

DATED

2023

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**UTTLESFORD DISTRICT COUNCIL** (1)

- and -

**ESSEX COUNTY COUNCIL** (2)

- and -

**RICHSTONE PROPERTIES LIMITED** (3)

- and -

**RICHSTONE INVESTMENTS LIMITED** (4)

- and -

**JULIA KARINA FINZEL, SERENA VIRGINIA FINZEL and** (5)  
**MARK CURLING FINZEL**

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**SECTION 106 AGREEMENT**

relating to land to the rear of Eldridge Close, Clavering, Saffron  
Walden, Essex

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**THIS AGREEMENT** is made on this

day of

2023

BETWEEN:

- (1) **UTTLESFORD DISTRICT COUNCIL** of Council Offices, London Road, Saffron Walden, Essex, CB11 4ER (**"the District Council"**); and
- (2) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex, CM1 1QH (**"the County Council"**); and
- (3) **RICHSTONE PROPERTIES LIMITED** (Co. Regn. No. 09023741) of Gladstone House, 77-79 High Street, Egham TW20 9HY and of Templeton House, 118 Priory Lane, London SW15 5JL (**"the Owners"**); and
- (4) **RICHSTONE INVESTMENTS LIMITED** (Co. Regn. No. 03756897) of Templeton, 118 Priory Lane, London SW13 5JL and care of Messrs Wade and Davis, 28 High Street, Dunmow CM6 1AH (**"RIL"**); and
- (5) **JULIA KARINA FINZEL, SERENA VIRGINIA FINZEL** and **MARK CURLING FINZEL** care of [REDACTED] (**"the Finzels"**).

## **BACKGROUND**

- (A) For the purposes of the 1990 Act (as defined herein), the District Council and the County Council are the local planning authorities for the area within which the Site (as defined herein) is located and are the authorities entitled to enforce the obligations set out in this Agreement. The County Council is also the authority responsible for: (a) the delivery of state funded education for the County of Essex; and (b) the upkeep of libraries in the County of Essex.
- (B) The Owners are the freehold owners of the majority of the Site (all except for the road within Eldridge Close) and which ownership is registered at HM Land Registry with the Title Number EX814045.
- (C) RIL is the beneficiary of a charge registered against the Site and which charge is recorded at the entries numbered 2 and 3 the Charges Register for the Title Number EX814045. RIL has entered into this Agreement to consent to the Owners binding the Site by the giving of the covenants herein.
- (D) The Finzels are the beneficiaries of a charge registered against the Site and which charge is recorded at the entries numbered 4 and 5 the Charges Register for the Title

Number EX814045. The Finzels have entered into this Agreement to consent to the Owners binding the Site by the giving of the covenants herein.

- (E) The Planning Application (as defined herein) has been submitted to the Secretary of State (as defined herein) pursuant to the provisions of Section 62A of the 1990 Act. The Parties (as defined herein) have entered into this Agreement to secure commitments associated with the Development (as defined herein) in the event that the Secretary of State grants the Planning Permission (as defined herein).
- (F) The Parties are satisfied that the planning obligations contained in this Agreement comply with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) in that they:
  - (i) are necessary to make the Development acceptable in planning terms;
  - (ii) are directly related to the Development; and
  - (iii) fairly and reasonable relate in scale and kind to the Development.
- (G) The Parties (as defined herein) have entered into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the District Council and the County Council (where appropriate) against the Owners and their successors in title.

## 1. **OPERATIVE PROVISIONS**

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

**“1990 Act”** means the Town and Country Planning Act 1990, as amended;

**“BCIS Index”** means the All in Tender Price Index published by the Building Cost Information Service from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Parties;

<b>“BCIS Index Linked “</b>	means the increase in any sum referred to in Schedule 1 by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 12 of this Agreement;
<b>“Commencement Date”</b>	means the date that Commencement of Development occurs;
<b>“Commencement of Development”</b>	means, subject to clause 3.2 herein, the carrying out pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and the use in this Agreement of the terms <b>“Commence the Development”</b> or <b>“Commence Development”</b> or <b>“Commenced”</b> shall be construed accordingly;
<b>“Development”</b>	means the erection of up to twenty eight (28) dwellings and including new vehicular access, public open space, sustainable drainable systems, landscaping and associated infrastructure and associated development;
<b>“Dwellings”</b>	means the residential dwellings (within use class C3) constructed as part of the Development and the use in this Agreement of the term <b>“Dwelling”</b> shall be construed accordingly;
<b>“Market Dwellings”</b>	means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings defined in Schedule 2 hereof;
<b>“NPPF”</b>	means the National Planning Policy Framework first published in March 2012 and last updated on 5 September 2023;

<b>“Notice A”</b>	means a written notice confirming the proposed Commencement Date;
<b>“Notice B”</b>	means a written notice confirming that Commencement of Development has taken place;
<b>“Occupation”</b>	<p>means beneficial occupation for the purposes permitted by the Planning Permission and shall not include:</p> <p>(a) any occupation associated with the construction of the Development including daytime occupation by workmen involved in the construction of the Development; and</p> <p>(b) in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security operations</p> <p>and the use in this Agreement of the terms <b>“Occupy”</b> or <b>“Occupied”</b> or <b>“Occupancy”</b> shall be construed accordingly;</p>
<b>“Parties”</b>	means together the District Council, the County Council, the Owners, RIL and the Finzels;
<b>“Planning Application”</b>	means the planning application requesting OUTLINE planning permission for the Development with all matters reserved except access and to which application the Secretary of State has applied the reference [.....];
<b>“Planning Permission”</b>	means the planning permission granted by the Secretary of State for the Development and

which planning permission is subject to conditions;

**“Secretary of State”**

means the Secretary of State for Levelling Up, Housing and Communities;

**“Site”**

means the land to the north of Eldridge Close Clavering Essex and which land is shown edged in red on the Site Plan;

**“Site Plan”**

means the drawing titled ‘Site Location Plan’ and numbered 18/17/01 Revision B, a copy of which drawing is attached hereto;

**“Working Days”**

means any day which is not a Saturday, a Sunday, a bank or public holiday in England.

