- (c) Any headings or side notes are for ease of reference only and shall not affect the construction of this Agreement
- (d) Where a party includes more than one person any obligations of that party shall be joint and several

2. INTERPRETATION AND LEGAL EFFECT

2.1 This Agreement is made pursuant to Section 106 of the Act and the covenants contained herein are planning obligations for the purposes of Section 106 of the Act in respect of which:

- (a) The Developer owns the freehold title to the Site and the Site is free from any third party interests and encumbrances other than those described in the Title Number EX350392
- (b) The Council is the Local Planning Authority entitled to enforce the provisions of this Agreement and the covenants contained in this Agreement shall be so enforceable
- (c) This Agreement is entered into in respect of the Site with the intent that it shall bind the Developer’s freehold interest in the Site
- (d) This Agreement shall be binding on all successors and/or assigns in title of the parties hereto and any persons claiming under or through them
- (e) This Agreement has been executed as a Deed and shall be registered by the Council against the Site as a Local Land Charge

2.2 This Agreement is made pursuant to Section 106 of the Act and all other powers enabling the parties to enter into such an Agreement and in consideration of the covenants herein contained

2.3 Nothing in this Agreement is or amounts to or shall be construed as a planning permission or approval

2.4 This Agreement shall come into force on the date of the grant of the Planning Permission

- 2.5 If the Planning Permission is quashed or revoked or ceases to have effect by operation of law or expires before the Commencement of the Development then this Agreement will at that time cease to have effect except that the Council will be required forthwith to cancel all entries made in the Register of Local Land Charges in respect of this Agreement
- 2.6 Nothing in this Agreement, whether express or implied, shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a local authority and the rights powers duties and obligations of the Council under all public and private statutes byelaws orders and regulations may be fully and effectually exercised in relation to the Site or any part of it and any works executed on it as if this Agreement had not been executed by the Council
- 2.7 Any approval given by the Council under this Agreement or for the purposes of this Agreement shall not be deemed to be an approval for any other purpose whatsoever
- 2.8 The Developer hereby agrees with the Council that the Site will be bound by this Agreement and more particularly covenants to observe and perform the restrictions and obligations contained in this Agreement
- 2.9 No party shall be liable for a breach of any covenant in this Agreement when that party no longer has any interest in any part of the Site but without prejudice to that party's liability for a breach of any covenant that occurred prior to the cessation of its interest in the Site
- 2.10 An obligation that prohibits the Developer from allowing any or limited occupation of the Development until certain events occur shall also be an obligation on the Developer to positively carry out those certain events by no later than the number of occupations set out therein unless the context otherwise requires

3. NOTICES AND COSTS

- 3.1 All works and/or acts required to be undertaken by the Developer shall in all respects be at the cost of the Developer
- 3.2 All notices given or served or required to be given or served under this Agreement shall be given or served as follows:
- (a) by personal delivery by hand (in which case service is immediately effected)
 - (b) by first class post (in which case service is effected on the second day after posting)

- (c) by facsimile transmission (in which case service is effected at the time of successful transmission)
- 3.3 The address for service of Notices to the Council shall be at the Council's address at the head of this Agreement and Notices shall be marked for the attention of the Head of Planning and Protection
- 3.4 The Developer shall on completion of this Agreement pay:
 - 3.4.1 the reasonable and proper fees disbursements and incidental expenses of the Council in relation to the negotiation preparation execution and completion of this Agreement
 - 3.4.2 a contribution of £~~3549.00~~ ^{3549.00} towards the Council's administration costs of monitoring the performance of the planning obligations under the terms of this Agreement

4. ARBITRATION

- 4.1 Any dispute or difference between any of the parties to this Agreement as to the interpretation of or as to the performance or non-performance of any obligation may be decided by Arbitration under Part I of the Arbitration Act 1996 by a single arbitrator appointed by the parties in dispute. If the parties do not agree on that appointment then the President of the Bar Council of England and Wales may appoint the arbitrator at the request of either party to the dispute
- 4.2 Before referring any dispute to arbitration under this Agreement either party to the dispute may (without obligation) suggest to the other that they voluntarily seek mediation to resolve their differences. If the suggestion is acceptable the parties to the dispute will:
 - (a) Apply to the then President of the Law Society of England and Wales to nominate a person of suitable knowledge and experience as the mediator; and
 - (b) Pay the costs of nominating the mediator and his fees and expenses as the mediator shall propose at the conclusion of the mediation but in the interim such fees shall be borne equally by the parties in dispute

5. THE DEVELOPER'S COVENANTS

The Developer HEREBY COVENANTS with the Council:

- 5.1 That the Affordable Housing Units shall be used only for the purposes of Rented Affordable Housing in perpetuity PROVIDED THAT:
 - 5.1.A this obligation shall not be binding on any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving

title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges, any mortgagee chargee or receiver of the Registered Provider and any person who shall derive title directly or indirectly from such mortgagee chargee or receiver (other than a Registered Provider) and any service companies or statutory undertakers who purchase (including by way of lease) or otherwise become proprietor of any part of the Affordable Housing Units for the purposes of providing services or facilities in connection with the Affordable Housing Units

5.1.B the said Affordable Housing Units shall be released from this covenant and the said covenant shall be discharged and extinguished from the date of the transfer of the said Affordable Housing Units to the Registered Provider

5.1.C in the event that the Council is satisfied with evidence provided by the Developer that by the time the Affordable Housing Units are due to be delivered in accordance with clause 5.2.1 herein no Registered Provider is interested in taking the Affordable Housing Units then the Developer shall instead agree with the Council the Affordable Housing Contribution and upon payment of the said Affordable Housing Contribution the said Affordable Housing Units shall be released from the occupancy restriction provided for by this clause 5.1 and the dwellings shall be available thereon after as Open Market Units

5.2 Not to Occupy or allow cause or permit to be Occupied any of the Open Market Units other than those comprised in Phase 3A unless and until:

5.2.1 the Affordable Housing Units have been constructed to Completion and have been transferred (along with any associated car parking and amenity land and rights concerning Drainage and Services) to the Registered Provider PROVIDED THAT in the event that by the time the Affordable Housing Units have been constructed to Completion the Council is satisfied with evidence provided by the Developer that no Registered Provider is interested in taking the Affordable Housing Units then the Developer shall instead pay to the Council the Affordable Housing Contribution in lieu of transferring the said Affordable Housing Units to a Registered Provider and for the avoidance of any doubt from the date of payment of the Affordable Housing Contribution the said Affordable Units shall thereon after be available as Open Market Units

5.2.2 the extent of the Interim Landscaping Land and the Interim Landscaping Works have been agreed in writing with the Council

5.2.3 the construction details for a dinghy park have been agreed with the Council and the Dinghy Park Land has been laid out as a dinghy park in accordance with the agreed construction details and in the manner indicated on the Site Layout Plan to enable the said Dinghy Park Land to be used for the parking or storage of boats and their trailers

- 5.2.4 the construction details for a car park have been agreed with the Council and the Car Park Land has been laid out as a car park in accordance with the agreed construction details and in the manner indicated on the Site Layout Plan to enable the said Car Park Land to be used as a public car park
- 5.2.5 the Dinghy Park Lease and the Car Park Lease have been completed
- 5.2.6 the Contributions have been paid to the Council
- 5.2.7 the freehold of the Play Area Land has been transferred to the Council for the nominal consideration of one pound (£1.00)
- 5.2.8 the Play Area Clearance Works have been agreed with the Council
- 5.2.9 the Play Area Clearance Works Bond (including the amount) has been agreed with and submitted to the Council
- 5.2.10 a notice board containing information (including pictures) on the former shipyard has been agreed with the Council and WTC and erected in a position agreed with the Council and WTC
- 5.2.11 the Blue Land Landscaping Scheme has been agreed in writing with the Council
- 5.3 To allow unrestricted and unhindered pedestrian and vehicular access to the Business Units and the Dinghy Park Land over and across the Permissive Rights of Way and the land shown coloured red on the Site Layout Plan (the said land coloured red being proposed adopted highway maintainable at the public expense)
- 5.4 To allow unrestricted and unhindered pedestrian and vehicular access to the Car Park Land over and across the land shown coloured red on the Site Layout Plan
- 5.5 Not to use the Dinghy Park Land or allow cause or permit the Dinghy Park Land to be used for any purpose other than as a dinghy park for the parking or storage of boats and their trailers
- 5.6 Not to allow the Dinghy Park Land to be used for the parking or storage of any boats that exceed 5 metres in length
- 5.7 Not to use the Car Park Land or allow cause or permit the Car Park Land to be used for any purpose other than as a public car park (with or without a reasonable charge)
- 5.8 From the Date of Completion of the residential development to: (a) allow all members of the public to have full unhindered and unrestricted pedestrian access without charge at all times over the Permissive

Rights of Way in perpetuity; and (b) maintain the Permissive Rights of Way in perpetuity to ensure that members of the public have safe use of the Permissive Rights of Way

