

DATED

2023

(1) UTTLESFORD DISTRICT COUNCIL

(2) ESSEX COUNTY COUNCIL

(3) WESTON HOMES PLC

(4) EUAN STEWART KENNEDY AND SHUNA MACKINNON
DICKSON

(5) HSBC CORPORATE TRUSTEE COMPANY (UK)

SECTION 106 AGREEMENT

RELATING TO LAND AT JACKS, TAKELEY
PLANNING APPLICATION REFERENCE XXXXXXX

REF:

REFERENCE

CONTENTS

CLAUSE

1	DEFINITIONS.....	1
2	RECITALS.....	5
3	ENABLING POWERS AND OBLIGATIONS.....	6
4	OBLIGATIONS UNDERTAKEN BY THE OWNERS.....	6
5	OBLIGATIONS UNDERTAKEN BY UDC AND ECC.....	6
6	MORTGAGEE'S CONSENT.....	7
7	NOTICE OF IMPLEMENTATION.....	7
8	PROVISOS AND INTERPRETATION.....	7
9	AGREEMENTS AND DECLARATIONS.....	8
10	MONITORING FEE.....	8
11	EXCLUSION OF THE 1999 ACT.....	8
12	NOTICES.....	9
13	ENTIRE AGREEMENT.....	9
14	COSTS.....	9
15	DISPUTE RESOLUTION.....	9
16	JURISDICTION.....	9
17	SECTION 73 VARIATION.....	10

SCHEDULE

SCHEDULE 1.....	12
OBLIGATIONS ENTERED INTO WITH UDC.....	12
PART 1 PHASING.....	12
PART 2 AFFORDABLE HOUSING.....	12
PART 3 PRIOR'S WOOD.....	ERROR! BOOKMARK NOT DEFINED.
PART 4 PUBLIC OPEN SPACE.....	ERROR! BOOKMARK NOT DEFINED.
PART 5 SANG.....	13
PART 6 HEALTHCARE CONTRIBUTION.....	14
PART 7 HATFIELD FOREST CONTRIBUTION.....	14
PART 8 PUBLIC BYWAY ROUTE AND PEDESTRIAN LINK.....	14
PART 9 CUSTOM BUILD PHASE.....	ERROR! BOOKMARK NOT DEFINED.
PART 10 HEALTHCARE FACILITY LAND.....	ERROR! BOOKMARK NOT DEFINED.
SCHEDULE 2.....	15
OBLIGATIONS ENTERED INTO WITH ECC.....	15
PART 1 HIGHWAYS IMPROVEMENT WORKS.....	15
PART 2 RESIDENTIAL TRAVEL PLAN AND TRAVEL INFORMATION PACKS.....	16
PART 3 WORKPLACE TRAVEL PLAN.....	ERROR! BOOKMARK NOT DEFINED.
PART 4 SUSTAINABLE TRANSPORT CONTRIBUTION.....	18
PART 5 EDUCATION CONTRIBUTION.....	20
PART 6 EDUCATION LAND.....	ERROR! BOOKMARK NOT DEFINED.
SCHEDULE 3.....	23
OBLIGATIONS UNDERTAKEN BY UDC.....	23
ANNEX 1.....	25
S106 MASTER PLAN.....	25
ANNEX 2.....	ERROR! BOOKMARK NOT DEFINED.

PUBLIC OPEN SPACE PLAN	ERROR! BOOKMARK NOT DEFINED.
ANNEX 3	ERROR! BOOKMARK NOT DEFINED.
HIGHWAY WORKS PLAN	ERROR! BOOKMARK NOT DEFINED.
ANNEX 4	ERROR! BOOKMARK NOT DEFINED.
AFFORDABLE HOUSING MASTER PLAN	ERROR! BOOKMARK NOT DEFINED.
ANNEX 5	ERROR! BOOKMARK NOT DEFINED.
EDUCATION SITE ACCESS PLAN	ERROR! BOOKMARK NOT DEFINED.
APPENDICES.....	26
ECC GUIDANCE NOTES FOR A RESIDENTIAL TRAVEL PLAN TEMPLATE (NEW RESIDENTIAL DEVELOPMENTS).....	26
ECC RESIDENTIAL TRAVEL PLAN TEMPLATE (NEW RESIDENTIAL DEVELOPMENTS)	26
ECC GUIDANCE NOTES FOR A WORKPLACE TRAVEL PLAN MAY 2021	ERROR! BOOKMARK NOT DEFINED.
ECC WORKPLACE TRAVEL PLAN TEMPLATE	ERROR! BOOKMARK NOT DEFINED.

- (1) **Uttlesford District Council** of Council Offices, London Road, Saffron Walden, Essex CB11 4ER ('UDC')
- (2) **Essex County Council** of County Hall, Market Road, Chelmsford CM1 1QH ('ECC')
- (3) **Weston Homes Plc** (company registration number 2133568) of Weston Group Business Centre, Parsonage Road, Takeley, Essex CM22 6PU (the '**Developer**') and
- (4) **Euan Stewart Kennedy** of [REDACTED] ('the Second Owner')
- (5) **HSBC Corporate Trustee Company (UK) Limited** (company registration number 06447555) of Level 22, 8 Canada Square, London E14 5HQ ('the Mortgagee')

1 **DEFINITIONS**

- 1.1 '**the 1972 Act**' shall mean the Local Government Act 1972
- 1.2 '**the 1990 Act**' shall mean the Town and Country Planning Act 1990
- 1.3 '**the 1999 Act**' shall mean the Contracts (Rights of Third Parties) Act 1999
- 1.4 '**the 2008 Act**' shall mean the Housing and Regeneration Act 2008
- 1.5 '**the 2011 Act**' shall mean the Localism Act 2011
- 1.6 '**Affordable Housing**' shall mean subsidised housing within the definition of affordable housing contained in Annex 2 of the NPPF that will be available to persons who cannot afford to buy or rent housing generally available on the open market including Affordable Rented Housing and Shared Ownership Housing
- 1.7 '**Affordable Housing Land**' shall mean the land on which the Affordable Housing Units will be constructed in accordance with the Permission as shown on the Affordable Housing Master Plan
- 1.8 '**Affordable Housing Master Plan**' shall mean the plan attached at **Annex X** identifying the number and location of the Affordable Housing Units included within the Development, the Affordable Housing Tenure Mix and the Affordable Housing Unit Mix.
- 1.9 '**Affordable Housing Tenure Mix**' shall mean the different types of tenure of Affordable Housing to be provided within the Development and which shall (unless otherwise approved by UDC) comprise -
 - (a) Seventy percent (70%) Affordable Rented Housing Units; and
 - (b) Thirty percent (30%) Shared Ownership Housing Units

in each case rounded up or down to the nearest whole number of units
- 1.10 '**Affordable Housing Unit Mix**' shall mean the different sizes of unit as shown on the Affordable Housing Master Plan
- 1.11 '**Affordable Housing Unit Mix**' shall mean the different types and size of Affordable Housing Units to be provided as part of the Development as shown on the Affordable Housing Master Plan
- 1.12 '**Affordable Housing Units**' shall mean the 75 units of accommodation shown on the Affordable Housing Master Plan to be constructed on the Affordable Housing Land
- 1.13 '**Affordable Rented Housing**' shall mean Affordable Housing provided by an Approved Body to households those in identified housing need where the rent level is capped at 80% of the local market rent (including any service charges, where applicable)