1.2 In this Agreement:

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

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

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

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

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

1.2.4 references to the Site include any part of it;

1.2.5 references to any party in this Agreement include the successors in title of that party. In addition, references to the District Council and the County Council includes any successor local planning authority exercising planning powers

under the 1990 Act or any successor authority exercising statutory powers in respect of matters concerning education and/or libraries;

- 1.2.6 “including” means “including, without limitation”;
  - 1.2.7 any covenant by the Owners not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
  - 1.2.8 words importing the singular meaning where the context so admits shall include the plural meaning and vice versa;
  - 1.2.9 words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner;
  - 1.2.10 words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to cause permit or allow infringement of the restriction;
- 1.3 The Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

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

- 2.1 This Agreement is a Deed and is made pursuant to the provisions of Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act, the covenants contained in the Schedules to this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council and (where appropriate) the County Council.
- 2.2 To the extent that any of the covenants contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the District Council and/or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.

- 2.4 The covenants in this Agreement will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owners to that statutory undertaker.
- 2.5 The covenants in this Agreement will not be enforceable against individual purchasers or lessees or Occupiers of the individual Dwellings or their mortgagees or successors in title to either the purchaser or lessee or Occupier or mortgagee, save in respect of: (a) the restrictions on occupation in paragraphs 2.7 and 2.8 of Schedule 2; and (b) the restriction on the sale of the First Homes Dwellings in paragraph 2.9 of Schedule 2.
- 2.6 The covenants in this Agreement will not be enforceable against any Approved Body (as defined in Schedule 2) or their mortgagee, chargee (including any receivers appointed by a mortgagee who are not in possession) save for the obligations in Schedule 2 which shall remain binding.
- 2.7 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal PROVIDED THAT this clause 2.7 does not apply to or in any way affect the operation of clause 10.

### 3. **COMMENCEMENT DATE**

- 3.1 The obligations set out in this Agreement are conditional upon the grant of the Planning Permission but any of those obligations that do not have to be observed or performed until after Commencement of Development do not take effect until the Commencement Date.
- 3.2 For the purposes of this Agreement only the Commencement Date and Commencement of Development will not be triggered by any of the following operations:
- 3.2.1 archaeological or site investigations or surveys;
  - 3.2.2 site or soil surveys or site decontamination;
  - 3.2.3 the clearance of the Site including any works of demolition;



- 3.2.4 works connected with groundworks;
- 3.2.5 works for the provision of drainage or mains services to prepare the Site for development;
- 3.2.6 erection of fencing or boarding;
- 3.2.7 erection of boards advertising the Development (including the erection of advertising hoardings);
- 3.2.8 the construction of a temporary site compound or temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite;
- 3.2.9 construction of temporary access roads.

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

- 4.1 The Owners so as to bind the Site hereby covenant with the District Council and the County Council to comply with the obligations set out in Schedules 1, 2 and 3 to this Agreement.
- 4.2 The Owners hereby covenant with the District Council and the County Council to provide the District Council and the County Council with: (a) a Notice A not less than twenty (20) Working Days before the expected Commencement Date; and (b) a Notice B not more than five (5) Working Days after the Commencement Date.
- 4.3 The District Council and the County Council hereby covenant with the Owners to comply with their obligations set out in Schedule 1, 2 and 3 to this Agreement.
- 4.4 The District Council and the County Council hereby covenant with the Owners to act reasonably, properly and diligently in exercising any discretion and in discharging their respective functions under this Agreement. In particular, where any agreement, approval, authorisation, consent or other similar affirmation is required from the District Council or the County Council under the terms of the Agreement, the District Council and the County Council will not unreasonably withhold or delay such agreement, approval, authorisation, consent or other similar affirmation PROVIDED ALWAYS that such agreement, approval, authorisation, consent or other similar affirmation may only be given in writing and only prior to the act or event to which it

applies (unless otherwise agreed by the District Council or the County Council as appropriate).

- 4.5 Any covenant by the Owners not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 4.6 Any obligation that prohibits the Owners from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owners to positively carry out those certain events by no later than the number of Occupations set out therein unless the context otherwise requires.
- 4.7 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs except to the extent that they have caused or contributed to that breach, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.7.
- 4.8 No compensation shall be payable by the District Council or the County Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owners and at no cost to the District Council or the County Council.
- 4.9 Representatives of the District Council and/or the County Council may enter upon the Site at any reasonable time upon reasonable written notice (and immediately in the event of an emergency) to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with subject to complying with all health and safety and security requirements required by the Owners as appropriate Provided That this right shall cease and determine in relation to any Dwelling on first Occupation of that Dwelling.
- 4.10 Any agreement, covenant or obligation contained herein by any of the Parties which comprise more than one person or entity shall be joint and several and where any

agreement, covenant or obligation is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.