- 5.9 From the Date of Completion of the residential development to erect appropriate signs on the Site stating that it is not intended that the use of the Permissive Rights of Way should create any public rights of way (the location and wording of such signs to be agreed with the Council prior to their erection)
- 5.10 To carry out the Play Area Clearance Works by the earlier of: (a) 3 months from the Date of Completion; or (b) 30 calendar months from the date of this Agreement
- 5.11 Not to Commence the Development until the Method Statement has been agreed with the Council and then to carry out all construction, demolition and de-contamination works in accordance with the agreed Method Statement
- 5.12 Not to allow cause or permit any heavy goods vehicles delivering construction materials to the Site to enter the Site at any time other than:
 - 5.12.1 08.00 hours to 17.00 hours (inclusive) on Mondays to Fridays (but at no time on public holidays)
 - 5.12.2 09.00 hours to 13.00 hours on Saturdays
- 5.13 Occupiers and users of the Business Units shall not operate vehicles with a kerb mass (which for the purposes of this Agreement means the weight of the complete vehicle and all equipment including fuel and water but without the payload, driver or any crew) in excess of 2300 kilograms from such units in association with the carrying out of such business or operation. Such Occupiers and users shall use reasonable endeavours to ensure that routine deliveries/collections made by others from/to such units are made using vehicles with a kerb mass that is no greater than 2300 kilograms
- 5.14 To serve on the Council at the appropriate times the First Notice of Occupation the Second Notice of Occupation and the Date of Completion Notice
- 5.15 If by the time that 16 of the Open Market Units are Occupied the obligations that are required to be performed before that Occupation have not been so performed not to carry out or allow cause or permit to be carried out any further works to construct the Development unless and until those obligations have been performed
- 5.16 If for any reason the Dinghy Park Lease comes to an end before the contractual term expressed in the said Dinghy Park Lease expires, to observe and perform all of the requirements and limitations of the said Dinghy Park Lease

- 5.17 To carry out the agreed Interim Landscaping Works within 4 weeks of the Car Park Land and the Dinghy Park Land being available for use for their respective purposes in accordance with the provisions of this Agreement
- 5.18 To construct the Business Units to Completion (with the exception of any final internal fitting out works) by no later than 12 calendar months from the date of Final Occupation PROVIDED THAT in the event that the Council is satisfied with evidence provided by the Developer that funding for the construction of the Business Units is not available to enable construction to be completed within the said 12 calendar months then the obligation to construct the said Business Units to Completion (with the exception of any final internal fitting out works) shall be extended to 24 calendar months from Final Occupation
- 5.19 To complete the agreed Blue Land Landscaping Scheme within 3 calendar months of Final Occupation and from thereonin to allow all members of the public to have full and unrestricted access to the Blue Land for recreational purposes until such time as the said Blue Land is required for the construction of the Business Units or for any other development permitted by a planning permission
- 5.20 That once Commencement of the Development has taken place the Developer shall not carry out any development on the Site pursuant to the Original Consent
- 5.21 If for any reason the Car Park Lease comes to an end before the contractual term expressed in the said Car Park Lease expires, to observe and perform all of the requirements and limitations of the said Dinghy Park Lease

6. THE COUNCIL'S COVENANTS

The Council HEREBY COVENANTS with the Developer as follows:

- 6.1 That it will grant the Planning Permission immediately upon completion of this Agreement or as soon as practicably possible thereafter
- 6.2 That it will only use the First Contribution towards the First Contribution Purposes and will return to the Developer any unexpended part of the said contribution (together with interest accrued that relates to that unexpended part) on the first anniversary of the date of completion of the Play Area Clearance Works
- 6.3 That it will install the playground facilities referred to in the First Contribution Purposes no later than six months of completion of the Play Area Clearance Works
- 6.4 That it will only use the Second Contribution towards:

- (a) the ongoing maintenance of the playground equipment referred to at clause 6.3 above
- (b) the ongoing maintenance of the Play Area Land used as public amenity land

and will return to the Developer any unexpended part of the said contribution (together with interest accrued that relates to that unexpended part) on the twenty-fifth anniversary of the date that the Council received the said contribution

- 6.5 That it will take the transfer of the Play Area Land at the appropriate time as provided for by clause 5.2.7 herein and will thereupon grant to the Developer the Compound Licence
- 6.6 That it shall forever after the completion of the Play Area Clearance Works keep the Play Area Land as open space available for usual recreational use by members of the public and shall not use the Play Area Land for any other purpose whatsoever

7. THE WTC COVENANTS

- 7.1 WTC covenants with the Council and the Developer that it will enter into the Car Park Lease and the Dinghy Park Lease when required to do so

8. MISCELLANEOUS PROVISIONS

- 8.1 The Contributions shall be increased or decreased in line with any increase or decrease that occurs in the Index from a date one month before the date of this Agreement to a date three months before the date that each of the Contributions is due
- 8.2 Each of the Contributions shall be paid on the date that they are due and in the event that they are not paid on the date that they are due then those payments shall attract interest at the rate of 4% above the base lending rate of Barclays Bank Plc from the first day after payment is due until such time as the payment is made in full
- 8.3 Any consent or agreement or approval required to be given by any party under this Agreement shall not be unreasonably withheld

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

It is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999

IN WITNESS WHEREOF this Agreement has been sealed by the Council the Developer and WTC the day and year first before written

THE COMMON SEAL of)
COLCHESTER BOROUGH COUNCIL)
was hereunto affixed in the presence of:)



Authorized Signatory *A. Leary*
Mayor

Proper Officer

SIGNED as a DEED by)
TAYOR WIMPEY DEVELOPMENTS)
LIMITED acting by its attorneys in the)
presence of)

Witness signature: *Paul Lord*

Witness name: *P Lord*

Witness address: **TAYLOR WIMPEY UK LIMITED
TARTAN HOUSE ETNA ROAD
BURY ST EDMUNDS IP33 1JF**

THE COMMON SEAL of)
WIVENHOE TOWN COUNCIL)
was hereunto affixed in the presence of:)

C J THORNTON
L J TURNER

A. Stinson Mayor

AJ Stinson
TOWN CLERK

THE FIRST SCHEDULE

METHOD STATEMENT

The Method Statement shall include the following:

1. That the crushing of concrete on the Site is to take place at a point on hardstanding as far away from existing houses as is practicable
2. That the crushing of concrete on the Site shall only take place on weekdays (but not public holidays) and only take place between the hours of 08.00 hours to 17.00 hours (inclusive)
3. That any material relating to decontamination and demolition to be removed from the Site will be accumulated and moved from the Site in intensive bursts and to give not less than 4 days notice to residents on the affected access roads that the material is to be removed
4. That the access roads referred to at paragraph 3 of this Schedule shall be agreed with the Council and WTC before material is removed from the Site
5. That reasonable endeavours will be used to avoid driven piles on the Site in the vicinity of existing houses
6. That no construction work relating to this permission shall be carried out:
 - (a) on any Sunday or Bank/Public Holiday
 - (b) before 07.30 hours or after 18.00 hours on any weekday
 - (c) before 08.00 hours or after 13.00 hours on any Saturday
7. That there shall be washing facilities at the access to the Site to wash away mud (or any other site material) from the wheels of all vehicles that exit the site during the demolition and decontamination of the Development
8. That the approach roads to the Site being Brook Street, East Street, Queens Road and Valley Road will be swept clean of all mud (or other site material) not less than once a week and in any event as and when required by the Council

THE SECOND SCHEDULE

AFFORDABLE HOUSING TRANSFER

The Affordable Housing Transfer shall include the following:

1. That the Affordable Housing Units are sold:
 - 1.1 with full title guarantee
 - 1.2 with vacant possession
 - 1.3 at a price that ensures that the Registered Provider is able to charge rents that the Council reasonably considers to be affordable
2. A grant by the transferor to the Registered Provider of all rights of access and passage of Drainage and Services and all other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units
3. A covenant by the transferor that it will enter into the necessary adoption agreements with the local highway authority (for the adoption of the estate roads as publicly maintainable highway) and the water undertaker (for the adoption of the foul and surface water sewers as sewers maintainable by the water undertaker)
4. A reservation of all rights of access and passage of Drainage and Services and rights of entry reasonably necessary for the purposes of the Development
5. Such other covenants as the transferor may require for the maintenance of the Development once it is completed and the preservation of the appearance thereof

APPENDIX 1

CAR PARK LEASE AND DINGHY PARK LEASE



Dated

2011

- (1) TAYLOR WIMPEY DEVELOPMENTS LIMITED
- (2) WIVENHOE TOWN COUNCIL

Lease

relating to premises known as The Car Park Land forming part of land at and to the East and West of Walter Radcliffe Way, Wivenhoe

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CONTENTS

Lease Particulars

Clause		Page
	PART 1: LAND REGISTRY PARTICULARS.....	1
	PART 2: OTHER PARTICULARS	4
1	INTERPRETATION.....	5
2	DEMISE	8
3	THE TENANT'S COVENANTS.....	8
4	QUIET ENJOYMENT.....	16
5	INSURANCE.....	16
6	FORFEITURE.....	18
7	AGREED SURRENDER	18
8	MEDIATION	19
9	MISCELLANEOUS	19
10	EXECUTION.....	21

LAND REGISTRY PARTICULARS

PART 1: LAND REGISTRY PARTICULARS

LR1.	Date of lease	2011
LR2.	Title number(s)	
LR2.1	Landlord's title number(s)	TITLE NUMBER EX350392
LR2.2	Other title numbers	None
LR3.	Parties to this lease	
	Landlord	TAYLOR WIMPEY DEVELOPMENTS LIMITED (registered number 00643420) of St Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE.
	Tenant	WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Essex CO7 9AB
LR4	Property	<p>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.</p> <p>The premises (referred to in this Lease as "the Premises") including all the land for identification only coloured red on the Plan and marked as the Public Car Park (or such similar and adjacent areas as may have been constructed in the vicinity under the Planning Consent) ("the Car Park")</p>
LR5.	Prescribed statements etc	
LR5.1	Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act	Not applicable

1993) of the Land Registration
Rules 2003

LR5.2	This lease is made under, or by reference to, provisions of:	Not applicable
LR6.	Term for which the Property is leased	999 years from and including the date of this Lease (referred to in this Lease as "the Term Commencement Date") To and including []. (This term is referred to in this Lease as "the Contractual Term")
LR7.	Premium	None
LR8.	Prohibitions or restrictions on disposing of this lease	This Lease contains a provision that prohibits or restricts dispositions.
LR9.	Rights of acquisition etc	
LR9.1	Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land	None
LR9.2	Tenant's covenant to (or offer to) surrender this lease	None
LR9.3	Landlord's contractual rights to acquire this lease	None
LR10.	Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11.	Easements	
LR11.1	Easements granted by this lease for the benefit of the Property	None
LR11.2	Easements granted or reserved by this lease over the	None.

