

DATED

2023

- (1) WESTON HOMES PLC
- (2) EUAN STEWART KENNEDY AND SHUNA
MACKINNON DICKSON
- (3) HSBC
- TO
- (4) UTTLESFORD DISTRICT COUNCIL
- (5) ESSEX COUNTY COUNCIL

SECTION 106 DEED OF UNILATERAL UNDERTAKING

RELATING TO LAND AT WARISH HALL FARM, SMITHS GREEN LANE, TAKELEY
PLANNING APPLICATION REFERENCE UTT/23/0902/PINS

DRAFT

29/06/2023

REFERENCE

JB/762107.30

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GIVEN BY -

- (1) **Weston Homes Plc** (company registration number 2133568) of Weston Group Business Centre, Parsonage Road, Takeley, Essex CM22 6PU (the '**Developer**') and
- (2) **Euan Stewart Kennedy** [REDACTED] and **Shuna Mackinnon Dickson** [REDACTED] ('the **Verge Owner**')
- (3) **HSBC Corporate Trustee Company (UK) Limited** (company registration number 06447555) of Level 22, 8 Canada Square, London E14 5HQ ('the **Mortgagee**')

TO -

- (4) **Uttlesford District Council** of Council Offices, London Road, Saffron Walden, Essex CB11 4ER ('**UDC**')
- (5) **Essex County Council** of County Hall, Market Road, Chelmsford CM1 1QH ('**ECC**')

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 First Homes 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 Plan
- 1.8 '**Affordable Housing Plan**' shall mean the plan attached at **Annex 3** (Plan [XXXX]) 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) Twenty five percent (25%) First Homes Units
 - (c) Five percent (5%) Shared Ownership Housing Unitsin 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 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 Unit Mix Table

- 1.12 **'Affordable Housing Units'** shall mean the [16] units of accommodation shown on the Affordable Housing 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 [11] 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 Plan
- 1.15 **'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
- 1.16 **'CIL Regulations'** shall mean the Community Infrastructure Levy Regulations 2010
- 1.17 **'the Councils'** shall mean Uttlesford District Council and Essex County Council
- 1.18 **'Decision Letter'** shall mean the decision letter issued by the Planning Inspector on behalf of the Secretary of State confirming whether or not the Permission is granted
- 1.19 **'the Development'** shall mean the development authorised by the Permission for construction of 40 dwellings (Class C3), including open space, landscaping, and associated infrastructure.
- 1.20 **'Discount Market Price'** means a sum which is the Market Value discounted by at least [30%]
- 1.21 **'Dwelling'** shall mean any residential dwelling (including a house, flat, or maisonette) constructed pursuant to the Permission
- 1.22 **'Education Contribution'** shall mean the sum of the Secondary Transport Contribution and the Secondary Education Contribution
- 1.23 **'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
- 1.24 **'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
- 1.25 **'First Homes Contribution'** means in circumstances where a sale of a First Homes Unit other than as First Homes Housing has taken place in accordance with paragraphs [XXXX] of this Deed, the lower of the following two amounts:
- (a) [30%][] of the proceeds of sale; and

- (b) the proceeds of sale less the amount due and outstanding to any mortgagee of the relevant First Homes Unit under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the owner of the First Homes Unit to the mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the owner of the First Homes Unit in connection with the sale of the First Homes Unit

and which for the avoidance of doubt shall in each case be paid following the deduction of any stamp duty land tax payable

- 1.26 **'First Homes Housing'** shall mean Dwellings which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first disposal does not exceed the Price Cap
- 1.27 **'First Homes Units'** shall mean the [4] units to be occupied as First Homes Housing in accordance with the terms of this deed as shall be identified on the Affordable Housing Plan
- 1.28 **'First Time Buyer'** means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
- 1.29 **'Highway Works'** shall mean the improvements to restricted Byway 48/25 [(Jacks Lane from Burgattes Road)] as shown indicatively (subject to detailed design) on the Highway Works Plan
- 1.30 **'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
- 1.31 **'Highway Works Plan'** shall mean the plan attached at **Annex 2** showing the indicative layout of the Highways Works (Plan [WH202.WST.P1.ZZ.DR.PL.10.01])
- 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 deed 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 Planning Application
- 1.38 **'the Land'** shall mean the land at Warish Hall Farm Smiths Green Lane Takeley shown edged in red on the Plan
- 1.39 **'Market Value'** means the open market value as assessed by a Valuer as confirmed to the Council by the First Homes Owner and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account the [30%] discount in the valuation[]
- 1.40 **'Monitoring Fee'** shall mean £[XXXX] or such lesser amount as the Inspector expressly states in the Decision Letter should be paid to reflect a reasonable estimate of UDC [and ECC] planning officer time in monitoring compliance with this deed 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
- 1.41 **'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
- 1.42 **'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
- 1.43 **'Open Market Housing Units'** shall mean the Dwellings to be constructed in accordance with the Permission which are not Affordable Housing Units
- 1.44 **'Owners'** shall mean together the Developer and the Verge Owner