- 4.11 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the Parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.12 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent seal signature execution or approval of the owner, lessee or occupier of any Dwelling or their mortgagee or chargee or any person deriving title from them shall not be required to vary any part of this Agreement.
- 4.13 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.14 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.15 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the District Council as such and the District Council covenants with the Owners that it will note on the local land charges register when compliance with all of the said obligations has occurred.
- 4.16 That in the event that the Owners fail to serve any of the notices that they are required by the provisions of this Agreement to serve then the District Council and/or the County Council (as appropriate) shall be entitled to payment of the various financial contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the

payment of a financial contribution and the time period for the return of any unspent financial contribution shall be extended accordingly.

- 4.17 Any of the financial contributions that are paid late will attract a daily interest rate of four percent (4%) above the Bank of England base rate on the amount due from the day that it is due until the day that it is paid.

5. **TERMINATION OF THIS AGREEMENT**

- 5.1 This Agreement will come to an end if:

5.1.1 the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owners before the Commencement Date so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

5.1.2 the Planning Permission expires.

5.2 Where the Agreement comes to an end under Clause 5.1 above the District Council shall, on the written request of the Owners vacate or cancel the entry made in the local land charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

6. **NOTICES**

6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by electronic mail (save in the case of the County Council) by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following address (or to such other address as one party may notify in writing to the others at any time as its address for service):

6.1.1 for the Owners to .....;

6.1.2 for RIL .....;

6.1.3 for the District Council as set out above and all notices shall: (a) be marked to the attention of .....; and (b) quote the planning application reference .....

6.1.4 for the County Council as set out above and all notices shall: (a) be marked for the attention of .....; and (b) quote the planning application reference .....

- 6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.2.1 if delivered by hand, at the time of delivery;
  - 6.2.2 if sent by post, on the second Working Day after posting; or
  - 6.2.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 6.4 Otherwise than in relation to individual purchasers of Dwellings the Owners shall give to the District Council and the County Council within one month of the Owners disposing of any part of the Site written notice of the name and address of the person or persons to whom the Site or part thereof has been transferred.

7. **COSTS OF THIS AGREEMENT**

- 7.1 Upon completion of this Agreement Owners covenant to pay to the District Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement.
- 7.2 Upon completion of this Agreement the Owners covenant to pay to the District Council a contribution of [.....] pounds (£.....) (no VAT) towards the District Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owners are required to observe and perform pursuant to the terms of this Agreement.
- 7.3 Upon completion of this Agreement the Owners covenant to pay to the County Council its reasonable and proper legal costs in connection with the negotiation and completion of this Agreement.
- 7.4 Upon completion of this Agreement the Owners covenant to pay to the County Council a contribution of [.....] pounds (£.....) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owners are required to observe and perform pursuant to the terms of this Agreement.

8. **DETERMINATION OF DISPUTES**

- 8.1 Subject to Clause 8.7 herein, if any dispute arises relating to or arising out of the terms of this Agreement (except for any dispute between the Owners and/or RIL and/or the Finzels), either party may give to the other written notice requiring the dispute to be determined under this Clause 8. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.
- 8.2 For the purposes of this Clause 8 a “Specialist” is a person qualified to act as an expert in relation to the dispute having not less than ten years’ professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.
- 8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.4.
- 8.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute).
- 8.5 The Specialist is to act as an independent expert and:
- 8.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;

- 8.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
- 8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 8.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;
- 8.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
- 8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 8.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.
- 8.7 This Clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England.

9. **JURISDICTION**

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

10. **SECTION 73**

- 10.1 In the event that any new planning permission is granted by the District Council (or granted on appeal) pursuant to a Section 73 (of the 1990 Act) application relating to the Planning Permission and unless otherwise agreed between the parties:

- 10.1.1 the obligations in this Agreement shall relate to and bind any subsequent planning permission in respect of the Site granted pursuant to Section 73 of the 1990 Act; and
- 10.1.2 the definitions of Development, Planning Application and Planning Permission in this Agreement shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission; and
- 10.1.3 this Agreement shall be endorsed with the following words in respect of any future Section 73 application:

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

PROVIDED THAT nothing in this clause shall fetter the discretion of the District Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new agreement/deed or supplemental agreement/deed pursuant to Section 106 or Section 106A of the 1990 Act.

## 11. **RIL AND THE FINZELS CONSENTS**

- 11.1 RIL and the Finzels hereby confirm that they consent to the Owners binding the Site by the giving of the covenants herein and acknowledge that the Site is bound by those covenants PROVIDED THAT neither RIL or the Finzels will be liable for the performance or observance of the covenants referred to herein unless they take possession of the Site pursuant to powers within their respective charges or otherwise.

## 12. **INDEXATION**

- 12.1 Any sum referred to in Schedule 1 of this Agreement (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index and (unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula  $A = B \times (C/D)$  where:



- 12.1.1 A is the sum payable under this Agreement;
- 12.1.2 B is the original sum calculated as the sum payable;
- 12.1.3 C is the BCIS Index for the month 2 months before the date on which the sum is payable;
- 12.1.4 D is the BCIS Index for the month 2 months before the date of this Deed; and
- 12.1.5  $C/D$  is greater than 1

13. **EXECUTION**

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed on the day and year first before written.