	Property for the benefit of other property	
LR12.	Estate rentcharge burdening the Property	None
LR13.	Application for standard form of restriction	None
LR14.	Declaration of trust where there is more than one person comprising the Tenant	Not applicable

PART 2: OTHER PARTICULARS

PARTICULARS

Date 2011

Landlord TAYLOR WIMPEY DEVELOPMENTS LIMITED (registered number 00643420) of St Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE.

Tenant WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Essex C07 9AB.

Landlord's Title The Landlord's title to the Premises registered at the Land Registry under title number(s) EX350392

Principal Rent A peppercorn if demanded

Rent Commencement Date The date of this Lease

THIS LEASE is made on the date set out in the Particulars
BETWEEN

(1) the Landlord; and

(2) the Tenant.

OPERATIVE PROVISIONS

1. **INTERPRETATION**

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

“Contractual Term” means 999 years commencing on and including the date of this lease

“Interest Rate” means the rate of 4% per year above the base lending rate of National Westminster Bank Plc or such other bank as the Landlord may from time to time nominate in writing

“Plan” means the plan annexed to this document

“Planning Acts” means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991

“Planning Consent” means the Planning Consent granted pursuant to application O/COL/01/1799

“Term” includes the Contractual Term and any period of holding over or extension or continuance of the Contractual Term by statute or common law

“VAT” means value added tax or any other tax of a similar nature and unless otherwise expressly stated all references to rents or other sums payable by the Tenant are exclusive of VAT

1.2 In this Lease:

Development

- 1.2.1 references to 'development' are references to development as defined by the Town and Country Planning Act 1990 section 55.

Gender and number

- 1.2.2 words importing one gender include all other genders; words importing the singular include the plural and vice versa

Headings

- 1.2.3 the clause, paragraph and schedule headings do not form part of this document and are not to be taken into account in its construction or interpretation

'Interest'

- 1.2.4 references to 'interest' are references to interest payable during the period from the date on which the payment is due to the date of payment both before and after any judgment at the Interest Rate then prevailing

'Interest Rate'

- 1.2.5 the 'Interest Rate' means the rate of 4% per year above the base lending rate of National Westminster Bank plc or such other bank as the Landlord may from time to time nominate in writing

Interpretation of 'consent' and 'approved'

- 1.2.6 references to 'consent of the Landlord' or words to similar effect are references to a prior written consent signed by or on behalf of the Landlord and references to the need for anything to be 'approved by the Landlord' or words to similar effect are references to the need for a prior written approval by or on behalf of the Landlord

Consent or approval of mortgagee

- 1.2.7 any provisions in this Lease referring to the consent or approval of the Landlord are to be construed as also requiring the consent or approval of any mortgagee of the Premises where that consent is required under a mortgage in existence at the date of this lease

Interpretation of 'the Landlord'

- 1.2.8 the expression 'the Landlord' includes the person or persons from time to time entitled to possession of the Premises when this Lease comes to an end

Interpretation of 'the last year of the Term' and 'the end of the Term'

1.2.9 references to the 'last year of the Term' are references to the actual last year of the Term however it determines and references to the 'end of the Term' are references to the end of the Term when and how it determines

Interpretation of 'the Tenant'

1.2.10 the 'Tenant' includes any person who is for the time being bound by the tenant covenants of this Lease and includes the Successors in Title to the Tenant

Interpretation of 'this Lease'

1.2.11 the expression 'this Lease' includes unless expressly stated to the contrary any document supplemental to or collateral with this document or entered into in accordance with this document

Joint and several liability

1.2.12 where any party to this Lease for the time being comprises two or more persons obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally

Losses

1.2.13 references to 'losses' are references to liabilities damages or losses awards of damages or compensation penalties costs disbursements and expenses arising from any claim demand action or proceedings

Obligations not to permit or suffer

1.2.14 any covenant by the Tenant not to do anything includes an obligation not to permit or suffer that thing to be done by another person where the Tenant is aware that the thing is being done

References to clauses and schedules

1.2.15 any reference in this document to a clause subclause paragraph subparagraph or schedule without further designation is to be construed as a reference to the clause subclause paragraph subparagraph or schedule of this document so numbered

References to rights of access

1.2.16 references to any right of the Landlord to have access to the Premises are to be construed as extending to any mortgagee of the Premises and to all persons authorised in writing by the Landlord and any mortgagee including agents professional advisors contractors workmen and others

References to statutes

1.2.17 unless expressly stated to the contrary any reference to a specific statute includes any statutory extensions or modification amendment or re-enactment of that statute and any regulations or orders made under that statute and any general reference to a statute includes any regulations or orders made under that statute

Terms from the 1995 Act

1.2.18 where the expression 'landlord covenants' 'tenant covenants' or 'authorised guarantee agreement' are used in this Lease they are to have the same meaning as is given by the 1995 Act section 28(1)

2. DEMISE

The Landlord demises the Premises to the Tenant with full title guarantee to hold to the Tenant for the Contractual Term yielding and paying the Principal Rent without any deduction in advance on the anniversary of the commencement of the term the first payment to be paid on the date of this document

3. THE TENANT'S COVENANTS

3.1 Rent

3.1.1 The Tenant must pay the rent, if demanded, on the date and in the manner set out in this Lease and must not exercise or seek to exercise any right or claim to withhold rent or any right or claim to legal or equitable set-off

3.2 Outgoings and VAT

The Tenant must pay and must indemnify the Landlord against:

3.2.1 all rates taxes assessments duties charges impositions and outgoings that are now or may at any time during the Term be charged assessed or imposed on the Premises or on the owner or occupier of them excluding any payable by the Landlord occasioned by receipt of the rent or by any disposition of or dealing with this Lease or ownership of any interest reversionary to the interest created by it

- 3.2.2 all VAT that may from time to time be charged on the rent or other sums payable by the Tenant under this Lease; and
- 3.2.3 all VAT incurred in relation to any costs that the Tenant is obliged to pay or in respect of which he is required to indemnify the Landlord under the terms of this Lease save where such VAT is recoverable or available for set-off by the Landlord as input tax

3.3 **Repair and cleaning**

- 3.3.1 The Tenant must repair the Premises and keep them in good repair and in particular where any part of the Premises is painted to repaint the same with good quality paint in the same colour as originally painted every three years further when replacing or repairing any hard surfaced areas must use the same materials and finishes unless unobtainable
- 3.3.2 The Tenant must replace any landlord's fixtures and fittings in the Premises that are beyond repair at any time during or at the end of the Term
- 3.3.3 The Tenant must keep the Premises clean and tidy and clear of all rubbish and in particular must remove any dumped or unsightly items the Tenant must not bring on to the Premises any bins or skips save where the Landlord's consent has been given
- 3.3.4 The Tenant must not cause any land roads or pavements abutting the Premises to be untidy or dirty and in particular but without prejudice to the generality of the above must not deposit refuse or other materials on them
- 3.3.5 Where the use of any of the Conduits or other things is common to the Premises and other property the Tenant must be responsible for and indemnify the Landlord against all sums due from the owner tenant or occupier of the Premises in relation to those Conduits boundary structures or other things and must undertake all work in relation to them that is his responsibility

3.4 **The Car Park**

The Tenant must not:

- 3.4.1 use the Car Park save for a Public Car Park without the prior written consent of the Landlord;
- 3.4.2 allocate the use of any space to any person;

- 3.4.3 treat in any different way the residents and occupiers of Cooks Shipyard from other members of the public;
- 3.4.4 save as set out below or with the consent of the Landlord restrict the hours during which the Car Park can be used;
- 3.4.5 use the Car Park for commercial vehicles boats and trailers or caravans or unroadworthy vehicles

The Tenant must:

- 3.4.6 retain and maintain in good condition the surface kerbs bollards walls racks bins signs or surface markings as may have been in existence at the commencement of the Term;
- 3.4.7 use all reasonable endeavours to remove any dumped or unroadworthy vehicles within 28 days of their becoming known to the Tenant and clean and clear rubbish from the Car park on not less than a quarterly basis taking steps to remove any graffiti there;
- 3.4.8 retain the Car Park as a visitors facility to Cooks Shipyard and Wivenhoe Town;

The Tenant may:

- 3.4.9 charge a reasonable fee for the use of spaces within the Car Park;
- 3.4.10 prohibit parking for continuous periods in excess of 7 days;
- 3.4.11 lock the Car Park between 0600 to 0800 or such other hours as may be agreed with the Landlord to prevent the use of the Car Park as a commuter facility;
- 3.4.12 provide up to four spaces for disabled users;
- 3.4.13 use all such reasonable means as may be appropriate to further the objectives set out at **clauses 3.4.9** and **3.4.10** and to prevent the Car Park being used as a commuter or residents only facility
- 3.4.14 close the car park and request the removal of any vehicles, both of which with the prior written agreement of the Landlord (such agreement to be in the Landlord's absolute discretion)
- 3.4.15 subject to obtaining the consent referred to in **clause 3.5.2** install at its own cost appropriate meters/machinery to enable the collection of fees referred to at **clause 3.4.9** above together with such necessary signage relating to parking regulations in a form to be approved by the