- 1.45 **'Permission'** shall mean the planning permission granted by the Inspector on behalf of the Secretary of State in respect of the Planning Application
- 1.46 **'Plan'** shall mean the plan attached at Annex 1 showing the Land
- 1.47 **'Planning Application'** shall mean the application made by the Developer under reference number UTT/23/0902/PINS
- 1.48 **'Price Cap'** means the amount for which a First Homes Unit is sold after the application of the Discount Market Price which on its first disposal shall not exceed [£250,000] or such other amount as may be published from time to time by the Secretary of State
- 1.49 **'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
- 1.50 **'Public Library Contribution'** shall mean the sum of £3,112.00 to [XXXX] or such lesser amount as the Inspector expressly states in the Decision Letter should be paid
- 1.51 **'Secondary Education Contribution'** shall mean the sum of £175,935.00 to mitigate the impact of the Development on local secondary school provision or such lesser amount as the Inspector expressly states in the Decision Letter should be paid
- 1.52 **'Secondary Transport Contribution'** shall mean the sum of £37,259.00 to [XXXX] or such lesser amount as the Inspector expressly states in the Decision Letter should be paid
- 1.53 **'Secretary of State'** shall mean the Secretary of State for Levelling Up, Housing and Communities 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
- 1.54 **'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
- 1.55 **'Shared Ownership Units'** shall mean units of Shared Ownership Housing
- 1.56 **'100% Staircaser'** means a leaseholder of a Shared Ownership Unit who has acquired 100% of the equity in the said Unit
- 1.57 **'Sustainable Transport Contribution'** means the sum of £112,000 towards measures to enhance sustainable transport measures including new and expanded bus services serving the development and cycling infrastructure to/from Stansted Airport and Takeley or such lesser amount as the Inspector expressly states in the Decision Letter should be paid
- 1.58 **'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
- 1.59 **'Valuer'** means a Member or Fellow of the Royal Institution of Chartered Surveyors being a registered valuer appointed by the owner of a First Homes Unit and acting in an independent capacity
- 1.60 **'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 Verge 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
- 2.5 The Mortgagee is the registered proprietor of the charge dated 25 September 2020 referred to in entry number 8 of the charges register of Title Number EX476530 and has agreed to enter into this deed to give its consent to the terms of this deed.
- 2.6 The Developer has made the Planning Application which has been submitted to the Planning Inspectorate (PINS) for determination under s62A of the 1990 Act.
- 2.7 The Owners are satisfied that the obligations in this deed 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 deed

- 2.8 The Owners have agreed to enter into this deed 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 Planning Application

3 **ENABLING POWERS AND OBLIGATIONS**

- 3.1 This deed 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 deed for the purpose of restricting or regulating the Development and use of the Land so that the provisions of this deed shall be enforceable against the Owners and their successors in title the Owners hereby undertake to observe and comply with the obligations contained in the Schedules to this deed subject always to clause 4.2 hereof
- 4.2 The provisions and obligations contained in clause [9] and the Schedules of this deed 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 meet 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 Planning Application 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 deed 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 deed 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 deed any easement covenant or similar right shall not constitute an interest in the Land

4.4 The Verge Owner shall have no liability pursuant to this Deed unless and until Implementation has occurred on the part of the Land owned by the Verge Owner.

5 **MORTGAGEE'S CONSENT**

5.1 The Mortgagee consents to the completion of this deed and declares that its interest in the Land shall be bound by the terms of this deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Land

5.2 The Mortgagee shall not be liable for any breach of the obligations in this deed 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

6 **NOTICE OF IMPLEMENTATION**

6.1 The Developer will give the Councils not less than 20 Working Days' notice of its intention to Implement the Permission specifying the intended Implementation Date

6.2 Forthwith upon Implementation the Developer will give the Councils notice of Implementation

7 **PROVISOS AND INTERPRETATION**

7.1 No provision of this deed 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

7.2 If any provision of this deed 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 deed and the enforceability of the remainder of this deed shall not be affected

7.3 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 deed to the contrary) be enforced against them jointly and severally

7.4 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 deed 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

7.5 Any provision contained in this deed 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

7.6 The headings in this deed do not affect its interpretation

7.7 Unless the context otherwise requires references to sub-clauses, clauses and schedules are to sub-clauses, clauses and schedules of this deed