- 1.14 **'Affordable Rented Units'** shall mean the 53 units of rented housing to be occupied as Affordable Rented Housing in accordance with the terms of this deed as shall be identified on the Affordable Housing Master Plan
- 1.15 **'Allocations Policy'** shall mean the UDC Allocations Policy dated June 2021 or any subsequent approved Allocations Policy replacing the policy of June 2021
- 1.16 **'Approved Body'** shall mean any registered provider registered or eligible for registration with Homes England or successor organisation, any body organisation or company which is a registered charity with the Charity Commissioners for England and Wales and approved by Homes England or any other body organisation or company approved by UDC and which has objects demonstrably similar to or compatible with or promoting those of a registered social landlord
- 1.17 **'CIL Regulations'** shall mean the Community Infrastructure Levy Regulations 2010
- 1.18 **'Commercial Development'** shall mean the commercial element of the Development
- 1.19 **'Commercial Travel Plan'** shall mean a plan for the encouragement of sustainable travel to and from and within the Development to give effect to the guidelines set out by ECC in the "Essex County Council Guidance Notes For a Workplace Travel Plan Template" dated May 2021
- 1.20 **'the Councils'** shall mean Uttlesford District Council and Essex County Council
- 1.21 **'Custom Build Plot'** shall mean a plot within the Custom Build Phase shown on the Affordable Housing Master Plan
- 1.22 **'the Development'** shall mean the development authorised by the for 40 dwellings on land north of Jacks Lane, east of Smiths Green Lane including associated landscaping, public open space, pedestrian and cycle routes
- 1.23 **'Decision Letter'** shall mean the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed
- 1.24 **'Dwelling'** shall mean any residential dwelling (including a house, flat, or maisonette) or other domestic property constructed pursuant to the Permission or created by conversion of an existing building on the Site pursuant to the Permission
- 1.25 **ECC's Monitoring Fee** shall mean a fee of £550 per obligation due to ECC under this Agreement and for the avoidance of doubt this is a total of £2750 (two thousand seven hundred and fifty pounds) (no VAT) towards ECC's reasonable and proper administration costs of monitoring and managing the performance of the planning obligations that the Owner are required to observe and perform pursuant to the terms of this Agreement.
- 1.26 **'Eligible Person'** shall mean a person or persons considered by the Approved Body to be in need of an Affordable Housing Unit who is unable to compete in the normal open market for property in the District of Uttlesford (**'the District'**) and who (or one of whom) -
- (a) has lived continuously in the District for the last 3 years and/or
 - (b) either lives outside the District or has lived in the District for less than 3 years but has immediate family members who have lived in the District for the last 5 years and in respect of whom he is receiving or giving substantial ongoing support that cannot be provided from outside the District and/or
 - (c) lives outside the District but has been permanently employed in the District for a minimum of 3 years and works at least 24 hours a week
 - (d) any other person as agreed with UDC
- 1.27 **'Expert'** shall mean such expert as may from time to time be appointed for the purpose of resolving a relevant dispute being a barrister or solicitor or chartered surveyor or other person appropriately qualified to resolve the dispute (having not less than 10 years' relevant experience) agreed by the parties to the dispute but in default of agreement appointed at the request of one of the parties by or on behalf of the President from time to time of the Bar Council or the Law Society or the Royal Institute of Chartered Surveyors

- 1.28 **'Hatfield Forest Contribution'** shall mean the sum of £X Index-linked or such lesser amount as the Inspector expressly states in the Decision Letter should be paid which shall be used for the Hatfield Forest Contribution Purpose
- 1.29 **'Hatfield Forest Contribution Purpose'** shall mean the mitigation of the potential impact of the Development as a consequence of increased visitor numbers in the form of visitor and botanical monitoring and mitigation works carried out by or on behalf of the National Trust at Hatfield Forest
- 1.30 **'Healthcare Contribution'** shall mean the sum of [£97,710] Index-Linked or such lesser amount as the Inspector expressly states in the Decision Letter should be paid
- 1.31 **'Healthcare Purposes'** shall mean the provision of services provided at the Eden Surgeries or within the South Uttlesford Primary Care Network which serves the Development to increase the capacity of primary care service provision within the locality of the Development
- 1.32 **'Homes England'** shall mean the body set up by section 1 of the Housing and Regeneration Act 2008 or any successor organisation
- 1.33 **'Implementation'** shall mean the implementation of the Permission by the carrying out of any material operation (as defined by s. 56 of the 1990 Act) pursuant to the Permission but disregarding for the purposes of this agreement and for no other purpose the following operations -
- (a) site clearance
 - (b) demolition
 - (c) site survey
 - (d) ecological survey
 - (e) archaeological survey
 - (f) remediation
 - (g) erection of fences or hoardings
- and Implement and Implemented shall mutatis mutandis be construed accordingly
- 1.34 **'Implementation Date'** shall mean the date specified by the Developer to the Councils in a written notice served upon the Councils as the date upon which the Development authorised by the Permission is to be Implemented or if no such notice is served the date of Implementation
- 1.35 **'Index'** shall mean the BCIS All-In Tender Price Index
- 1.36 **'Index Linked'** shall mean that the sum shall be changed by an amount equal to the change in the Index from the date hereof to the date the relevant payment is due
- 1.37 **'Inspector'** shall mean the planning inspector appointed by the Planning Inspectorate/ Secretary of State in determination of the Appeal
- 1.38 **'the Land'** shall mean the land at Warish Hall Farm Smiths Green Takeley shown edged in red on the S106 Master Plan
- 1.39 **'LAP'** shall mean a local area of play constructed and equipped in accordance with regulations and guidance of Fields in Trust (current at the date of the Permission) to be provided as part of the Public Open Space and in accordance with the Public Open Space Plan
- 1.40 **'Management Company'** shall mean a company or companies body or bodies or other entity responsible for the long-term management and maintenance of the Public Open Space and may include a residents' association established for this purpose
- 1.41 **'UDC's Monitoring Fee'** shall mean a sum of £3,796.00 per annum for the period of construction of the Development or such lesser amount as the Inspector expressly states in the Decision Letter should be paid to reflect a reasonable estimate of UDC planning officer time in monitoring compliance

with this agreement to include (where appropriate) but not be limited to time spent in connection with -

- (a) recording of payments
- (b) proof of expenditure
- (c) reporting
- (d) financial monitoring
- (e) meetings
- (f) all correspondence
- (g) site visits
- (h) data entry

- 1.42 **'NPPF'** shall mean the National Planning Policy Framework issued by the Ministry of Housing, Communities and Local Government and dated July 2021 or any replacement statement guidance note or circular which may amend, supplement or supersede it
- 1.43 **'Occupation'** shall mean occupation of a building constructed as part of the Development of the Land pursuant to the Permission and shall not include daytime occupation by workmen involved in the construction of the buildings the use of finished buildings for sales purposes for use as temporary offices or for the storage of plant and material and 'Occupy' 'Occupancy' and 'Occupied' shall be construed accordingly
- 1.44 **'Open Market Housing Units'** shall mean the Dwellings to be constructed in accordance with the Permission which are not Affordable Housing Units
- 1.45 **'Owners'** shall mean together the Developer the First Owner the Second Owner and the Third Owner
- 1.46 **'the Permission'** shall mean the planning permission granted by the Secretary of State pursuant to the Appeal in respect of the Planning Application
- 1.47 **'the Planning Application'** shall mean the application made by the Developer under reference number X
- 1.48 **'Protected Tenant'** shall mean any tenant who -
- (a) has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (including a preserved right to buy) (or any equivalent contractual right including the voluntary Right to Buy agreed between the Government and the National Housing Federation in 2015 and any extension or amendment thereto) in respect of a particular Affordable Housing Unit
 - (b) has exercised any statutory right to buy purchase or acquire (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
 - (c) has been granted a shared ownership lease by the Approved Body and has become a 100% Staircaser
- 1.49 **'Public Open Space'** shall mean the public open space including the LEAP and the LAP and informal and open space (which shall be laid out in accordance with the approved Open Space Specification) shown for identification purposes on the Public Open Space Plan
- 1.50 **'Public Open Space Plan'** shall mean the plan attached at **Annex X** showing the location of the Public Open Space including any associated playspace
- 1.51 **'Public Open Space Management Plan'** shall mean a management plan prepared by the Developer including details of the timing of the delivery and transfer of the Public Open Space the Management Company and for the ongoing management and maintenance of the Public Open Space, including

for the avoidance of doubt provisions for the rectification of any defects in any area of the Public Open Space until the completion of the relevant transfer of the Public Open Space to the Management Company