Landlord acting reasonably and pay any charges relating to the use of the meters/machinery that may be incurred

3.5 **Waste and Alterations**

3.5.1 The Tenant must not commit any waste make any addition to the Premises unite the Premises with any adjoining premises or make any alterations to the Premises save as required or permitted by this Lease

3.5.2 The Tenant must not make any connection with any conduits except with the consent of the Landlord and competent authority undertaker or supplier

3.6 **Statutory Obligations**

3.6.1 The Tenant must comply in all respects with the requirements of any statutes applicable to the Premises or the trade or business for the time being carried on their and any other obligations so applicable imposed by law or by any byelaws

3.7 **Particular Obligations**

3.7.1 Without prejudice to the generality of **clause 3.6.1** the Tenant must execute all works and provide and maintain all arrangements on or in respect of the Premises or the use to which the Premises are being put that are required in order to comply with the requirements of any statute already or in the future to be passed or the requirements of any government department local authority or other public or competent authority or court of competent jurisdiction regardless of whether such requirements are imposed on the owner the occupier or any other person

3.7.2 With prejudice to the generality of **clause 3.6.1** the Tenant must not do in or near the Premises anything by reason of which the Landlord may incur any losses under any statute

3.8 **Use**

The Tenant must not use the Premises for any purpose other than as set out in this Lease

3.9 **Nuisance**

The Tenant must not do anything on the Premises or allow anything to remain on them that may be or become or cause a nuisance or annoyance disturbance inconvenience injury or damage to the Landlord or his tenants or the owners or occupiers of adjacent or neighbouring premises

3.10 **Auctions Trade and Immoral Purposes**

The Tenant must not use the Premises for any auction sale any dangerous noxious noisy or inoffensive trade business manufacture or occupation or for any illegal or immoral act or purpose

3.11 **Residential Use Sleeping and Animals**

The Tenant must not use the Premises as sleeping accommodation or for residential purposes or keep any animal on the Premises

3.12 **Entry to Inspect and Notice to Repair**

3.12.1 The Tenant must permit the Landlord on reasonable notice during normal business hours except in emergency:

3.12.1.1 to enter the Premises to ascertain whether or not the covenants and conditions of this Lease have been observed and performed;

3.12.1.2 to view the state of repair and condition of the Premises; and

3.12.1.3 to give to the Tenant a notice specifying the Works required to remedy any breach of the Tenant's obligations in this Lease ("a notice to repair")

Works to be carried out

3.12.2 The Tenant must immediately carry out the works specified in a notice to repair

Landlord's power in default

3.12.3 If within one month of the service of a notice to repair the Tenant has not started to execute the work referred to in the notice or is not proceeding diligently with it or if the Tenant fails to finish the work within four months or the Tenant is unlikely to finish the work within that period the Tenant must permit the Landlord to enter the Premises to execute the outstanding work and must within 14 days of a written demand pay to the Landlord the cost of so doing and all expenses incurred by the Landlord including legal costs and surveyors fees

3.13 **Alienation**

3.13.1 The Tenant must not hold the Premises on trust for another the Tenant must not part with possession of the whole or any part of the Premises

or permit another to occupy them or any part of them except pursuant to a transaction permitted by and effected in accordance with the provisions of this Lease

- 3.13.2 The Tenant must not assign sublet or charge part only of the Premises
- 3.13.3 The Tenant must not assign sublet or charge the whole of the Premises without the prior written consent of the Landlord such consent not to be unreasonably withheld
- 3.13.4 The parties agree that upon any approved assignment the Tenant shall not be obliged to enter into an authorised guarantee agreement under the terms of the Landlord and Tenant (Covenants) Act 1995, and that on any approved sub-letting of all or part of the premises it shall not be unreasonable for the Tenant to charge a rent not exceeding the market rent of the sub-let premises from time to time
- 3.13.5 To lodge or procure to be lodged with the Landlord (or the Landlord's Solicitors if the Landlord shall so direct) for the purpose of registration:
 - (a) all assignments and transfers of the term created in the Premises or any part;
 - (b) all underleases of and all charges by way of legal mortgage upon the Premises or any part and all transfers; and
 - (c) all other instruments made for effecting or evidencing any devolution of any legal estate in the Premises whether of the term hereby created or any sub-term or other derivative interest in the Premises or any part thereof and including probates and letters of administration and surrenders of any sub-terms and discharges of any charges by way of legal mortgage or copies of any of the above certified copies of the originals.
- 3.13.6 To supply on registering any such instrument a copy of any plan referred to and in the case of probates or letters of administration a written statement of the number of the Premises the title to which devolves thereunder.
- 3.13.7 To effect such lodgement within one month of the execution of any such instrument or in the case of probates or letters of administration within one month of the grant thereof.

3.13.8 On lodging any such instrument or particulars as aforesaid to pay to the Landlord (or the Landlord's Solicitors if application) a reasonable fee to cover the registration of such instrument or particulars.

3.14 **Costs of Applications Notices and Recovery of Arrears**

The Tenant must pay to the Landlord on an indemnity basis all costs fees charges disbursements and expenses including without prejudice to the generality of the above those payable to counsel solicitors surveyors and bailiffs properly and reasonably incurred by the Landlord in relation to or incidental to:

3.14.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease whether it is granted or refused or offered subject to any lawful qualification or condition or whether the application is withdrawn unless the refusal qualification or condition is unlawful whether because it is unreasonable or otherwise;

3.14.2 the contemplation preparation and service of a notice under the Law of Property Act 1925 section 146 or the contemplation or taking of proceedings under sections 146 or 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;

3.14.3 the recovery or attempted recovery of arrears of rent or other sums due under this Lease; and

3.14.4 any steps taken in contemplation of or in connection with the preparation and service of a schedule of dilapidations during or after the end of the Term

3.15 **Planning**

3.15.1 The Tenant must observe and comply with the provisions and requirements of the Planning Acts affecting the Premises and their use and must indemnify the Landlord and keep him indemnified both during and following the end of the Term against all losses in respect of any contravention of those Acts

3.15.2 The Tenant must not make any application for planning permission relating to the Premises without the written consent of the Landlord

3.16 **Indemnities**

The Tenant must keep the Landlord fully indemnified against all Losses arising directly or indirectly out of any act omission or negligence of the Tenant or any persons at the Premises expressly or implied with the Tenant's authority and under his control or any breach or non-observance by the Tenant of the

covenants conditions or other provisions of this Lease or any of the matters to which this demise is subject

3.17 **Encroachments**

The Tenant must take all reasonable steps to prevent the construction of any new path passage pipe or the making of any encroachment or the acquisition of any easement in relation to the Premises and must notify the Landlord immediately if any such thing is constructed encroachment is made or easement acquired or if any attempt is made to encroach or acquire an easement at the request of the Landlord the Tenant must adopt such means as are reasonably required to prevent the making of any encroachment or the acquisition of any easement

3.18 **Yielding Up**

At the end of the Term the Tenant must yield up the Premises with vacant possession decorated and repaired in accordance with and in the condition required by the provisions of this Lease give up all keys of the Premises to the Landlord remove tenant's fixtures and fittings if requested to do so by the Landlord

3.19 **Interest on Arrears**

The Tenant must pay interest on the rents or other sums due under this Lease that are not paid within 14 days of the date due whether formally demanded or not nothing in this clause entitles the Tenant to withhold or delay any payment of the rent or any other sum due under this Lease or affects the rights of the Landlord in relation to any non-payment

3.20 **Statutory Notices**

The Tenant must give full particulars to the Landlord of any notice direction order or proposal relating to the Premises made given or issued to the Tenant by any government department or local public regulatory or other authority or court within 7 days of receipt and if so requested by the Landlord must produce it to the Landlord the Tenant must without delay take all necessary steps to comply with the notice direction or order at the request of the Landlord but at his own cost the Tenant must make or join with the Landlord in making any objection or representation the Landlord deems expedient against or in respect of any notice direction order or proposal

3.21 **Keyholders/Supervisors**

The Tenant must ensure that at all times the Landlord has written notice of the name home address and home telephone number of at least 2 keyholders or supervisors of the Premises

3.22 **Consent to the Landlord's Release**

The Tenant must not unreasonably withhold consent to a request made by the Landlord under the 1995 Act section 8 for a release from all or any of the landlord covenants of this Lease

4. **QUIET ENJOYMENT**

The Landlord covenants with the Tenant to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for him

5. **INSURANCE**

5.1 **Definitions**

In this **clause 5** the terms defined in this **clause 5.1** have the meanings specified

"Insured Risks"

means the risks of loss or damage by fire lighting explosion aircraft including articles dropped from aircraft riot civil commotion malicious persons earthquake storm tempest flood bursting and overflowing of water pipes tanks and other apparatus and impact by boats or road vehicles and any other risks the Landlord from time to time by notice to the Tenant reasonably requires the Tenant to insure against

"Permissions"

means references to all the planning permissions and other permits and consents that may be required under the Planning Acts or other statutes for the time being in force to enable the Premises to be rebuilt and reinstated lawfully in the event of any damage or destruction