## **SCHEDULE 1**

### **EDUCATION AND LIBRARIES**

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

<b>“Early Years &amp; Childcare Contribution”</b>	means the sum of Thirty Six Thousand Seven Hundred and Fifteen Pounds and Eighty Eight Pence (£36,715.88) BCIS Index Linked; [NB – this is pro rata for the sum requested for the 32 dwelling application (i.e. £41,961.00 divided by 32 x 28)]
<b>“Early Years &amp; Childcare Purposes”</b>	means the use of the Early Years & Childcare Contribution towards the cost to the County Council of providing early years and childcare facilities and services within the ward of Clavering and including the reimbursement of capital funding made by the County Council in anticipation of payment of the Early Years & Childcare Contribution;
<b>“Education Contribution”</b>	means together the Early Years & Childcare Contribution and the Secondary School Transport Contribution;
<b>“Libraries Contribution”</b>	means the sum of Seventy Seven Pounds and Eighty Pence (£77.80) BCIS Index Linked per Dwelling to be delivered by the Development;
<b>“Libraries Purposes”</b>	means the use of the Libraries Contribution towards expanding the reach of the County Council’s mobile library and outreach services in order to provide an appropriate service to the those residing within the Development;

**“Secondary School Transport Contribution”**

means the sum of Twenty Three Thousand Five Hundred and Twenty One Pounds and Five Pence (£23,521.05) BCIS Index Linked; [NB – this is pro rata for the sum requested for the 32 dwelling application (i.e. £26,881.20 divided by 32 x 28)]

**“Secondary School Transport Purposes”**

means the use of the Secondary School Transport Contribution towards the cost to the County Council of providing transport for secondary school aged children residing within the Development to and from: (a) Joyce Frankland Academy, Newport, Saffron Walden, Essex, CB11 3TR; and/or (b) other secondary schools within the administrative district of Uttlesford.

2. The Owners hereby covenant with the District Council and the County Council, as follows:
  - 2.1 Not to Commence the Development unless or until:
    - 2.1.1 the Libraries Contribution has been paid to the County Council; and
    - 2.1.2 at least fifty percent (50%) of the Education Contribution has been paid to the County Council.
  - 2.2 To pay the Libraries Contribution and at least fifty percent (50%) of the Education Contribution to the County Council before Commencement of the Development.
  - 2.3 Not to Occupy (or allow, cause or permit the Occupation of) any of the Dwellings unless and until a further (and final) fifty percent (50%) of the Education Contribution has been paid to the County Council.
  - 2.4 To pay a further (and final) fifty percent (50%) of the Education Contribution to the County Council before any of the Dwellings are Occupied.
3. The County Council hereby covenants with the Owners, as follows:
  - 3.1 To provide a written form of receipt for payment of each tranche of the Education Contribution.

- 3.2 To place each tranche of the Education Contribution when received into an interest-bearing account with a clearing bank and to ensure that Education Contribution is applied exclusively towards the Early Years & Childcare Purposes and the Secondary School Transport Purposes and the Sixth Form Purposes, as appropriate.
- 3.3 To provide a written form of receipt for payment of the Libraries Contribution.
- 3.4 To place the Libraries Contribution when received into an interest-bearing account with a clearing bank and to ensure that the Libraries Contribution is applied exclusively towards the Libraries Purposes.
- 3.5 To pay any part of the Education Contribution and the Libraries Contribution, remaining unspent or uncommitted after ten years from the date of first Occupation of the final Dwelling (including interest applied at the Bank of England base rate minus two basis points compounding annually at financial year end) to the party who paid such contribution within 28 Working Days of receipt of a written request made within one year of the tenth anniversary of the date of first Occupation of the final Dwelling for the repayment of any such unspent monies.

## **SCHEDULE 2**

### **AFFORDABLE HOUSING**

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

**“Affordable Housing Construction Standard”** means the construction standard to be applied to the Affordable Housing Dwellings, and which construction standard shall be either Category M4(2) or Category M4(3)(2)(b) as appropriate and as set out within the Affordable Housing Plan;

**“Affordable Housing Dwellings”** means together the Affordable Rented Dwellings, the First Homes Dwellings and the Shared Ownership Dwellings, and the use in this Schedule 2 of the term **“Affordable Housing Dwelling”** shall be construed accordingly;

**“Affordable Rented Dwellings”** means those Affordable Housing Dwellings to be used exclusively for the purposes of Affordable Rented Housing, subject to the terms of this Schedule 2, and the use in this Schedule 2 of the term **“Affordable Rented Dwelling”** shall be construed accordingly;

**“Affordable Rented Housing”** means housing that is: (a) let at a rent that is at least twenty percent (20%) below the local market rent for similar housing in the same location; and (b) owned and managed by an Approved Body; and (c) let to Persons in Housing Need;

**“Affordable Housing Plan”** means a plan that shows: (a) the precise location of the Affordable Housing Dwellings; and (b) the type of the Affordable Housing

Dwellings, i.e. if they are Affordable Rented Dwellings or First Homes Dwellings or Shared Ownership Dwellings; and (c) the size of each of the Affordable Housing Dwellings; and (d) the Affordable Housing Construction Standard to be applied to each of the Affordable Housing Dwellings; and (e) confirmation that the Affordable Housing Dwellings comply with the current nationally described space standards;