- 1.52 **'Public Open Space Specification'** means a specification to be approved in writing by UDC for the laying out of the Public Open Space
- 1.53 **'Public Open Space Relevant Documents'** means the Public Open Space Plan the Public Open Space Specification and the Public Open Space Management Plan
- 1.54 **'Residential Development'** shall mean the residential element of the Development
- 1.55 **'SANG'** means suitable publicly accessible natural greenspace to be provided within the Development in accordance with Natural England's Guidelines for the creation of Suitable Accessible Natural Green Space of not less than 2.4 hectares including walking routes in excess of 2.7km in length within and adjoining the site as shown on the Public Open Space Plan
- 1.56 **'Secretary of State'** shall mean the Secretary of State for Homes, Communities and Local Government or such other Minister of Her Majesty's Government for the time being having or discharging the functions of the Secretary of State for the purposes of the 1990 Act
- 1.57 **'Shared Ownership Housing'** shall mean housing which will be offered for shared ownership by the Developer/Approved Body to persons in need of affordable housing
- 1.58 **'Shared Ownership Units'** shall mean units of Shared Ownership Housing
- 1.59 **'100% Staircaser'** means a leaseholder of a Shared Ownership Unit who has acquired 100% of the equity in the said Unit
- 1.60 **'Unit'** shall mean a house or self-contained flat or bungalow or any other Dwelling constructed as part of the Development and 'Units' shall be construed accordingly
- 1.61 **'CCG'** shall mean the NHS West Essex Clinical Commissioning Group
- 1.62 **'Working Days'** shall mean any day from Monday to Friday inclusive which is not Christmas Day Good Friday a statutory bank holiday or a day between Christmas Day and New Year's Day

2 **RECITALS**

- 2.1 UDC is the local planning authority within the meaning of the 1990 Act for the District in which the Land is situated
- 2.2 ECC is the local planning authority the local authority for statutory age and pre-statutory age education and childcare and the local highway authority for the County within which the Land is situated (which includes some highway land)
- 2.3 The Developer is the proprietor of the freehold interest in the majority of Land registered at HM Land Registry under Title Number EX476530
- 2.4 The First Owner is proprietor of the freehold interest in that part of the Land registered at HM Land Registry under Title Numbers EX670637 and EX991543
- 2.5 The Second Owner is proprietor of the freehold interest in that part of the Land along Smiths Green Land registered at HM Land Registry under the Title Number EX645448
- 2.6 The Councils and the Owners agree that the obligations in this agreement are compliant with the requirements of regulation 122(2) of the CIL Regulations in that they are
- (a) necessary to make the Development acceptable in planning terms
 - (b) directly related to the Development
 - (c) fairly and reasonably related in scale and kind to the Development

and that in accordance with regulation 122(2A) of the CIL Regulations any Monitoring Fee(s) to be paid fairly and reasonably relate in scale and kind to the Development and that the sums to be paid do not exceed the Councils' estimates of their costs of monitoring the Development over the lifetime of the obligations in this agreement

- 2.7 The Councils and the Owners have agreed to enter into this agreement pursuant to the operative powers described in clause 3 for the purpose of regulating the Development and use of the Land in the event that the Permission is granted pursuant to determination of the Appeal

3 ENABLING POWERS AND OBLIGATIONS

- 3.1 This agreement is entered into pursuant to section 106 of the 1990 Act, section 111 of the 1972 Act, section 1 of the 2011 Act and all other enabling powers
- 3.2 Such of the covenants contained herein as are capable of being planning obligations within the meaning of section 106 of the 1990 Act are declared to be planning obligations and as such are enforceable by UDC and ECC as hereinafter provided

4 OBLIGATIONS UNDERTAKEN BY THE OWNERS

- 4.1 With the intent that the Land shall be subject to the obligations and restrictions contained in this agreement for the purpose of restricting or regulating the Development and use of the Land so that the provisions of this agreement shall be enforceable against the Owners and their successors in title the Owners hereby jointly and severally covenant with UDC and ECC to observe and comply with the obligations contained in the Schedules to this agreement subject always to clause 4.2 hereof
- 4.2 The provisions and obligations contained in clause 10 and the Schedules of this agreement shall only apply and shall be enforceable by UDC or ECC in such circumstances that the Inspector or the Secretary of State states clearly in the Decision Letter that such obligations are necessary and meets the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and PROVIDED THAT if the Inspector or the Secretary of State in the Decision Letter concludes that any of the planning obligations set out in the Deed are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the CIL Regulations and accordingly attaches no weight to that obligation in determining the appeal then the relevant obligation shall from the date of the Decision Letter cease to have effect and the Owners shall be under no obligation to comply with them
- 4.3 The liability of the Owners or any one or more of them under this agreement shall cease once they have parted with their relevant respective interest in the Land or any relevant part thereof (in which event the obligations of the Owners under this agreement shall cease only in relation to that part or those parts of the Land which is or are transferred by them and for the avoidance of doubt once any of the Owners has transferred all parts of the Land owned by that Owner, the obligations on that Owner shall cease) but not so as to release any party from liability for any breaches hereof arising prior to the transfer and for the purposes of this agreement any easement covenant or similar right shall not constitute an interest in the Land
- 4.4 A person whose only interest in the Land is a freehold or leasehold interest or mortgage or charge in respect of that part of the Land registered at HM Land Registry under Title Numbers EX670637 and EX991543 shall have no liability pursuant to this deed unless and until Implementation has occurred on that part of the Land

5 OBLIGATIONS UNDERTAKEN BY UDC AND ECC

- 5.1 UDC covenants to observe and comply with the obligations on its part contained in Schedules 1 and 3
- 5.2 ECC covenants to observe and comply with the obligations on its part contained in Schedule 2
- 5.3 At the written request of the Owners UDC and ECC shall provide written confirmation of the discharge of the obligations given to them respectively in this agreement when satisfied that such obligations have been performed

6 MORTGAGEE'S CONSENT

- 6.1 The Mortgagee consents to the completion of this agreement and declares that its interest in the Land shall be bound by the terms of this agreement as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Land
- 6.2 The Mortgagee shall not be liable for any breach of the obligations in this agreement unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land and continues with or carries out the Development itself

7 NOTICE OF IMPLEMENTATION

- 7.1 The Developer will give the Councils not less than 28 days' notice of its intention to Implement the Permission specifying the intended Implementation Date
- 7.2 Forthwith upon Implementation the Developer will give the Councils notice of Implementation
- 7.3 Within six (6) months of the Implementation Date the Developer will give CCG notice of the start of the Healthcare Facility Land Option Period
- 7.4 The Owners and or the Developer shall give ECC not less than 28 days' notice of its intention to Implement the Residential Development and also the Commercial Development specifying the intended Implementation Date.
- 7.5 The Owners and or the Developer shall serve on ECC notice of Occupation of the first Dwelling on the Residential Development and also the Commercial Development within 1 (one) month thereof and on a 6 (six) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings the Unit Mix of Dwellings that are completed but not Occupied the Unit Mix of Dwellings that are under construction and the Unit Mix of Dwellings where construction work has yet to start at the time the notice is served.

8 PROVISOS AND INTERPRETATION

- 8.1 No provision of this agreement shall be interpreted so as to take effect contrary to law or the rights powers duties and obligations of the Councils in the exercise of any of their statutory functions or otherwise
- 8.2 If any provision of this agreement shall be held to be unlawful or unenforceable in whole or in part under any enactment or rule of law, such provision shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected
- 8.3 Where there is more than one person named as a party and where more than one party undertakes an obligation all their obligations may (unless there is an express provision in this agreement to the contrary) be enforced against them jointly and severally
- 8.4 No waiver (whether express or implied) by the Councils of any breach or default in performing or observing any of the obligations, covenants or terms and conditions of this agreement shall constitute a continuing waiver and no such waiver shall prevent the Councils from enforcing any of the said obligations, covenants or terms and conditions or from acting upon any subsequent breach or default
- 8.5 Any provision contained in this agreement requiring the consent or approval of any party hereto shall be deemed to incorporate a proviso that such consent or approval shall not be unreasonably withheld or delayed
- 8.6 The headings in this agreement do not affect its interpretation
- 8.7 Unless the context otherwise requires references to sub-clauses, clauses and schedules are to sub-clauses, clauses and schedules of this agreement
- 8.8 Unless the context otherwise so requires
- 8.8.1 references to Councils and the Owners include their respective permitted successors and assigns and in the cases of Councils shall include the successors to their statutory functions

- 8.8.2 references to statutory provisions include those statutory provisions as amended or re-enacted and
- 8.8.3 references to any gender include all genders and words importing the singular include the plural and vice versa.