5.2 **Covenant to Insure**

- 5.2.1 The Tenant covenants with the Landlord to insure the Premises and keep them insured against damage or destruction by the Insured Risks in the joint names of the Landlord and the Tenant and of any other persons the Landlord from time to time by notice to the Tenant reasonably requires in an amount equal to the full cost of rebuilding and reinstating the Premises as new in the event of their total destruction including VAT architects' surveyors' and other professional fees payable on application for any permissions the cost of debris removal demolition site clearance and any works that may be required by statute and incidental expenses
- 5.2.2 The Tenant covenants with the Landlord to effect and maintain such insurance, in such amount as the Landlord reasonably and properly by notice to the Tenant requires (and in any event no less than £5 million for the aggregate of this and any other leases granted by the Landlord to the Tenant out of the Landlord's Title Number) in respect of the Tenant's liability to indemnify the Landlord against losses arising from the Tenant's acts omissions or negligence
- 5.2.3 All insurance must be effected in a substantial and reputable insurance office or with such underwriters and through such agency as the Landlord from time to time by notice to the Tenant reasonably requires such approval not to be unreasonably withheld or delayed

5.3 **Tenant's Further Insurance Covenants**

The Tenant covenants with the Landlord to observe and perform the requirements of this **clause 5.3**:

- 5.3.1 the Tenant must comply with all requirements and recommendations of the insurers;
- 5.3.2 the Tenant must not do or omit to do anything that could cause any insurance policy effected in accordance with this Lease to become wholly or partly void or voidable;
- 5.3.3 the Tenant must comply with all requirements and recommendations of the insurers;
- 5.3.4 the Tenant must immediately give notice to the Landlord of anything that might affect any insurance policy effected in accordance with this Lease and of any destruction or damage to the Premises whether or not caused by one or more of the Insured Risks;

5.3.5 the Tenant must produce to the Landlord on demand every insurance policy effected in accordance with this Lease and the receipt for the then current year's premium and if so required must supply the Landlord with a copy of every such policy

5.4 **Reinstatement**

If and whenever during the Term the Premises are damaged or destroyed by one or more of the Insured Risks then:

5.4.1 all money received under any insurance policy effected in accordance with this Lease must be placed in an account in the joint names of the Landlord and the Tenant at a bank designated by the Landlord [acting reasonably] and must subsequently be released to the Tenant from that account by instalments against architect's certificates or other evidence acceptable to the Landlord whose acceptance may not be unreasonably withheld of expenditure actually incurred by the Tenant in rebuilding and reinstating the Premises; and

5.4.2 the Tenant must with all convenient speed obtain the Permissions and as soon as they have been obtained rebuild and reinstate the Premises in accordance with them making up out of his own money any difference between the cost of rebuilding and reinstatement and the money received from the insurance policy

6. **FORFEITURE**

If and whenever during the Term:

6.1 the Tenant breaches any covenant or other term of this Lease;

the Landlord may at any time re-enter the Premises or any part of them in the name of the whole even if any previous right of re-entry has been waived and then the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to the Landlord against the Tenant in respect of any breach of covenant or other term of this Lease including the breach in respect of which the re-entry is made

7. **AGREED SURRENDER**

If the Tenant notifies the Landlord that it is unable to regulate or manage the Premises then (without prejudice to the right of the Landlord to enforce the covenants to that effect in this Lease) the Landlord may (but shall not be obliged to) accept a surrender of the Premises at the cost of the Tenant

8. **MEDIATION**

8.1 Any dispute arising out of or in connection with this lease shall, at first instance, be referred to a mediator for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the parties fail to agree within fourteen days, either party, upon giving written notice, may apply to the President or the Deputy President, for the time being, of the Royal Institute of Chartered Surveyors, for the appointment of a mediator.

8.2 Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty-eight days, apply to the President or the Deputy President, for the time being, of the Royal Institute of Chartered Surveyors, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Royal Institution of Chartered Surveyors, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales. The ruling of the arbitrator shall be final save on a point of law.

9. **MISCELLANEOUS**

9.1 **Exclusion of Warranty as to Use**

9.1.1 Nothing in this Lease is intended to confer any benefit on any person who is not a party to it

9.1.2 Nothing in this Lease shall grant to the Tenant any Riparian Rights to the River Colne or its foreshore and all such rights including the right to create or refuse berthing facilities along the river frontage of Cooks Shipyard shall remain vested in the Landlord

9.2 **Compensation on Vacating Excluded**

Any statutory right of the Tenant to claim compensation from the Landlord on vacating the Premises is excluded to the extent that the law allows

9.3 **Notices**

9.3.1 **Form and services of notices**

A notice under this Lease must be in writing and unless the receiving party or his authorised agent acknowledges receipt is valid if and only if:

9.3.1.1 it is given by hand sent by registered post or recorded delivery or sent by fax provided a confirmatory copy is given by hand or sent by registered post or recorded delivery on the same day; and

9.3.1.2 it is served

(a) where the receiving party is a company incorporated within Great Britain at the registered office; or

(b) where the receiving party is the Tenant and the Tenant is not such a company at the Premises; or

(c) where the receiving party is the Landlord and the Landlord is not such a company at the Landlord's address shown in this Lease or at any address specified in a notice given by the Landlord to the Tenant

9.3.2 **Deemed delivery**

9.3.2.1 Unless it is returned through the Royal Mail undelivered a notice sent by registered post or recorded delivery is to be treated as served on the third working day after posting whenever and whether or not it is received

9.3.2.2 A notice sent by fax is to be treated as served on the day upon which it is sent or the next working day where the fax is sent after 1600 hours or on a day that is not a working day whenever and whether or not it or the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail undelivered

9.3.2.3 References to "a working day" are references to a day when the United Kingdom clearing banks are open for business in the City of London

9.3.3 **Joint recipients**

If the receiving party consists of more than one person a notice to one of them is notice to all

9.4 **Agreement for Lease**

It is certified that there is no agreement for lease to which this document gives effect

10. **EXECUTION**

The parties have executed this Lease as a deed and it is delivered on the date set out in the Particulars.

THE COMMON SEAL of)
WIVENHOE TOWN COUNCIL was)
affixed to this deed in the presence of:)

Town Mayor

Town Clerk

EXECUTED as a deed by)
TAYLOR WIMPEY DEVELOPMENTS LIMITED)
acting by a director and its secretary)
or two directors)

Director

Director / Secretary

Dated

2011

- (1) TAYLOR WIMPEY DEVELOPMENTS LIMITED
- (2) WIVENHOE TOWN COUNCIL

Lease

relating to premises known as The Dinghy Park, forming part of land at
and to the East and West of Walter Radcliffe Way, Wivenhoe

Eversheds LLP
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CONTENTS

Lease Particulars

Clause		Page
	PART 1: LAND REGISTRY PARTICULARS.....	3
	PART 2: OTHER PARTICULARS	6
1	INTERPRETATION.....	1
2	DEMISE	4
3	THE TENANT'S COVENANTS.....	4
4	QUIET ENJOYMENT.....	12
5	INSURANCE.....	12
6	FORFEITURE.....	14
7	AGREED SURRENDER	14
8	MEDIATION	14
9	MISCELLANEOUS	15
10	RIGHTS GRANTED	16
11	EXECUTION.....	16

LAND REGISTRY PARTICULARS

PART 1: LAND REGISTRY PARTICULARS

LR1.	Date of lease	2011
LR2.	Title number(s)	
LR2.1	Landlord's title number(s)	TITLE NUMBER EX350392
LR2.2	Other title numbers	None
LR3.	Parties to this lease	
	Landlord	TAYLOR WIMPEY DEVELOPMENTS LIMITED (registered number 00643420) of St Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE.
	Tenant	WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Essex C07 9AB.
LR4	Property	In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail. The premises (referred to in this Lease as "the Premises") including all land for identification only coloured pink on the Plan and marked as the Dinghy Park (or such similar adjacent area as may have been constructed in the vicinity under the Planning Consent) ("the Dinghy Park")
LR5.	Prescribed statements etc	
LR5.1	Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act	Not applicable

**1993) of the Land Registration
Rules 2003**

LR5.2	This lease is made under, or by reference to, provisions of:	Not applicable
LR6.	Term for which the Property is leased	999 years from and including the date of this Lease (referred to in this Lease as "the Term Commencement Date") To and including []. (This term is referred to in this Lease as "the Contractual Term")
LR7.	Premium	None
LR8.	Prohibitions or restrictions on disposing of this lease	This Lease contains a provision that prohibits or restricts dispositions.
LR9.	Rights of acquisition etc	
LR9.1	Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land	None
LR9.2	Tenant's covenant to (or offer to) surrender this lease	None
LR9.3	Landlord's contractual rights to acquire this lease	None
LR10.	Restrictive covenants given in this lease by the Landlord in respect of land other than the Property	None
LR11.	Easements	
LR11.1	Easements granted by this lease for the benefit of the Property	The rights specified in clause 9
LR11.2	Easements granted or reserved by this lease over the	None.

**Property for the benefit of
other property**

- | | | |
|--------------|---|----------------|
| LR12. | Estate rentcharge burdening
the Property | None |
| LR13. | Application for standard form
of restriction | None |
| LR14. | Declaration of trust where
there is more than one person
comprising the Tenant | Not applicable |

PART 2: OTHER PARTICULARS

PARTICULARS

Date 2011

Landlord TAYLOR WIMPEY DEVELOPMENTS LIMITED (registered number 00643420) of St Davids Court, Union Street, Wolverhampton, West Midlands WV1 3JE.

Tenant WIVENHOE TOWN COUNCIL of 77 High Street, Wivenhoe, Essex CO7 9AB

Landlord's Title The Landlord's title to the Premises registered at the Land Registry under title number(s) EX350392

Principal Rent A peppercorn if demanded

Rent Commencement Date The date of this Lease

THIS LEASE is made on the date set out in the Particulars

BETWEEN

- (1) the Landlord; and
- (2) the Tenant.