**“Approved Body”**

means any registered provider of social housing as defined in Section 80 of the Housing and Regeneration Act 2008 and which registered provider is:

- (a) approved by the District Council; and
- (b) regulated by Homes England;

and the use in this Schedule 2 of the term **“Approved Bodies”** shall be construed accordingly;

**“Building Regulations”**

means the Building Regulations 2010, as amended;

**“Category M4(2)”**

means category M4(2) of the Building Regulations;

**“Category M4(3)(2)(b)”**

means category M4(3)(2)(b) of the Building Regulations;

**“Chargee”**

means any mortgagee or chargee or any manager or 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 of the whole or any part of the Affordable Housing Dwellings that have been transferred to an Approved Body or any persons or bodies deriving title through such mortgagee or chargee;

**“Choice Based Lettings Scheme”** means an integrated electronic and manual information system which enable members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party;

**“First Homes Dwellings”** means those Affordable Housing Dwellings to be used exclusively for the purposes of First Homes Housing, subject to the terms of this Schedule 2, and the use in this Schedule 2 of the term **“First Homes Dwelling”** shall be construed accordingly;

**“First Homes Housing”** means housing that: (a) is sold at the Discounted Price; and (b) is available exclusively to Qualifying Persons; and (c) is subject to the First Homes Sale Restriction;

**“First Homes Sale Restriction”** means a restriction on the sale of each First Homes Dwelling to ensure that the property is only sold to Qualifying Persons at the Discounted Price in perpetuity and such restriction shall be placed on the registered title for the property in the following terms:

“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of a registered charge is to be registered without a certificate signed by the solicitor/conveyancer for the disponent that the provisions of paragraph [ ] of Schedule [ ] within a Section 106 (Town and Country Planning Act 1990) Agreement dated [ ] containing planning obligations relating the development of land to the north of Eldridge Close, Clavering, Saffron Walden, Essex have been complied with”;

**“Discounted Price”**

means seventy percent (70%) of the Open Market Value of the First Homes Dwelling as at the date of any proposed sale as determined in writing by an independent chartered surveyor of not less than ten years standing having experience of residential property prices within the area of the Site;

**“Homes England”**

means the public body set up to fund and regulate the provision of Affordable Housing (as described in Annex 2 (Glossary) of the NPPF) in England and any successor body;

**“Housing Administrator”**

has the meaning ascribed to it in Section 101 of the Housing and Planning Act 2016;

**“Locally Connected Person”**

means an individual who:

- Is living and/or working within the Uttlesford district, or
- has a close family connection to the Uttlesford district, or



- is due to commence employment within the Uttlesford district;

**“Open Market Value”**

means the best price at which the sale of an interest in a Dwelling could reasonably be expected to achieve on the open market for cash consideration on the date of valuation assuming: (i) a willing buyer and a willing seller; and (ii) any restrictions imposed on the Dwelling by this Agreement are disregarded; and (iii) there has been a reasonable period within which to negotiate the sale; and (iv) the Dwelling has been freely exposed to the market; and (v) both the buyer and the seller acted knowledgeably prudently and without compulsion;

**“Persons in Housing Need”**

means a person or persons registered on the District Council's Choice Based Lettings Scheme and the use in this Agreement of the term **“Person in Housing Need”** shall be construed accordingly;

**“Protected Tenant”**

means any tenant who has:

- (a) exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 Act or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Rented Dwelling; or
  - (b) exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Rented Dwelling; or
  - (c) exercised a contractual right to acquire a one hundred percent (100%) interest in the lease of a Shared Ownership Dwelling
- and for the avoidance of any doubt the term **“Protected Tenants”** shall include successors in title to the tenant referred to above;

**“Qualifying Persons”**

means anyone who:

(a) is 18 years of age or older; and

(b) is a first time buyer; and

(c) is able to get a mortgage for at least half the Discounted Price of the relevant First Homes Dwelling; and

(d) is buying the relevant First Homes Dwelling as part of a household where the total income of that household is no more than Eighty Thousand Pounds (£80,000); and

(e) is buying the relevant First Homes Dwelling as their main residence; and

(f) is a Locally Connected Person PROVIDED THAT the prospective buyer of the First Homes Dwelling does not need to be a Locally Connected Person where that prospective buyer is:

- a member of the armed forces; or
- the divorced or separated spouse or civil partner of a member of the armed forces; or
- a widow or widower of a deceased member of the armed forces (if their death was caused wholly or partly by their service); or
- a veteran who left the armed forces in the last 5 years

and the use in this Agreement of the term **“Qualifying Person”** shall be construed accordingly;

- “Regulator of Social Housing”** means the public body set up to fund and regulate the provision of Affordable Housing (as defined in the NPPF) in England and any successor body;
- “Shared Ownership Dwellings”** means those Affordable Housing Dwellings to be used exclusively for the purposes of Shared Ownership Housing, subject to the terms of this Schedule 2, and the use in this Schedule 2 of the term **“Shared Ownership Dwelling”** shall be construed accordingly;
- “Shared Ownership Housing”** means housing let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with terms in the Homes England capital funding guide;
- “Shared Ownership Lease”** means a lease of over 125 years substantially in the form of the Regulator of Social Housing model lease from time to time where:
- (a) an initial purchase shall range from 10% to 70% of the equity dependent on the ability of the lessee to obtain finance;
  - (b) there is the ability for the lessee to acquire increased levels of equity (up to 100%) in the Shared Ownership Dwelling at some time in the future;
  - (c) the initial rent charged by the Approved Body shall not exceed 2.75% of the value of the equity retained by the Approved Body subject

to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the District Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England;

- (d) capital receipts received from increased equity acquisitions (referred to in '(b)' above) is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re-invest such capital receipts in Affordable Housing (as defined in the NPPF) within the administrative district of the District Council subject to any contrary requirements within the Regulator of Social Housing capital funding guide.