9 **AGREEMENTS AND DECLARATIONS**

- 9.1 The obligations contained in the Schedules of this agreement shall take effect only upon the Implementation Date and in the event that the Appeal is dismissed or the Permission is not implemented and expires, the obligations contained in the Schedules shall absolutely cease and determine without further obligation upon the Owners or their successors in title
- 9.2 The obligations contained in the Schedules of this agreement shall absolutely cease and determine without further obligation upon the Owners or their successors in title if the Permission is revoked, quashed, is modified without the consent of the Owners expires or if a separate planning permission is subsequently granted and implemented which is incompatible with the Permission
- 9.3 Nothing in this agreement shall prohibit or limit the right to develop any part of the Land in accordance with any planning permission (other than the Permission as defined herein)
- 9.4 The obligations under this agreement shall not be enforceable against
- 9.4.1 persons who purchase or take leases of the Dwellings (including any Dwellings on Custom Build Plots), the successors in title mortgagees or chargees or receivers of such persons or
- 9.4.2 a Shared Ownership Leaseholder who has staircased to or otherwise acquired 100% ownership or a tenant of an Affordable Housing Unit who exercises the right to acquire or other statutory right or in each case their successors in title
- 9.4.3 in respect of any Affordable Housing Unit, a mortgagee or chargee or receiver who has first complied with its duty pursuant to paragraph 2.2 Part 2 of Schedule 1
- 9.4.4 any statutory undertaker/utility provider which acquires any part of the Land or an interest in it for the purposes of a statutory function
- 9.5 This agreement constitutes a Local Land Charge and shall be registered as such provided that UDC will upon the happening of any of the eventualities referred to in clauses 9.1. and 9.2 of this agreement or upon the determination of this agreement howsoever determined procure the removal of any entry made on the Local Land Charges Register in respect of or related to this agreement
- 9.6 No variation to this agreement shall be effective unless made by deed and for the avoidance of doubt the consent, seal, signature, execution or approval of any tenant or occupier of the Development or their mortgagees shall not be required to vary any part of this agreement nor shall any other party who has no liability under this agreement or any interest in the Land
- 9.7 Save where it is expressly excluded, if at any time Value Added Tax ('VAT') is or becomes chargeable in respect of any supply made in accordance with the provisions of this agreement then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall issue a valid and appropriate VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

10 **MONITORING FEE**

Prior to Implementation the Developer shall pay the UDC's Monitoring Fee and the ECC's Monitoring Fee in full.

11 **EXCLUSION OF THE 1999 ACT**

For the purposes of the 1999 Act it is agreed that nothing in this agreement shall confer on any third party any right to enforce or any benefit of any term of this agreement

12 **NOTICES**

12.1 Any notices required to be served on or any document to be supplied or submitted to any of the parties hereto shall be sent or delivered to the address stated in this agreement as the address for the receiving party or such other address as shall from time to time be notified by a party to this agreement as an address at which service of notices shall be accepted or (in the case of a limited company) at its registered office

12.2 Any notices to be served or documents to be supplied or submitted or applications for approval under the terms of this agreement to be made which are addressed to UDC shall be addressed to the Assistant Director Planning of UDC and to Planning@uttlesford.gov.uk and those which are addressed to ECC shall be addressed marked for the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH AND to development.enquiry@essex.gov.uk

13 **ENTIRE AGREEMENT**

This agreement the Schedules and the documents annexed hereto or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements arrangements and understandings between the parties relating to that subject matter

14 **COSTS**

14.1 Upon the execution of this agreement the Developer will pay the reasonable legal costs incurred of both UDC and ECC in connection with the negotiation and preparation thereof

15 **DISPUTE RESOLUTION**

Without prejudice to UDC's or ECC's exercise of their statutory functions, in the event of any dispute or difference between the Owners and UDC and/or ECC arising out of this agreement, or any delay, the parties will use their reasonable endeavours to resolve the same (including holding a meeting attended by at least one representative of appropriate seniority from each party within 10 Working Days of a request from one party to convene the meeting).and either party may, if the dispute or delay remains unresolved after 10 Working Days refer such dispute or difference to the Expert and it is further agreed that -

15.1 the determination of the Expert shall be final and binding on the parties save in the case of manifest error or fraud

15.2 the parties shall be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct

15.3 the Expert's costs shall be borne in such proportions as he/she may direct, failing which the Owners and UDC and/or ECC shall each bear their own costs of the reference and determination and the Expert's costs shall be shared equally

15.4 the Expert shall be appointed subject to an express requirement that he/she reaches a decision and communicates it to the parties within the minimum practicable timescales allowing for the nature and complexity of the dispute and in any event not more than twenty-one (21) Working Days from the date of appointment to act and

15.5 the Expert may be replaced by a fresh appointee in the event he/she becomes at any time unable or unwilling for any reason to proceed to discharge his/her function and such fresh appointee shall be appointed in the same manner as the Expert

16 **JURISDICTION**

This agreement is to be governed by and interpreted in accordance with the law of England and Wales and the courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this agreement

Signed and delivered by the said)
Euan Stewart Kennedy)
as his deed in the presence of)

Signature of Witness

Name

Address

.....

Occupation

Signed and delivered by the said)
Shuna Mackinnon Dickson)
as his deed in the presence of)

Signature of Witness

Name

Address

.....

Occupation

SCHEDULE 1

OBLIGATIONS ENTERED INTO WITH UDC

PART 1 PHASING

- 1 A Phasing Plan shall be agreed with UDC prior to Implementation identifying the Phases of the Development and the Development shall be provided in accordance with the agreed Phasing Plan as may varied by agreement from time to time with the written consent of UDC
- 2 The Owners covenant with UDC in respect of the Residential Development as follows -

PART 2 AFFORDABLE HOUSING

- 1
 - 1.1 To construct the Affordable Housing Units on the Affordable Housing Land in accordance with the approved Affordable Housing Master Plan
 - 1.2 That 5% of the Affordable Housing Units shall be M4(3)(2)(a) wheelchair adaptable unless otherwise agreed in writing with UDC **PROVIDED THAT** any fraction of a Unit produced by calculating the percentage shall be rounded up if 0.5% or over and shall be rounded down if under 0.5%
 - 1.3 Not to permit the first Occupation of more than 75% of the Open Market Housing Units within any Phase until such time as all of the Affordable Housing Units within that Phase have been constructed and are available for Occupation and have been transferred to an Approved Body (unless such a transfer is not required pursuant to the Affordable Housing Master Plan) or until a binding agreement for such transfer has been completed and **FOR THE AVOIDANCE OF DOUBT** the Owners may complete a binding agreement with an Approved Body for the completion and transfer of the Affordable Housing Units and Affordable Housing Land within the entire Development or for several Phases
 - 1.4 For the purposes of this Schedule only the expression 'transfer' or 'transferred' shall mean a transfer of the freehold or grant of a lease with a term of not less than 125 years of the Affordable Housing Units or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owners (unless otherwise agreed with UDC)
 - 1.5 That Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing
 - 1.6 To serve on UDC Notice not less than 14 days after the first Occupation of 75% of the Open Market Housing Units within a Phase
- 2 It is hereby agreed and declared
 - 2.1 The affordable housing obligations and restrictions contained in this agreement (including for the avoidance of doubt in this Part) shall not bind -
 - 2.1.1 a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a 'Receiver')) of the whole or any part of the Affordable Housing Units and/or the Affordable Housing Land or any persons or bodies deriving title through such mortgagee or chargee or Receiver **PROVIDED THAT** such mortgagee or chargee or Receiver has first complied with the provisions of paragraph 2.2 of this Part or
 - 2.1.2 a Protected Tenant or
 - 2.1.3 a 100% Staircaser or
 - 2.1.4 any mortgagee or chargee or receiver of a 100% Staircaser or Protected Tenant or
 - 2.1.5 any mortgagee or chargee or receiver of an occupier of an Affordable Housing Unit and