OPERATIVE PROVISIONS

1. INTERPRETATION

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

"Contractual Term"	means 999 years commencing on and including the date hereof of this lease
"Interest Rate"	means the rate of 4% per year above the base lending rate of National Westminster Bank Plc or such other bank as the Landlord may from time to time nominate in writing
"Plan"	means the plan annexed to this document
"Planning Acts"	means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991
"Planning Consent"	means the Planning Consent granted pursuant to application O/COL/01/1799
"Shared Access"	the shared access area leading to the Premises and delineated with cross stitching on the Plan
"Term"	includes the Contractual Term and any period of holding over or extension or continuance of the Contractual Term by statute or common law
"VAT"	means value added tax or any other tax of a similar nature and unless otherwise expressly stated all references to rents or other sums payable by the Tenant are exclusive of VAT

1.2 In this Lease:

Development

- 1.2.1 references to 'development' are references to development as defined by the Town and Country Planning Act 1990 section 55.

Gender and number

- 1.2.2 words importing one gender include all other genders; words importing the singular include the plural and vice versa

Headings

- 1.2.3 the clause, paragraph and schedule headings do not form part of this document and are not to be taken into account in its construction or interpretation

'Interest'

- 1.2.4 references to 'interest' are references to interest payable during the period from the date on which the payment is due to the date of payment both before and after any judgment at the Interest Rate then prevailing

'Interest Rate'

- 1.2.5 'The Interest Rate' means the rate of 4% per year above the base lending rate of National Westminster Bank Plc or such other bank as the Landlord may from time to time nominate in writing

Interpretation of 'consent' and 'approval'

- 1.2.6 references to 'consent of the Landlord' or words to similar effect are references to a prior written consent signed by or on behalf of the Landlord and references to the need for anything to be 'approved by the Landlord' or words to similar effect are references to the need for a prior written approval by or on behalf of the Landlord

Consent or approval of mortgagee

- 1.2.7 any provisions in this Lease referring to the consent or approval of the Landlord are to be construed as also requiring the consent or approval of any mortgagee of the Premises where that consent is required under a mortgage in existence at the date of this lease

Interpretation of 'the Landlord'

- 1.2.8 the expression 'the Landlord' includes the person or persons from time to time entitled to possession of the Premises when this Lease comes to an end

Interpretation of 'the last year of the Term' and 'the end of the Term'

- 1.2.9 references to the 'last year of the Term' are references to the actual last year of the Term however it determines and references to the 'end of the Term' are references to the end of the Term when and how it determines

Interpretation of 'the Tenant'

- 1.2.10 the 'Tenant' includes any person who is for the time being bound by the tenant covenants of this Lease and includes the Successors in Title to the Tenant

Interpretation of 'the Lease'

- 1.2.11 the expression 'this Lease' includes unless expressly stated to the contrary any document supplemental to or collateral with this document or entered into in accordance with this document

Joint and several liability

- 1.2.12 where any party to this Lease for the time being comprises two or more persons obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally

Losses

- 1.2.13 references to 'losses' are references to liabilities damages or losses awards of damages or compensation penalties costs disbursements and expenses arising from any claim demand action or proceedings

Obligations not to permit or suffer

- 1.2.14 any covenant by the Tenant not to do anything includes an obligation not to permit or suffer that thing to be done by another person where the Tenant is aware that the thing is being done

References to Clauses and Schedules

- 1.2.15 any reference in this document to a clause subclause paragraph subparagraph or schedule without further designation is to be

construed as a reference to the clause subclause paragraph subparagraph or schedule of this document so numbered

References to rights of access

1.2.16 references to any right of the Landlord to have access to the Premises are to be construed as extending to any mortgagee of the Premises and to all persons authorised in writing by the Landlord and any mortgagee including agents professional advisors contractors workmen and others

References to statutes

1.2.17 unless expressly stated to the contrary any reference to a specific statute includes any statutory extensions or modification amendment or re-enactment of that statute and any regulations or orders made under that statute and any general reference to a statute includes any regulations or orders made under that statute

Terms from the 1995 Act

1.2.18 where the expression 'landlord covenants' 'tenant covenants' or 'authorised guarantee agreement' are used in this Lease they are to have the same meaning as is given by the 1995 Act section 28(1)

2. DEMISE

The Landlord demises the Premises to the Tenant with full title guarantee to hold to the Tenant for the Contractual Term yielding and paying the Principal Rent without any deduction in advance on the anniversary of the commencement of the term the first payment to be paid on the date of this document.

3. THE TENANT'S COVENANTS

3.1 Rent

The Tenant must pay the rent, if demanded, on the date and in the manner set out in this Lease and must not exercise or seek to exercise any right or claim to withhold rent or any right or claim to legal or equitable set-off

3.2 Outgoings and VAT

The Tenant must pay and must indemnify the Landlord against:

3.2.1 all rates taxes assessments duties charges impositions and outgoings that are now or may at any time during the Term be charged assessed or imposed on the Premises or on the owner or occupier of them

excluding any payable by the Landlord occasioned by receipt of the rent or by any disposition of or dealing with this Lease or ownership of any interest reversionary to the interest created by it

3.2.2 all VAT that may from time to time be charged on the rent or other sums payable by the Tenant under this Lease; and

3.2.3 all VAT incurred in relation to any costs that the Tenant is obliged to pay or in respect of which he is required to indemnify the Landlord under the terms of this Lease save where such VAT is recoverable or available for set-off by the Landlord as input tax

3.3 **Repair and cleaning**

3.3.1 The Tenant must repair the Premises and keep them in good repair and in particular where any part of the Premises is painted to repaint the same with good quality paint in the same colour as originally painted every three years further when replacing or repairing any hard surfaced areas must use the same materials and finishes unless unobtainable

3.3.2 The Tenant must replace any landlord's fixtures and fittings in the Premises that are beyond repair at any time during or at the end of the Term

3.3.3 The Tenant must keep the Premises clean and tidy and clear of all rubbish and in particular must remove any dumped or unsightly items the Tenant must not bring on to the Premises any bins or skips save where the Landlord's consent has been given

3.3.4 The Tenant must not cause any land roads or pavements abutting the Premises to be untidy or dirty and in particular but without prejudice to the generality of the above must not deposit refuse or other materials on them

3.3.5 Where the use of any of the Conduits or other things is common to the Premises and other property the Tenant must be responsible for and indemnify the Landlord against all sums due from the owner tenant or occupier of the Premises in relation to those Conduits boundary structures or other things and must undertake all work in relation to them that is his responsibility

3.4 **The Dinghy Park**

The Tenant must not:

- 3.4.1 use the Dinghy Park other than as a Dinghy Park without the Landlord's prior written consent;
- 3.4.2 use any of the spaces within the Dinghy Park for any purpose other than the storage of a single dinghy (meaning boats of up to 5 metres in length) and its trailer provided that whilst the dinghy is in use, the owner may park one private motor vehicle with the dinghy trailer;
- 3.4.3 allocate the use of any space in the Dinghy Park for a period of more than one year without annual review;
- 3.4.4 allow boats or trailers to remain or impede the Shared Access;
- 3.4.5 allow any vehicles (whether or not associated with the Dinghy Park users) to access it by way of the Shared Access save that the Tenant may access the Dinghy Park over the Shared Access on foot only together with the right to pull dinghy trailers
- 3.4.6 make any differential charges for spaces between residents at Cooks Shipyard and others

The Tenant must:

- 3.4.7 actively manage the use and allocation of spaces within the Dinghy Park imposing such rules and regulations as will prevent its use becoming a nuisance to neighbouring occupiers on Cooks Shipyard;
- 3.4.8 retain and maintain any bollards tie down loops or features and surface marking features delineating any dinghy space;
- 3.4.9 allocate the use of all the spaces within the Dinghy Park at least annually and at that time give priority to applicants who are resident at Cooks Shipyard (for the first three years from the date of this lease and from the third anniversary of that date to all residents of Wivenhoe on a first come first serve basis.) Priority shall be given to existing allocatees who request renewal of their spaces;

The Tenant may:

- 3.4.10 charge a fair licence fee to all persons using the Dinghy Park;
- 3.4.11 delegate management of the Dinghy Park to Wivenhoe Sailing Club or similar organisation with the written consent of the Landlord

3.5 **Waste and Alterations**

3.5.1 The Tenant must not commit any waste make any addition to the Premises unite the Premises with any adjoining premises or make any alterations to the Premises save as required or permitted by this Lease

3.5.2 The Tenant must not make any connection with any conduits except with the consent of the Landlord and competent authority undertaker or supplier

3.6 **Statutory Obligations**

3.6.1 The Tenant must comply in all respects with the requirements of any statutes applicable to the Premises or the trade or business for the time being carried on their and any other obligations so applicable imposed by law or by any byelaws

3.7 **Particular Obligations**

3.7.1 Without prejudice to the generality of **clause 3.6.1** the Tenant must execute all works and provide and maintain all arrangements on or in respect of the Premises or the use to which the Premises are being put that are required in order to comply with the requirements of any statute already or in the future to be passed or the requirements of any government department local authority or other public or competent authority or court of competent jurisdiction regardless of whether such requirements are imposed on the owner the occupier or any other person

3.7.2 With prejudice to the generality of **clause 3.6.1** the Tenant must not do in or near the Premises anything by reason of which the Landlord may incur any losses under any statute