## **Part One**

2. The Owners hereby covenant with the District Council, as follows:

2.1 That forty percent (40%) of the Dwellings on the Site shall be provided as Affordable Housing Dwellings in the following proportions:

- (i) seventy percent (70%) Affordable Rented Dwellings;
- (ii) twenty five percent (25%) First Homes Dwellings; and
- (iii) five percent (5%) Shared Ownership Dwellings;

PROVIDED THAT where: (a) the calculation of the forty percent (40%) produces a part dwelling then where that part is 0.5 and above the number of Affordable Housing Dwellings shall be rounded up to the nearest whole dwelling number; and (b) the calculation of the forty percent (40%) produces a part dwelling then where that part is

below 0.5 then the number of Affordable Housing Dwellings shall be rounded down to the nearest whole dwelling number.

- 2.2 That at least five percent (5%) of the Affordable Housing Dwellings shall be constructed to Category M4(3)(2)(b) standards (the said Affordable Housing Dwellings being constructed to meet the needs of occupiers who use wheelchairs) [and the remainder of the Affordable Housing Dwellings shall be constructed to Category M4(2) standard].
- 2.3 Not to Commence the Development unless and until the Affordable Housing Plan has been submitted to the District Council for approval and the District Council has approved the Affordable Housing Plan in writing.
- 2.4 To provide the Affordable Housing Dwellings entirely in accordance with the approved Affordable Housing Plan.
- 2.5 Not to Occupy (or allow, cause or permit the Occupation of) any more than fifty percent (50%) of the Market Dwellings unless and until at least fifty percent (50%) of the Affordable Housing Dwellings have been:
- 2.5.1 constructed and are capable of being Occupied for their intended purpose; and
- 2.5.2 transferred to the Approved Body and for the purposes of this Schedule 2 only the expression "transferred" shall mean a transfer of the freehold interest or leasehold interest that comprises the relevant Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owners PROVIDED ALWAYS THAT: (a) any transfer of the relevant Affordable Housing Dwellings to the Approved Body shall include the provisions contained in paragraphs 1 and 2 at Part Two of this Schedule 2; and (b) this paragraph 2.5.2 does not apply to the First Homes Dwellings.
- 2.6 Not to Occupy (or allow, cause or permit the Occupation of) any more than seventy five percent (75%) of the Market Dwellings unless and until one hundred percent (100%) of the Affordable Housing Dwellings have been:
- 2.6.1 constructed and are capable of being Occupied for their intended purpose; and
- 2.6.2 transferred to the Approved Body and for the purposes of this Schedule 2 only the expression "transferred" shall mean a transfer of the freehold interest or

leasehold interest that comprises the relevant Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owners PROVIDED ALWAYS THAT: (a) any transfer of the relevant Affordable Housing Dwellings to the Approved Body shall include the provisions contained in paragraphs 1 and 2 at Part Two of this Schedule 2; and (b) this paragraph 2.6.2 does not apply to the Discounted Market Dwellings.

- 2.7 Subject always to paragraph 2.10 of this Schedule 2:
- 2.7.1 the Affordable Rented Dwellings transferred to the Approved Body shall be Occupied for no purpose other than as Affordable Rented Housing; and
- 2.7.2 the Shared Ownership Dwellings shall be Occupied for no purpose other than as Shared Ownership Housing.
- 2.8 the First Homes Dwellings shall be Occupied for no purpose other than as First Homes Housing and the transfer of each First Homes Dwelling shall include the First Homes Dwelling Restriction to ensure that the property remains available in perpetuity as a First Homes Dwelling to future eligible households.
- 2.9 Not to sell, transfer or otherwise dispose of any First Homes Dwelling to anyone other than a Qualifying Person and for any price other than the Discounted Price.
- 2.10. It is Hereby Agreed and Declared:
- 2.15.1 the obligations and restrictions contained in this Schedule 2 shall not bind:
- 2.15.1.1 a Protected Tenant and their mortgagees and/or chargees and any receiver appointed by such mortgagees and/or chargees;
- 2.15.1.2 any person or body deriving title through or from a Protected Tenant (including any sub-tenant lender chargee or mortgagee);
- 2.15.1.3 a Chargee of the Approved Body with a charge over the whole or part of the Affordable Housing Dwellings PROVIDED THAT the Chargee has first provided the District Council with notice in writing that they intend to dispose of the Affordable Housing Dwelling (or Affordable Housing Dwellings) and have given the District Council at least twelve (12) weeks from the date of that notice to put forward a proposal to purchase the Affordable Housing Dwelling (or Affordable

Housing Dwellings) at a fair price which at least covers the financial extent of the Chargee's charge, interest, costs and expenses AND if such disposal has not taken place within twelve (12) weeks from the date of that notice the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the obligations in Schedule 2.