- 2.1.6 any person or body deriving title through or from any of the parties mentioned in paragraphs 2.1.1-2.1.5 above
- 2.2 Any mortgagee or chargee or Receiver claiming the protection granted by paragraph 2.1.1 above must first -
- 2.2.1 give written notice to UDC of its intention to dispose of the Affordable Housing Units and/or the Affordable Housing Land specified in the notice and thereafter shall give an opportunity
- 2.2.2 to another Approved Body (the name and address of which shall be given to UDC) for a period of one (1) month from the date of the written notice to purchase the specified Affordable Housing Units and/or the Affordable Housing Land and thereafter
- 2.2.3 to UDC for a further period of two (2) months to purchase the specified Affordable Housing Units and/or the Affordable Housing Land
- in either case for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 2.2.4 if such disposal has not completed on the expiration of both periods referred to above (and for the avoidance of doubt totalling a three-month period from the date of the written notice), the mortgagee or chargee or Receiver shall be entitled to dispose of the specified Affordable Housing Units and/or the Affordable Housing Land free from the affordable housing provisions set out in this Part, which provisions shall determine absolutely
- 2.2.5 During the three-month period from the date of the written notice, the mortgagee or chargee or Receiver shall use reasonable endeavours to reply to enquiries raised by UDC or by an Approved Body in relation to the specified Affordable Housing Units and/or the Affordable Housing Land as expeditiously as possible so as to ensure the completion of any disposal within the said three-month period.
- 3 The transfers of the Affordable Housing Units to the Approved Body shall be with vacant possession
- 4 The transfer deed for the transfer of the Affordable Housing Units to the Approved Body shall be prepared by the Owners and shall contain
- 4.1 a grant by the Owners to the Approved Body of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Units
- 4.2 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development and the beneficial use and enjoyment of the remainder of the Land and
- such other covenants as the Owners may reasonably require for the maintenance of the Development once it is completed and the preservation of the appearance thereof

PART 3 SANG

- 1 The Owners covenant with UDC in respect of the Residential Development as follows -
- 1.1 To provide the SANG in accordance with a specification approved by UDC **PROVIDED THAT** such specification shall be deemed to be approved by UDC after 30 Working Days following its submission to UDC in the event that UDC does not notify the Owners with reasons prior to the expiry of such 30 Working Day period why the specification is not approved.
- 1.2 to complete the works of provision of the SANG in accordance with the approved specification and to maintain the SANG and make the SANG available for use by the public for the lifetime of the Development by no later than the completion of the Development

**PART 4
HEALTHCARE CONTRIBUTION**

- 1 The Owners covenant with UDC in respect of the Residential Development as follows -
- 1.1 The Owners shall pay the Healthcare Contribution to UDC for use by CCG for the Healthcare Purposes in the following instalments
- 1.2 Fifty per cent (50%) of the Healthcare Contribution prior to the first Occupation of any Dwelling and
- 1.3 the residual fifty per cent (50%) of the Healthcare Contribution prior to the date six (6) months following first Occupation of any Dwelling

**PART 5
HATFIELD FOREST CONTRIBUTION**

- 1 The Owners covenant with UDC in respect of the Residential Development as follows -
- 1.1 The Owners hereby covenant with UDC to pay the Hatfield Forest Contribution to UDC on or prior to Occupation of the Residential Development

**PART 6
PUBLIC BYWAY ROUTE AND PEDESTRIAN LINK**

- 1 The Owners covenant with UDC in respect of the Residential Development as follows -
- 1 The upgrading of the Public Byway Route shall be completed and the byway open and available for public use prior to the first Occupation of the first Dwelling accessed from Smiths Green Lane
- 1.1 The provision of the Pedestrian Link shall be completed and available for use prior to the first Occupation of the first Dwelling accessed from Smiths Green Lane and shall thereafter be kept available for use by the Occupiers of the Development and managed and maintained by the Owners for the time being of the land on which the Pedestrian Link is located Provided That it is acknowledged that there is no intention to create a public right of way over the Pedestrian Link

SCHEDULE 2

OBLIGATIONS ENTERED INTO WITH ECC

PART 1 HIGHWAYS IMPROVEMENT WORKS

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

'Highway Works Agreement' shall mean an agreement entered into pursuant to all powers enabling the parties to regulate the carrying out of the Highway Works and shall include the following matters:

- (a) securing of security to ensure that third party funds are available to complete the Highway Works to the satisfaction of ECC
- (b) payment of ECC's works inspection fees maintenance fees special orders fees supervision fees
- (c) payment of ECC's legal administrative and other fees and disbursements associated with the drafting negotiating and completion of the Highway Works Agreement
- (d) preparation and advance approval of works drawings and traffic management measures
- (e) certification and maintenance of the Highway Works
- (f) regulating of the issue of the Works Licence to enable the Highway Works to be carried out
- (g) the dedication of land as public highway
- (h) the standards and procedures for carrying out the Highway Works
- (i) traffic regulation orders and statutory processes

'Highway Works' shall mean and include the following improvements; -

- (a) Upgrade of the signalised junction of the B1256/B183 (known as the Four Ashes) to include MOVA (Microprocessor Optimised Vehicle Actuation) to provide optimisation of the signals to increase capacity. The upgrade works shall also include any necessary refurbishment or renewal of equipment and signing and lining including that required to provide prioritisation for cyclists at the junction as appropriate;
- (b) provision of bus stop on the northern side of the B1256 in the vicinity of the junction with Smiths Green which shall comprise (but not be limited to) the following facilities: shelters; seating; raised kerbs; bus stop markings; flags timetable casings. Real time passenger information shall be provided at the new bus stop and the existing bus stop to the south of the B1256 and east of Smith's Green;
- (c) Improvements to restricted Byway 48/25 (Jacks Lane) from Burgattes Road to the point where it joins the proposed internal footway/cycle in the Garden Village Character Area forms the majority of the Jack's Lane parcel, to make it suitable for every day, all weather use for pedestrians, cyclists and people with mobility impairment including, but not limited to all weather surfacing, lighting, signing, infrastructure to stop use by motor vehicles and a maintenance plan to be submitted for approval to the highway authority;
- (d) Extension of the footpath running north/south immediately east of the commercial building right up to the northern boundary of the site and the east-west footway/cycleway immediately south of the school extension land shall extend right up to the western boundary of the site, both shown in principle in drawing number WH202-10-P-20 Rev B

and

including any necessary alterations to and reinstatements of existing highways and statutory undertakers equipment to the provision of or alteration to street lighting road signs drainage structures traffic signals related accommodation and any other works normally associated with the construction of a highway or required as a result of ECC's inspections all as shown indicatively (subject to detailed design) on the Highway Works Plan

'Highway Works Plan' shall mean the plan attached at Annex 3 showing the indicative layout of the Highways Works (Plan 03 drawing no WH202_10_S106_03A)

'Public Byway Route' shall mean the public Byway 48/25 route from the Development via Jacks Lane to Priors Green

1. The Owners covenant with UDC and ECC as follows -

1.1 to enter a Highways Works Agreement in relation to the Highway Works (c) prior to Implementation of the Development and not to cause allow or Permit Implementation of the Development unless and until the Owners have entered into a Highways Works Agreement in relation to the Highway Works (c) with ECC.

1.2 Prior to Occupation the Owners shall -

1.2.1 enter into the Highway Works Agreement(s) with ECC prior to commencement of the relevant Highway Works and not allow cause or permit the commencement of the relevant Highway Works unless and until the Owners have entered into the Highway Works Agreement(s) to secure where necessary the design, construction and completion by the Owners of the relevant Highway Works and their subsequent adoption as publicly maintainable highway.