3.8 **Use**

The Tenant must not use the Premises for any purpose other than as set out in this Lease except with the written consent of the Landlord

3.9 **Nuisance**

The Tenant must not do anything on the Premises or allow anything to remain on them that may be or become or cause a nuisance or annoyance disturbance inconvenience injury or damage to the Landlord or his tenants or the owners or occupiers of adjacent or neighbouring premises

3.10 **Auctions Trade and Immoral Purposes**

The Tenant must not use the Premises for any auction sale any dangerous noxious noisy or inoffensive trade business manufacture or occupation or for any illegal or immoral act or purpose

3.11 **Residential Use Sleeping and Animals**

The Tenant must not use the Premises as sleeping accommodation or for residential purposes or keep any animal on the Premises

3.12 **Entry to Inspect and Notice to Repair**

3.12.1 The Tenant must permit the Landlord on reasonable notice during normal business hours except in emergency:

3.12.1.1 to enter the Premises to ascertain whether or not the covenants and conditions of this Lease have been observed and performed;

3.12.1.2 to view the state of repair and condition of the Premises; and

3.12.1.3 to give to the Tenant a notice specifying the Works required to remedy any breach of the Tenant's obligations in this Lease ("a notice to repair")

Works to be carried out

3.12.2 The Tenant must immediately carry out the works specified in a notice to repair

Landlord's power in default

3.12.3 If within one month of the service of a notice to repair the Tenant has not started to execute the work referred to in the notice or is not proceeding diligently with it or if the Tenant fails to finish the work within four months or the Tenant is unlikely to finish the work within that period the Tenant must permit the Landlord to enter the Premises to execute the outstanding work and must within 14 days of a written demand pay to the Landlord the cost of so doing and all expenses incurred by the Landlord including legal costs and surveyors fees

3.13 **Alienation**

3.13.1 The Tenant must not hold the Premises on trust for another the Tenant must not part with possession of the whole or any part of the Premises or permit another to occupy them or any part of them except pursuant

to a transaction permitted by and effected in accordance with the provisions of this Lease

- 3.13.2 The Tenant must not assign sublet or charge part only of the Premises
- 3.13.3 The Tenant must not assign sublet or charge the whole of the Premises without the prior written consent of the Landlord
- 3.13.4 To lodge or procure to be lodged with the Landlord (or the Landlord's Solicitors if the Landlord shall so direct) for the purpose of registration:
 - (a) all assignments and transfers of the term created in the Premises or any part;
 - (b) all underleases of and all charges by way of legal mortgage upon the Premises or any part and all transfers; and
 - (c) all other instruments made for effecting or evidencing any devolution of any legal estate in the Premises whether of the term hereby created or any sub-term or other derivative interest in the Premises or any part thereof and including probates and letters of administration and surrenders of any sub-terms and discharges of any charges by way of legal mortgage or copies of any of the above certified copies of the originals.
- 3.13.5 To supply on registering any such instrument a copy of any plan referred to and in the case of probates or letters of administration a written statement of the number of the Premises the title to which devolves thereunder.
- 3.13.6 To effect such lodgement within one month of the execution of any such instrument or in the case of probates or letters of administration within one month of the grant thereof.
- 3.13.7 On lodging any such instrument or particulars as aforesaid to pay to the Landlord (or the Landlord's Solicitors if application) a reasonable fee to cover the registration of such instrument or particulars.

3.14 **Costs of Applications Notices and Recovery of Arrears**

The Tenant must pay to the Landlord on an indemnity basis all costs fees charges disbursements and expenses including without prejudice to the generality of the above those payable to counsel solicitors surveyors and bailiffs properly and reasonably incurred by the Landlord in relation to or incidental to:

- 3.14.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease whether it is granted or refused or offered subject to any lawful qualification or condition or whether the application is withdrawn unless the refusal qualification or condition is unlawful whether because it is unreasonable or otherwise;
- 3.14.2 the contemplation preparation and service of a notice under the Law of Property Act 1925 section 146 or the contemplation or taking of proceedings under sections 146 or 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;
- 3.14.3 the recovery or attempted recovery of arrears of rent or other sums due under this Lease; and
- 3.14.4 any steps taken in contemplation of or in connection with the preparation and service of a schedule of dilapidations during or after the end of the Term

3.15 **Planning**

- 3.15.1 The Tenant must observe and comply with the provisions and requirements of the Planning Acts affecting the Premises and their use and must indemnify the Landlord and keep him indemnified both during and following the end of the Term against all losses in respect of any contravention of those Acts
- 3.15.2 The Tenant must not make any application for planning permission relating to the Premises without the written consent of the Landlord

3.16 **Indemnities**

The Tenant must keep the Landlord fully indemnified against all Losses arising directly or indirectly out of any act omission or negligence of the Tenant or any persons at the Premises expressly or implied with the Tenant's authority and under his control or any breach or non-observance by the Tenant of the covenants conditions or other provisions of this Lease or any of the matters to which this demise is subject

3.17 **Encroachments**

The Tenant must take all reasonable steps to prevent the construction of any new path passage pipe or the making of any encroachment or the acquisition of any easement in relation to the Premises and must notify the Landlord immediately if any such thing is constructed encroachment is made or easement acquired or if any attempt is made to encroach or acquire an easement at the request of the Landlord the Tenant must adopt such means as are reasonably

required to prevent the making of any encroachment or the acquisition of any easement

3.18 **Yielding Up**

At the end of the Term the Tenant must yield up the Premises with vacant possession decorated and repaired in accordance with and in the condition required by the provisions of this Lease give up all keys of the Premises to the Landlord remove tenant's fixtures and fittings if requested to do so by the Landlord

3.19 **Interest on Arrears**

The Tenant must pay interest on the rents or other sums due under this Lease that are not paid within 14 days of the date due whether formally demanded or not nothing in this clause entitles the Tenant to withhold or delay any payment of the rent or any other sum due under this Lease or affects the rights of the Landlord in relation to any non-payment

3.20 **Statutory Notices**

The Tenant must give full particulars to the Landlord of any notice direction order or proposal relating to the Premises made given or issued to the Tenant by any government department or local public regulatory or other authority or court within 7 days of receipt and if so requested by the Landlord must produce it to the Landlord the Tenant must without delay take all necessary steps to comply with the notice direction or order at the request of the Landlord but at his own cost the Tenant must make or join with the Landlord in making any objection or representation the Landlord deems expedient against or in respect of any notice direction order or proposal

3.21 **Keyholders/Supervisors**

The Tenant must ensure that at all times the Landlord has written notice of the name home address and home telephone number of at least 2 keyholders or supervisors of the Premises

3.22 **Consent to the Landlord's Release**

The Tenant must not unreasonably withhold consent to a request made by the Landlord under the 1995 Act section 8 for a release from all or any of the landlord covenants of this Lease

4. **QUIET ENJOYMENT**

The Landlord covenants with the Tenant to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for him

5. **INSURANCE**

5.1 **Definitions**

In this **clause 5** the terms defined in this **clause 5.1** have the meanings specified

"Insured Risks"

means the risks of loss or damage by fire lighting explosion aircraft including articles dropped from aircraft riot civil commotion malicious persons earthquake storm tempest flood bursting and overflowing of water pipes tanks and other apparatus and impact by boats or road vehicles and any other risks the Landlord from time to time by notice to the Tenant reasonably requires the Tenant to insure against

"Permissions"

means references to all the planning permissions and other permits and consents that may be required under the Planning Acts or other statutes for the time being in force to enable the Premises to be rebuilt and reinstated lawfully in the event of any damage or destruction

5.2 **Covenant to Insure**

5.2.1 The Tenant covenants with the Landlord to insure the Premises and keep them insured against damage or destruction by the Insured Risks in the joint names of the Landlord and the Tenant and of any other persons the Landlord from time to time by notice to the Tenant reasonably requires in an amount equal to the full cost of rebuilding and reinstating the Premises as new in the event of their total destruction including VAT architects' surveyors' and other professional fees payable on application for any permissions the cost of debris removal demolition site clearance and any works that may be required by statute and incidental expenses

- 5.2.2 The Tenant covenants with the Landlord to effect and maintain such insurance, in such amount as the Landlord reasonably and properly by notice to the Tenant requires (and in any event no less than £5 million for the aggregate of this and any other leases granted by the Landlord to the Tenant out of the Landlord's Title Number) in respect of the Tenant's liability to indemnify the Landlord against losses arising from the Tenant's acts omissions or negligence
- 5.2.3 All insurance must be effected in a substantial and reputable insurance office or with such underwriters and through such agency as the Landlord from time to time by notice to the Tenant reasonably requires such approval not to be unreasonably withheld or delayed

5.3 **Tenant's Further Insurance Covenants**

The Tenant covenants with the Landlord to observe and perform the requirements of this **clause 5.3**:

- 5.3.1 the Tenant must comply with all requirements and recommendations of the insurers;
- 5.3.2 the Tenant must not do or omit to do anything that could cause any insurance policy effected in accordance with this Lease to become wholly or partly void or voidable;
- 5.3.3 the Tenant must comply with all requirements and recommendations of the insurers;
- 5.3.4 the Tenant must immediately give notice to the Landlord of anything that might affect any insurance policy effected in accordance with this Lease and of any destruction or damage to the Premises whether or not caused by one or more of the Insured Risks;
- 5.3.5 the Tenant must produce to the Landlord on demand every insurance policy effected in accordance with this Lease and the receipt for the then current year's premium and if so required must supply the Landlord with a copy of every such policy

5.4 **Reinstatement**

If and whenever during the Term the Premises are damaged or destroyed by one or more of the Insured Risks then:

- 5.4.1 all money received under any insurance policy effected in accordance with this Lease must be placed in an account in the joint names of the Landlord and the Tenant at a bank designated by the Landlord [acting reasonably] and must subsequently be released to the Tenant from

that account by instalments against architect's certificates or other evidence acceptable to the Landlord whose acceptance may not be unreasonably withheld of expenditure actually incurred by the Tenant in rebuilding and reinstating the Premises; and

- 5.4.2 the Tenant must with all convenient speed obtain the Permissions and as soon as they have been obtained rebuild and reinstate the Premises in accordance with them making up out of his own money any difference between the cost of rebuilding and reinstatement and the money received from the insurance policy

6. **FORFEITURE**

If and whenever during the Term:

- 6.1 the Tenant breaches any covenant or other term of this Lease;

the Landlord may at any time re-enter the Premises or any part of them in the name of the whole even if any previous right of re-entry has been waived and then the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to the Landlord against the Tenant in respect of any breach of covenant or other term of this Lease including the breach in respect of which the re-entry is made

7. **AGREED SURRENDER**

If the Tenant notifies the Landlord that it is unable to regulate or manage the Premises then (without prejudice to the right of the Landlord to enforce the covenants to that effect in this Lease) the Landlord may (but shall not be obliged to) accept a surrender of the Premises at the cost of the Tenant.