## **Part Two**

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

### **SCHEDULE 3**

#### **OPEN SPACE**

1. In this Schedule 3 the following words and expressions shall have the following meanings:

<b>"Chartered Architect"</b>	<b>Landscape</b>	means a chartered member of the Landscape Institute appointed by the Owners;
<b>"District Council's Nominee"</b>	<b>Council's</b>	means a third party nominated by the District Council including a relevant parish council;
<b>"Estate Road"</b>		means the road within the Site that serves all of the Dwellings and which road: (a) is shown indicatively on the Proposed Layout Plan; and (b) is intended to be adopted by the County Council as highway maintainable at public expense;
<b>"Landscape Institute"</b>		means the Landscape Institute (charity registered in England and Wales with the number 1073396) of 85 Tottenham Court Road, London W1T 4TQ;
<b>"LAP"</b>		means a Local Area for Play, which: (a) is located within an area of open space; and (b) is in a safe position and not hidden away; and (c) is equipped and for use primarily by children aged 6 years and under;
<b>"Management Company"</b>		means a private limited company established or appointed for the purpose of managing and maintaining: (a) the Open Space; and (b) the Estate Road until the Estate Road has been adopted by the County Council as highway maintainable at public expense;



<b>"Open Space "</b>	means the areas of land within the Site which shall be laid out in accordance with the approved Open Space Specification to enable the Open Space to be used by all members of the public for informal and casual recreational use PROVIDED THAT for the avoidance of any doubt the Open Space does not include: (a) the Dwellings and parking areas and garden space associated with those Dwellings; (b) the estate roads; and (c) any land to be used for highway purposes including highway verges;
<b>"Open Space Completion Certificate"</b>	means a certificate or certificates in writing relating to the Open Space issued by the District Council that confirms that the Open Space has been laid out in accordance with the approved Open Space Specification;
<b>"Open Space Final Certificate"</b>	means a certificate or certificates in writing issued by the District Council that confirms that the Open Space has been maintained and remedial works completed to the reasonable satisfaction of the District Council;
<b>"Open Space Plan"</b>	means a HM Land Registry compliant plan that precisely identifies the areas of Open Space within the Site;
<b>"Open Space Management Plan"</b>	means a management plan prepared by the Owners to be approved in writing by the District Council for the ongoing management and maintenance of the Open Space (including the LAP located within the Open Space) including for the avoidance of doubt provisions for the rectification of any defects in any area of the Open Space until the completion of the relevant transfer of the Open Space to either the District Council, the Management Company, or the District Council's Nominee in accordance with this Agreement;
<b>"Open Space Maintenance Contribution"</b>	means a sum to be agreed between the Owners and the District Council and which sum shall in all the circumstances accurately reflect the amount required for the purposes of maintenance of the Open Space;

<b>"Open Space Specification"</b>	<b>Space</b> means a specification (to be approved by the District Council in writing) prepared by or in association with a Chartered Landscape Architect for the provision of the Open Space (including the LAP) to include the clearing, decontamination (if necessary), fencing (if necessary), levelling/profiling (as appropriate), laying out, planting and seeding of the Open Space to enable the Open Space to be used by all members of the public for recreational activities at all times without cost, exclusion or hindrance;
<b>"Proposed Layout Plan"</b>	means the drawing numbered 18/17/22 dated August 2023 and titled 'Illustrative Site Plan', a copy of which is annexed hereto;
<b>"Relevant Documents"</b>	means: (a) confirmation from Companies House on the formation of the Management Company; and (b) the Open Space Plan; and (c) the Open Space Specification; and (d) the Open Space Management Plan.

1. The Owners hereby covenant with the District Council, as follows:
  - 1.1 to submit the Relevant Documents to the District Council before Commencement of the Development;
  - 1.2 not to Commence the Development prior to submitting the Relevant Documents to the District Council for approval;
  - 1.3 to transfer the Open Space to the Management Company in accordance with the provisions of this Schedule 3 unless the District Council serves the written notice referred to in paragraph 3.3 below on the Owners;
  - 1.4 in the event that the District Council serves a written notice on the Owners pursuant to paragraph 3.3 below requesting the transfer of the Open Space to the District Council or the District Council's Nominee, the Owners will transfer the Open Space to the District Council or the District Council's Nominee in accordance with the provisions of this Schedule 3.
2. The District Council hereby covenants with the Owners that the District Council will:

- 2.1 use reasonable endeavours to provide approval in writing of the Relevant Documents within three months of receipt; and
  - 2.2 in the event the District Council has not provided approval in writing of the Relevant Documents within three months of receipt then the Relevant Documents are deemed to have been approved by the District Council;
  - 2.3 in the event that the District Council elects to accept the transfer of the Open Space or requires the Open Space to be transferred to the District Council's Nominee, it shall serve a written notice to this effect upon the Owners no later than six weeks from the date of the final approval of reserved matters (such reserved matters being those referred to in the Planning Permission) and such notice shall be accompanied by a written statement advising of the Open Space Maintenance Contribution payable to the District Council or the District Council's Nominee (as appropriate) upon transfer of the Open Space (including a detailed calculation of such sum).
3. The Owners hereby covenant with the District Council, as follows:
- 4.1 Not to Occupy (or allow, cause or permit the Occupation of) any of the Dwellings unless and until the Relevant Documents have been approved by the District Council in writing or are deemed to have been approved pursuant to paragraph 3.2 of this Schedule 3.
  - 4.2 Not to Occupy (or allow, cause or permit the Occupation of) more than fifty percent (50%) of the Dwellings unless and until:
    - 4.2.1 at least fifty percent (50%) of the Open Space has been provided in accordance with the approved Open Space Plan and the approved Open Space Specification; and
    - 4.2.2 the District Council has issued an Open Space Completion Certificate for the Open Space provided.
  - 4.3 Not to Occupy (or allow, cause or permit the Occupation of) more than seventy five percent (75%) of the Dwellings unless and until:
    - 4.3.1 one hundred percent (100%) of the Open Space (including any LAP that is required by the District Council) has been provided in accordance with the approved Open Space Plan and the approved Open Space Specification;