1.2.2 Complete the Highway Works prior to the first Occupation of any Dwellings and not to Occupy allow cause or permit first Occupation of any Dwellings unless and until the Highway Works have been properly constructed and completed in accordance with the Highway Works Agreement(s) and the relevant certificate confirming such completion has been issued under the provisions of the relevant Highway Works Agreement(s) and have been made available for public use;

PART 2 RESIDENTIAL TRAVEL PLAN AND TRAVEL INFORMATION PACKS

1 In this part of Schedule 2 unless the context requires otherwise the following words, expressions and terms shall have the following meanings:

Biennial Traffic Counts means the collection of travel data every two years from all entry and exit points to the Residential Development including pedestrian and cycle routes leading to a service or amenity where a lower traffic generation rate has been agreed based on the fact that there will be travel planning measures in place to reduce the modal share travelling by car;

Relevant Sustainable Travel Indexation means the amount that the Owner shall pay with and in addition to each part of the Residential Travel Plan Monitoring Fee paid that shall in each case equal a sum calculated by taking the amount of the Residential Travel Plan Monitoring Fee being paid and multiplying this amount by the percentage change shown in the Sustainable Travel Index between the Index Point pertaining to April 2021 and the date payment is made to ECC Council

Residential Travel Information Pack means a specific district or borough tailor-made booklet aimed at promoting the benefits of sustainable transport in support of the objective to secure a modal shift from the private car and increase the use of sustainable modes of travel and shall contain the following:

- (a) guidance and promotional material on the use of sustainable modes of travel;
- (b) details on walking, cycling, trains, buses, park & ride, taxis, car sharing, car clubs, electric vehicles, school transport and personalised journey planning services;
- (c) reference to travel websites, resources and support services for each mode of travel, information provided by ECC and UDC;
- (d) details of local travel campaigns and networking/support groups; and
- (e) to include the Travel Vouchers for use with the relevant local public transport operator;

Residential Travel Plan means a working plan to include all measures to ensure sustainable means of travel are available to residents of the Development in accordance with the requirements of the National Planning Policy Framework and shall include but not be limited to such Residential Travel

Plan Measures as stated in the 'Travel Plan Template' and amended and supplemented from time to time under the provisions of this Deed and the Biennial Traffic Counts reviews;

Residential Travel Plan Co-Ordinator means a member of staff appointed by the Owner with appropriate skills and budgetary provision and resources to fulfil the role of the Residential Travel Plan Co-ordinator as described in the job description(s) stated in the Residential 'Travel Plan Template';

Residential Travel Plan Monitoring Fee means a non-refundable annual payment of £1,533 (one thousand five hundred and thirty three pounds sterling) plus Relevant Sustainable Travel Indexation payable towards the monitoring by ECC of the implementation of the Residential Travel Plan to ensure that (a) monitoring is conducted in line with Residential Travel Plan monitoring protocols and (b) the Residential Travel Plan remains an "active" document with the overarching aim to secure a modal shift from the private car and increase the number of people using sustainable modes of travel;

Residential Travel Plan Template means the template appended to this Agreement as updated and amended by ECC from time to time;

Sustainable Travel Index means the Consumer Price Index (CPI) or in the event that the CPI is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by ECC Council

Sustainable Travel Index Point means a point shown on the Sustainable Travel Index indicating a relative cost at a point of time;

Travel Vouchers shall mean tickets/passes/ vouchers or other means of accessing transport or journey planning information as agreed with ECC including the following as a minimum (six scratchcard bus tickets per household OR season ticket voucher) and/or (incentives for rail travel with the local rail operator) for each eligible member of the household AND access to an online tool to generate personalised travel plans using a home and destination postcode to provide details of different travel modes/options travel routes/maps and timetable information).

- 2 The Owners hereby covenants with ECC in respect of the Residential Development:
 - 2.1 prior to the Occupation of the Residential Development to formulate and submit to ECC for approval a Residential Travel Plan and not to cause or allow first Occupation of the Residential Development prior to the Residential Travel Plan being approved in writing by ECC;
 - 2.2 to appoint a Residential Travel Plan Co-ordinator prior to first Occupation of the Residential Development and not to cause or allow Occupation of the Residential Development prior to the appointment of a Residential Travel Plan Co-ordinator and to notify ECC of the identity and contact details of the Residential Travel Plan Co-ordinator as soon as an appointment is confirmed;
 - 2.3 to continue to employ a Residential Travel Plan Co-ordinator in respect of each Phase of the Development for the period until a minimum of one year after the Final Occupation of the Residential Development or five years after first Occupation whichever is the later and in the event of a vacancy occurring in the post during that period to re-appoint within a maximum period of two months of the vacancy occurring and to notify ECC as soon as the appointment is confirmed; to use all reasonable endeavours to ensure that the Residential Travel Plan Co-ordinator fulfils their duties in accordance with the duties specified in the job description of the Residential Travel Plan Co-ordinator stated in the approved Residential Travel Plan;
 - 2.4 not to change the responsibilities or role of the Residential Travel Plan Co-ordinator without prior written approval of ECC;
 - 2.5 to implement the Residential Travel Plan in respect of each Phase of the Development in a timely manner and at its own expense and to comply in all respects with the requirements of the Residential Travel Plan for a period of one year after the Final Occupation of the Residential Development or a minimum of five years after first Occupation of the Residential Development whichever is the later
 - 2.6 to pay the first annual Residential Travel Plan Monitoring Fee to ECC prior to Occupation of the Residential Development and not to allow Occupation of the Residential Development until the Travel Plan Monitoring Fee has been paid to ECC and in the case of late payments interest will be payable

by the Owner from the date payment is due to the date payment is made on which late sums interest shall accrue under the Seven Day LIBID Rate;

- 2.7 to pay the annual Residential Travel Plan Monitoring Fee to ECC on each subsequent anniversary following the first annual payment until one year after the Final Occupation of the Residential Development or a minimum of five years after Occupation of the Residential Development whichever is the later and in the case of late payments interest will be payable by the Owners from the date payment is due to the date payment is made on which late sums interest shall accrue under the Seven Day LIBID Rate;
 - 2.8 to submit raw data collected as part of the Biennial Traffic Count no later than two months from completion of the Biennial Traffic Count to which the data relates; and
 - 2.9 in the event that any of the Biennial Traffic Counts are not carried out by the Owner pursuant to the Residential Travel Plan ECC shall on written notice to the Owner be entitled to conduct such Biennial Traffic Counts as are necessary to discharge the requirements of the Residential Travel Plan and **furthermore** on receipt of an appropriate invoice or request for payment from ECC acting reasonably the Owner hereby agrees to pay ECC's reasonable and proper costs arising from such surveys.
- 3 The ECC hereby covenants with the Owner:
- 3.1 to agree the terms of the Residential Travel Plan (acting reasonably) and to provide recommendations on the said plan following submission by the Owner in a timely manner;
 - 3.2 to provide support and advice to the Residential Travel Plan Co-ordinator in implementing the ongoing monitoring and review of the Residential Travel Plan (in accordance with the terms under which the Residential Travel Plan Monitoring Fee was paid); and
 - 3.3 to respond in writing to the Residential Travel Plan Co-ordinator within two months of receipt of any correspondence relating to the Residential Travel Plan.

4 **Travel Information Packs**

The Owners further hereby covenant with ECC:

- 4.1 to submit a draft Residential Travel Information Pack (including Travel Vouchers) to ECC for written approval prior to first Occupation of a Dwelling and not to cause or allow first Occupation of a Dwelling prior to the Residential Travel Information Pack (including Travel Vouchers) being submitted to and approved in writing by ECC;
- 4.2 to provide the first occupier of each Dwelling with an approved Residential Travel Information Pack upon to Occupation of any Dwelling and not to cause or permit Occupation of any Dwellings on the Development unless and until the Owners have provided the first occupiers with an approved Residential Travel Information Pack and Travel Voucher at the expense of the Owner; and
- 4.3 to confirm the contact details of Residential Travel Plan Co-ordinator to ECC within one month of the appointment having been made.

PART 3 SUSTAINABLE TRANSPORT CONTRIBUTION

- 1 In this part of Schedule 2 unless the context requires otherwise the following words, expressions and terms shall have the following meanings:

General Index means the Consumer Price Index (CPI) or in the event that the CPI is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by ECC

General Index Point means a point on the most recently published edition of the General Index at the time of use

Index means the most recently published edition at the time of use of each index used under the terms of this Agreement to calculate any amount to be paid with or in addition to a Contribution due under the terms of this Agreement to add to or reduce the Contribution to reflect changes in cost over time

Index Point means a point shown on the relevant Index indicating a relative cost at a point in time

Sustainable Transport Contribution means the sum of £735,000 (seven hundred and thirty-five thousand pounds sterling) payable to ECC to which sum the Relevant Sustainable Transport Indexation shall be added;

Sustainable Transport Contribution Purposes means the use of the Sustainable Transport Contribution to fund sustainable transport measure including cycling infrastructure to/from Stansted Airport and Takeley and improvements to enhance bus services between the Development and Bishops Stortford and or local amenities and or Stansted Airport improving frequency, quality, and or geographical cover of bus routes that serve the Site and shall include the reimbursement of capital funding for such provision made by ECC in anticipation of the receipt of the Sustainable Transport Contribution and including any design and feasibility work undertaken to facilitate infrastructure work even if the work is not implemented in full or part.