8. **MEDIATION**

- 8.1 Any dispute arising out of or in connection with this lease shall, at first instance, be referred to a mediator for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the parties fail to agree within fourteen days, either party, upon giving written notice, may apply to the President or the Deputy President, for the time being, of the Royal Institute of Chartered Surveyors, for the appointment of a mediator.

- 8.2 Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty-eight days, apply to the President or the Deputy President, for the time being of the Royal Institute of Chartered Surveyors, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation

proceedings, unless both parties have consented in writing. The arbitration shall be governed by both the Arbitration Act 1996 and the Controlled Cost Rules of the Royal Institution of Chartered Surveyors, which Rules are deemed to be incorporated by reference into this clause. The seat of the arbitration shall be England and Wales. The ruling of the arbitrator shall be final save on a point of law.

9. MISCELLANEOUS

9.1 Exclusion of Warranty as to Use

9.1.1 Nothing in this Lease is intended to confer any benefit on any person who is not a party to it

9.1.2 Nothing in this Lease shall grant to the Tenant any Riparian Rights to the River Colne or its foreshore and all such rights including the right to create or refuse berthing facilities along the river frontage of Cooks Shipyard shall remain vested in the Landlord

9.2 Compensation on Vacating Excluded

Any statutory right of the Tenant to claim compensation from the Landlord on vacating the Premises is excluded to the extent that the law allows

9.3 Notices

9.3.1 Form and services of notices

A notice under this Lease must be in writing and unless the receiving party or his authorised agent acknowledges receipt is valid if and only if:

9.3.1.1 it is given by hand sent by registered post or recorded delivery or sent by fax provided a confirmatory copy is given by hand or sent by registered post or recorded delivery on the same day; and

9.3.1.2 it is served

(a) where the receiving party is a company incorporated within Great Britain at the registered office; or

(b) where the receiving party is the Tenant and the Tenant is not such a company at the Premises; or

(c) where the receiving party is the Landlord and the Landlord is not such a company at the Landlord's

address shown in this Lease or at any address specified in a notice given by the Landlord to the Tenant

9.3.2 Deemed delivery

9.3.2.1 Unless it is returned through the Royal Mail undelivered a notice sent by registered post or recorded delivery is to be treated as served on the third working day after posting whenever and whether or not it is received

9.3.2.2 A notice sent by fax is to be treated as served on the day upon which it is sent or the next working day where the fax is sent after 1600 hours or on a day that is not a working day whenever and whether or not it or the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail undelivered

9.3.2.3 References to "a working day" are references to a day when the United Kingdom clearing banks are open for business in the City of London

9.3.3 Joint recipients

If the receiving party consists of more than one person a notice to one of them is notice to all

9.4 Agreement for Lease

It is certified that there is no agreement for lease to which this document gives effect

10. RIGHTS GRANTED

The Premises are let together with the following rights for the benefit of the Tenant, so far as the Landlord is able to grant them, to be enjoyed in common with the Landlord and any others entitled to use them:

10.1 A right of way on foot (pulling dinghy trailers as necessary) across the Shared Access

11. EXECUTION

The parties have executed this Lease as a deed and it is delivered on the date set out in the Particulars.

THE COMMON SEAL of)
WIVENHOE TOWN COUNCIL affixed to)
this deed in the presence of:)

Town Mayor

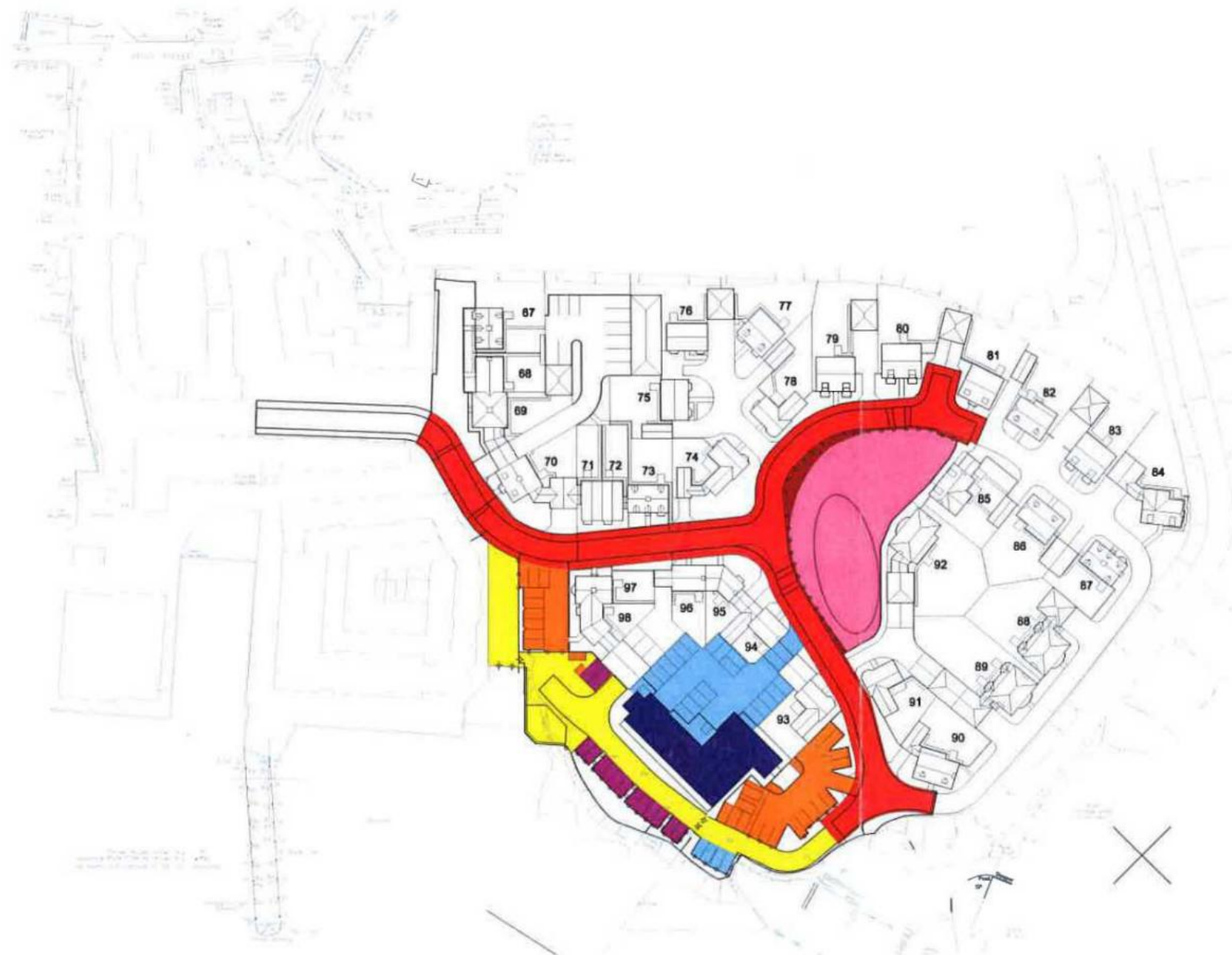
Town Clerk

EXECUTED as a deed by)
TAYLOR WIMPEY DEVELOPMENTS LIMITED)
acting by a director and its secretary)
or two directors)

Director

Director / Secretary

APPENDIX 2
SITE LAYOUT PLAN



-  Public Car Park
-  Commercial Building
-  Commercial Building Parking
-  Dinghy Park
-  Play Area Land
-  Pedestrian Area with Public Access
-  Adopted Highway
-  Highway Visibility Splay Used as POS

Cross

[Signature]
WIVENHOPE TOWN MAYOR

[Signature]
TOWN CLERK

A. Lewis

Date: April 2011
Scale: 1:500 @ A1
Revised: -

Section 106 - Plan 1
Proposed Residential & Office Development at Cook's Shipyard
for Taylor Wimpey East London

Title: Section 106 Plan 1
Project: Cook's Shipyard, Wivenhoe
DWG No: 106 Plan 1

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THIS DRAWING IS FOR PLANNING PURPOSES ONLY AND SHOULD NOT BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN PERMISSION OF MELVILLE DUNBAR ASSOCIATES