- 4.3.2 and the District Council has issued an Open Space Completion Certificate for all of the Open Space (including any LAP that is required by the District Council).
- 4.4 To:
- 4.4.1 maintain the Open Space in accordance with the approved Open Space Management Plan following the issue of the Open Space Completion Certificate and until such time as the transfer described in paragraph 4.7 of this Schedule 3 (below) have been completed; and
- 4.4.2 carry out and complete any remedial works to the Open Space as identified by the District Council pursuant to paragraph 4.5 of this Schedule 3 (below); and
- 4.4.3 maintain the Estate Road until such time as the Estate Road has been adopted as highway maintainable at public expense.
- 4.5 Upon the expiry of one (1) year from the issue of an Open Space Completion Certificate the Owners shall invite the District Council in writing to inspect the Open Space and identify any remedial works required to be carried out on the Open Space.
- 4.6 Within three (3) months of receipt of any list of remedial works required to be carried out on the Open Space (or within the next planting season where this is later and appropriate) the Owners shall complete the said remedial works and invite the District Council in writing to re-inspect the Open Space and issue the Open Space Final Certificate.
- 4.7 That once the District Council has issued one hundred percent (100%) of the Open Space with an Open Space Final Certificate the Owners shall transfer the Open Space to: (a) the District Council or the District Council's Nominee (but only in the event that the District Council has provided the confirmation referred to in paragraph 3.3 of this Schedule 3); or (b) the Management Company PROVIDED THAT before the transfer of the Open Space to the Management Company takes place the Owners may still offer to transfer the Open Space to the District Council or the District Council's Nominee and in the event that the offer is accepted then the Open Space shall be transferred to either the District Council or the District Council's nominee as appropriate PROVIDED FURTHER THAT for the avoidance of any doubt:

- 4.7.1 the transfer of the Open Space to the District Council or the District Council's Nominee or the Management Company shall be for the nominal consideration of One Pound (£1.00); and
  - 4.7.2 the Open Space shall be transferred free of encumbrances and with all necessary easements and vacant possession and with the reasonable legal fees for such transfer being the responsibility of the Owners; and
  - 4.7.3 in the event that the Open Space is transferred to the District Council or the District Council's Nominee the Owners shall pay the Open Space Maintenance Contribution to the District Council or the District Council's Nominee (as appropriate) at the same time as the transfer of the Open Space has been completed.
- 4.8 To include the following provisions in any transfer of the Open Space:
- 4.8.1 covenants to commit the transferee to permit the Open Space to be used exclusively by all members of the public for the purposes of recreation without cost, exclusion or hindrance; and
  - 4.8.2 covenants to commit the transferee to maintain the Open Space in accordance with the Open Space Management Plan; and
  - 4.8.3 covenants that the transferee will not transfer any part of the Open Space into the individual ownership of the owners of the Dwellings; and
  - 4.8.4 covenants that the transferee will comply with the provisions of this Agreement; and
  - 4.8.5 obligations that the transferee will (if the District Council so requires) enter into a direct covenant with the District Council to perform the obligations set out in paragraphs 4.8.1, 4.8.2, 4.8.3 and 4.8.4 of this Schedule 3 PROVIDED THAT this paragraph 4.8.5 does not apply in the event that the Open Space is transferred to the District Council.
- 4.9 To provide a copy of the completed transfer (as referred to in paragraph 4.7 of this Schedule 3) to the District Council in relation to the Open Space and to inform the District Council in writing of the contact details of any Management Company PROVIDED THAT this paragraph 4.9 does not apply in the event that the Open Space is transferred to the District Council.

- 4.10 In the event that the Open Space is transferred to a Management Company, to include in each transfer or lease of a Dwelling (including for the avoidance of doubt an Affordable Housing Dwelling) an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Open Space.

The **COMMON SEAL** of )  
**UTTLESFORD DISTRICT COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory

The **COMMON SEAL** of )  
**ESSEX COUNTY COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory

EXECUTED AS A DEED BY )  
**RICHSTONE PROPERTIES LIMITED** )  
acting by two Directors or one )  
Director and Secretary or by )  
one Director and a witness )

Director

Director/Secretary

Witness:

Witness Signature:

Witness Address:

EXECUTED AS A DEED BY )  
**RICHSTONE INVESTMENTS LIMITED** )  
acting by two Directors or one )  
Director and Secretary or by )  
one Director and a witness )

Director

Director/Secretary

Witness:

Witness Signature:

Witness Address:

**[INCLUDE ATTESTATIONS FOR THE FINZELS HERE]**