Relevant Highway Indexation means the amount that the Owner shall pay with and in addition to the Sustainable Transport Contribution paid that shall equal a sum calculated by taking the amount of the Sustainable Transport Contribution being paid and multiplying this amount by the percentage change shown in the General Index between the Index Point pertaining to April 2021 and the Index Point pertaining to the date the payment is due to be made to ECC

- 2 The Owner hereby covenants with ECC:
 - 2.1 to pay the Sustainable Transport Contribution to ECC prior to first Occupation of any Dwellings on the Development and not to cause permit or allow first Occupation of any Dwellings on the Development unless and until the Sustainable Transport Contribution has been paid to ECC in full (100%)
 - 2.2 In the event that the Sustainable Transport Contribution is paid later than dates set out in paragraph 2.1 above of this Schedule then the amount of the Sustainable Transport Contribution or part thereof payable by the Owners shall in addition include either an amount equal to any percentage increase in build costs shown by the General Index between the Index Point prevailing at the date the payment is due and the Index Point prevailing at the date of actual payment to ECC multiplied by the Sustainable Transport Contribution due or if greater an amount pertaining to interest on the Sustainable Transport Contribution (or the part thereof) due calculated at the Seven Day LIBID Rate from the date that the payment is due until the date payment of the Sustainable Transport Contribution is received by ECC;
 - 2.3 In addition to the requirement of 2.2 above in the event that any sum due to be paid by the Owner to ECC pursuant to this Schedule should not be received by ECC by the date that the sum is due then the Owner hereby covenants to pay to ECC within ten Working Days of receiving a written request all reasonable costs that ECC has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) for each and every letter sent to the Owner pursuant to the debt.
- 3 In the event that the Sustainable Transport Contribution is overpaid by the Owner then ECC shall be under no obligation to return any such overpaid sum in whole or in part if in good faith ECC have spent the Sustainable Transport Contribution or have entered into a legally binding contract or obligation to spend the Sustainable Transport Contribution otherwise ECC shall upon the Occupation of the final Dwelling on the Site or at such earlier time as ECC shall determine return any such overpaid sum or sums in whole or in part to the Owner (in excess of those sums calculated as due for payment under this Agreement) together with interest calculated at the Seven Day LIBID Rate within twenty (20) Working Days of ECC being informed by the Owner of such overpayment.
- 4 ECC hereby covenants with the Owner to:
 - 4.1 place the Sustainable Transport Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the Sustainable Transport Contribution Purposes only and for no other purposes;
 - 4.2 upon receipt of a request in writing to do so to be received by ECC from the Owner no sooner than the tenth (10th) anniversary of receipt of the Sustainable Transport Contribution in full and no later than the eleventh (11th) anniversary of the same to return to the party who deposited the Sustainable Transport Contribution or any part of the Sustainable Transport Contribution that remains unexpended when such request in writing is received (together with interest accrued on the

unexpended part) Provided Always that where a legally binding contract or obligation has been entered into by ECC prior to the tenth (10th) anniversary of receipt of the Sustainable Transport Contribution in full to make a payment in respect of the Sustainable Transport Contribution Purpose the unexpended part of the Sustainable Transport Contribution shall not be repaid until such payment is made and the unexpended part of the Sustainable Transport Contribution to be repaid (if any) shall not include such payment; and

4.3 That upon receipt of a written request from the Owner statement confirming whether the Sustainable Transport Contribution has been spent and if the Sustainable Transport Contribution has been spent in whole or in part outlining how the Sustainable Transport Contribution has in whole or in part been spent.

5 It is hereby agreed that:

5.1 Any dispute in relation to how the Sustainable Transport Contribution has been spent must be raised in writing by the Owner and received by ECC within twenty (20) Working Days of receipt by the Owner of ECC's statement referred to in 2.3 above and shall clearly state the grounds on which it is disputed. If no written request is received by ECC or no valid dispute is raised, the Owner shall accept that the Sustainable Transport Contribution has been spent on the appropriate Purposes but without prejudice to ECC's obligations to repay any unspent part of the Sustainable Transport Contributions pursuant to the terms of this Agreement.

5.2 ECC may utilise up to two percent (2%) of the total amount of the Sustainable Transport Contribution due under this Agreement to a maximum of Two Thousand Four Hundred Pounds (£2,400) plus the Relevant Sustainable Transport Indexation for the purposes of scheme validation, programming, commissioning of works, scheme monitoring including site visits and meetings, budget control, governance and for the avoidance of doubt such purposes are agreed by the Owner to form part of the definition of use of the Sustainable Transport Contribution Purpose.

PART 4 EDUCATION CONTRIBUTION

Completion Notice means the notice served by the Owners on ECC pursuant to paragraph 2.5

Dwelling means a house self-contained flat bungalow maisonette or other domestic property constructed as part of the Development or created by conversion of an existing building on the Site and for the avoidance of doubt for the purposes only of the Education Land Schedule and the Education Contributions Schedule of this Agreement this definition shall exclude any dwelling that by condition set out in the Planning Permission cannot under any circumstance be Occupied by persons under the age of nineteen (19) years of age]

Early Years & Childcare Contribution means the Early Years and Childcare Pupil Product multiplied by the cost generator of £17,268 (seventeen thousand two hundred and sixty-eight pounds sterling)

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

Early Years and Childcare Purpose means the design (including feasibility work) and/or delivery and/or provision of facilities for the education and/or care of children between the ages of 0 to 5 (both inclusive) including those with special educational needs within the Takeley Ward and/or within a 3 mile radius of the Development and including the reimbursement of capital funding for such provision made by ECC in anticipation of the Early Years and Childcare Contribution

Education Contribution means the sum of the Early Years & Childcare Contribution and the Secondary Education Contribution to which sums the Relevant Education Indexation shall be added

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

Education Index Point means a point on the most recently published edition of the relevant index at the time of use;

Education Purposes means the Early Years and Childcare Purpose and the Secondary Education Purpose;

Flat means a Dwelling that occupies a single floor and /or does not benefit from private open space for the exclusive use of the residents of the Dwelling and no other persons;

General Index means the Consumer Price Index (CPI) or in the event that the CPI is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by ECC

General Index Point means a point on the most recently published edition of the General Index at the time of use

Index means the most recently published edition at the time of use of each index used under the terms of this Agreement to calculate any amount to be paid with or in addition to a Contribution due under the terms of this Agreement to add to or reduce the Contribution to reflect changes in cost over time

Index Point means a point shown on the relevant Index indicating a relative cost at a point in time

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

Notice of Commencement means the written notice served pursuant to paragraph 2.3

Payment Notice means a written notice advising of a proposed payment served pursuant to paragraph 2.4

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

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

Qualifying Housing Units means the Qualifying Houses and Qualifying Flats;

Relevant General Indexation means the amounts that the Owner shall pay with and/or agree in addition to each part of the fee or sum set out in paragraphs 6.2 of this Part 5 of Schedule 2 that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change in the General Index between the General Index point pertaining to January 2020 and the date payment is made to the ECC;

Relevant Education Indexation means the amounts that the Owner shall pay with and/or agree in addition to each part of the Contribution paid that shall in each case equal a sum calculated by taking the amount of the Contribution being paid and multiplying this amount by the percentage change in the Education Index between the Education Index point pertaining to January 2020 and Index point pertaining to the date payment is made to ECC;

Secondary Education Contribution means the Secondary Pupil Product multiplied by the cost generator of (twenty-three thousand seventy hundred and seventy-five) pounds sterling (£23,775)

Secondary Education Purposes means the design (including feasibility work) and/or delivery and/or provision of facilities for the education and/or care of children between the ages of 11 to 19 (both inclusive) including those with special educational needs in the vicinity deemed by ECC as serving the Development and/or at Forest Hall School and/or Uttlesford Secondary Group 2 and including the reimbursement of capital funding for such provision made by ECC in anticipation of the Secondary Education Contribution

Secondary Pupil Product means the sum of the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2;

Seven Day LIBID Rate shall mean an assessment of the rate of interest ECC can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow euro currency deposits or such other rate as ECC considers appropriate;

Triggers means when the Education Contributions are or part thereof are due to be paid to ECC

Unit Mix means the number of Qualifying Flats and the number of Qualifying Houses and the number of Dwellings that by definition shall not be counted as Qualifying Flats or Qualifying Houses.

1 The Owner Owners hereby covenant with ECC in respect of the Residential Development

- 1.1 to pay fifty percent (50%) of the Education Contribution to ECC prior to Implementation of the Residential Development and not to Commence the Residential Development until fifty percent (50%) the Education Contribution have been received by ECC;
- 1.2 to pay the remaining fifty percent (50%) of the Education Contribution to ECC prior to the first Occupation of a Dwelling and not to Occupy any Dwelling (or cause or allow any Dwelling to be Occupied) until ECC has received payment of the remaining fifty (50%) percent of the Education Contributions and 100% of the Education Contribution has thereby been paid;
- 1.3 to serve on ECC the Notice of Commencement not less than three (3) months prior to Implementation stating the expected Implementation Date an estimate of the Triggers and any further information stipulated in the Schedules to this Agreement and to serve Notice of Implementation of the Residential Development;
- 1.4 to serve on ECC the Payment Notice between sixty (60) and thirty (30) Working Days prior to the date that each and any payment is due to be made to ECC under this Agreement stating the date that such payment becomes due and any further information stipulated in the Schedules to this Agreement;
- 1.5 to serve on ECC the Completion Notice within 30 Working Days of all Dwellings being Occupied for the first time stating the date that the last Dwelling was Occupied for the first time and any further information stipulated in the Schedules to this Agreement and for the avoidance of doubt any dispute regarding any notice to be served under this Agreement may be resolved through the 2 mechanisms set out in [Clause 8] of this Agreement; and
- 1.6 to serve on ECC notice of Occupation of the first Dwelling on the Residential Development within 1 (one) month thereof and on a 6 (six) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings the Unit Mix of Dwellings that are completed but not Occupied the Unit Mix of Dwellings that are under construction and the Unit Mix of Dwellings where construction work has yet to start at the time the notice is served.
- 2 The Notice of Commencement shall in addition to that information stipulated in paragraph 2.3 to this Agreement state the Unit Mix and in the event that the Unit Mix constructed or to be constructed should at any time differ from the Unit Mix notified to ECC then the Owners shall serve on ECC a further notice stating the revised Unit Mix within ten (10) Working Days of the revised Unit Mix being decided and in the further event that the Owners fails to serve any notice set out in this Paragraph 3 of this Schedule ECC may estimate and determine the Unit Mix as it sees fit acting reasonably.
- 3 The Payment Notice shall state the Unit Mix on which the payment is to be based.
- 4 The Completion Notice shall state the final Unit Mix.
- 5 It is hereby agreed and declared:
 - 5.1 In the event that the Education Contribution is paid later than dates set out in paragraph 2.1 and 2.2 then the amount of the Education Contribution or part thereof payable by the Owners shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the date of Implementation and the Education Index Point prevailing at the date of actual payment multiplied by the Education Contribution due or if greater an amount pertaining to interest on the Contributions or part thereof due calculated at the Seven Day LIBID Rate from the date of Implementation until the date payment of the Education Contribution is received by ECC
 - 5.2 In addition to the requirement of 6.1 above in the event that any sum due to be paid by the Owners to ECC pursuant to this Deed should not be received by ECC by the date that the sum is due then the Owners hereby covenant to pay to ECC within ten Working Days of receiving a written request all reasonable costs that ECC has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) plus the Relevant General Indexation for each and every letter sent to the Owners pursuant to the debt.
 - 5.3 In the event that the Unit Mix to be constructed on the Development does not match the Unit Mix on which the Education Contribution or part thereof paid was based the Owners hereby covenant to pay to ECC as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Education Contribution paid and the amount of the Education

Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by ECC form part of the Education Contribution.

- 5.4 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owners and received by ECC within twenty (20) Working Days of receipt by the Owners of ECC's statement referred to in paragraph 7.3 and shall clearly state the grounds on which the expenditure is disputed.
- 5.5 In the event that the Education Contribution is overpaid by the Owners then ECC shall be under no obligation to return any such overpaid sum in whole or in part if in good faith ECC have spent the Education Contribution or have entered into a legally binding contract or obligation to spend the Education Contribution otherwise ECC shall upon the Occupation of the final Unit on the Site or at such earlier time as ECC shall determine return any such overpaid sum or sums in whole or in part to the Owners (in excess of those sums calculated as due for payment under this Agreement) together with interest calculated at the Seven Day LIBID Rate within twenty (20) Working Days of ECC being informed by the Owners of such overpayment.
- 6 ECC covenants with the owner as follows:
- 6.1 If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid in full but no later than one (1) year thereafter ECC shall return to the party that made the payment of the relevant Contribution any part of the relevant Education Contribution that remains unexpended when such notice is received (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if ECC is legally obliged to make a payment in respect of any Purpose the unexpended part of the Education Contribution shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid shall not include such payment
- 6.2 In the event that no written request is received by ECC from the Owners pursuant to paragraph 7.1 above or no valid dispute is raised by the Owners pursuant to paragraph 6.4 the Owners shall accept the Education Contribution has been spent in full on the Education Purposes as appropriate.
- 6.3 Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the date the Education Contribution is paid in full ECC shall provide the Owners with a statement confirming whether the Education Contributions have been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contributions have in whole or in part been spent.
- 6.4 At the written request of the Owners ECC shall provide written confirmation of the discharge of the obligations contained in this agreement when satisfied that such obligations have been performed.

OBLIGATIONS UNDERTAKEN BY UDC

UDC hereby covenants with the Owners as follows:

1. To place the Hatfield Forest Contribution and the Healthcare Facility Contribution in an interest bearing account on receipt and in the event of repayment UDC shall repay to the person who paid the relevant Contribution any part which remains unexpended together with any accrued interest thereon
2. To keep an up-to-date record of all payments from the Hatfield Forest Contribution transferred by UDC to the National Trust
3. Not to pay any part of the Hatfield Forest Contribution to the National Trust until the National Trust has undertaken in writing to spend the monies only for the Hatfield Forest Contribution Purpose and that if some or all of the monies are not used or committed for the Hatfield Forest Contribution Purpose within five years of payment of those monies, to repay those unexpended or uncommitted monies to UDC along with any interest accrued thereon prior to the expiry of 42 days from the end of the five-year period referred to PROVIDED THAT if such undertaking has not been received within 2 years of the date that the Hatfield Forest Contribution was received by UDC then UDC shall repay the Hatfield Forest Contribution

4. UDC shall repay any monies returned to it by the National Trust to the party who made the original payment to UDC within 30 days of receipt of such monies from the National Trust
5. To keep an up-to-date record of all payments from the Healthcare Contribution transferred by UDC to CCG
6. Not to pay any part of the Healthcare Contribution to CCG until the CCG has undertaken in writing to spend the monies only for the Healthcare Purposes and that if some or all of the monies are not used or committed for the Healthcare Purposes within five years of payment of those monies, to repay those unexpended or uncommitted monies to UDC along with any interest accrued thereon prior to the expiry of 42 days from the end of the five-year period referred to PROVIDED THAT if such undertaking has not been received within 2 years of the date that the Healthcare Contribution was received by UDC then UDC shall repay the Healthcare Contribution
7. UDC shall repay any monies returned to it by CCG to the party who made the original payment to UDC within 30 days of receipt of such monies from CCG
8. UDC hereby covenants with the Owners to use all sums received within the administrative area in which it operates and for the purposes specified in this agreement
9. UDC shall provide the Owners with such evidence as the Owners shall reasonably require in order to confirm the expenditure of the sums paid under this agreement
10. At the written request of the Owners UDC shall provide written confirmation of the discharge of the obligations contained in this agreement when satisfied that such obligations have been performed
11. If UDC refuses any request for approval under any of the provisions in this agreement it shall simultaneously provide the reasons for that refusal in writing and shall set out the actions or works necessary to enable approval to be issued

ANNEX 1
S106 MASTER PLAN

Appendices

ECC GUIDANCE NOTES FOR A RESIDENTIAL TRAVEL PLAN TEMPLATE (NEW RESIDENTIAL DEVELOPMENTS)

ECC RESIDENTIAL TRAVEL PLAN TEMPLATE (NEW RESIDENTIAL DEVELOPMENTS)