7.8 Unless the context otherwise so requires

7.8.1 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

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

8 **AGREEMENTS AND DECLARATIONS**

- 8.1 The obligations contained in the Schedules of this deed shall take effect only upon the Implementation Date and in the event that the Permission is not granted or is granted but 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
- 8.2 The obligations contained in the Schedules of this deed 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
- 8.3 Nothing in this deed 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)
- 8.4 The obligations under this deed shall not be enforceable against
- 8.4.1 persons who purchase or take leases of Open Market Housing Units the successors in title mortgagees or chargees or receivers of such persons or
- 8.4.2 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
- 8.4.3 in respect of any Affordable Housing Unit, a mortgagee or chargee or receiver who has first complied with its duty pursuant to [paragraph 9.8. Part 1 of Schedule 1]
- 8.4.4 any statutory undertaker/utility provider which acquires any part of the Land or an interest in it for the purposes of a statutory function
- 8.5 This deed constitutes a Local Land Charge and shall be registered as such if the Permission is granted provided that UDC will upon the happening of any of the eventualities referred to in clauses [10.1. and 10.2] of this deed or upon the determination of this deed howsoever determined procure the removal of any entry made on the Local Land Charges Register in respect of or related to this deed
- 8.6 No variation to this deed 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 deed nor shall any other party who has no liability under this deed or any interest in the Land
- 8.7 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 deed 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

9 **MONITORING FEE**

Upon Implementation the Developer shall pay the Monitoring Fee

10 **EXCLUSION OF THE 1999 ACT**

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

11 **NOTICES**

11.1 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 deed as the address for the receiving party or such other address as shall from time to time be notified by a party to this deed as an address at which service of notices shall be accepted or (in the case of a limited company) at its registered office

11.2 Any notices to be served or documents to be supplied or submitted or applications for approval under the terms of this deed to be made which are addressed to UDC shall be addressed to the Assistant Director Planning of UDC and those which are addressed to ECC shall be addressed to [XXXX]

12 **ENTIRE DEED**

This deed the Schedules and the documents annexed hereto or otherwise referred to herein contain all the provisions 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

13 **COSTS**

Upon the execution of this deed the Developer will pay the reasonable legal costs incurred of both UDC and ECC in connection with the negotiation and preparation thereof in the sum of £[XXXX] and £[XXXX] respectively

14 **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 deed, 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 -

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

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

14.3 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

14.4 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

14.5 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

15 **JURISDICTION**

This deed 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 deed

16 **SECTION 73 VARIATION**

If UDC agrees in writing following an application under section 73 of the 1990 Act to vary or release any condition contained in the Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act, the covenants or provisions of this deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless UDC in

determining the application for the new planning permission indicate that consequential amendments are required to this deed to reflect the impact of the section 73 application, in which case a separate deed under section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the new planning permission

In witness whereof the parties hereto have executed this Unilateral Undertaking as a deed the day and year before written

Executed as a Deed by)
Weston Homes Plc)
acting by)

Authorised Officer

Executed as a Deed by)
Aegon)
acting by)

Authorised Officer

Executed as a Deed by)
Weston (Business Centres) Limited)
acting by)

Authorised Officer

Executed as a Deed by)
HSBC Corporate Trustee Company)
(UK) Limited acting by)

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 GIVEN TO UDC

- 1 The Owners covenant with UDC as follows -

PART 1 AFFORDABLE HOUSING

- 1.1 To construct the Affordable Housing Units on the Affordable Housing Land in accordance with the approved Affordable Housing 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 until such time as all of the Affordable Housing Units have been constructed and are available for Occupation and the Affordable Rented Housing and Shared Ownership Housing has been transferred to an Approved Body (unless such a transfer is not required pursuant to the Affordable Housing 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 Rented Housing and Shared Ownership Housing 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 For the purposes of this Schedule only disposal shall not include a disposal on death or following divorce or a dissolution of a marriage or civil partnership
- 1.6 That Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing
- 1.7 To serve on UDC Notice not less than 15 Working Days after the first Occupation of 75% of the Open Market Housing Units
- 1.8 The First Homes Units shall be provided in accordance with the Affordable Housing Plan and shall be retained as First Homes Housing in perpetuity subject to the terms of this Schedule.
- 1.9 Any transfer of a First Homes Unit shall include a provision that the First Homes Unit is sold subject to and with the benefit of the terms in this Deed relating to First Homes Housing and the transferee acknowledges that it may not transfer or otherwise dispose of the First Homes Unit or any part of it other than in accordance with the terms of this Deed
- 1.10 On the first disposal of a First Homes Unit to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by [Local Authority] of [address] or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"
- 1.11 The owner of a First Homes Unit (which for the purposes of this clause shall include the Developer) may apply to the Council to dispose of it other than as First Homes Housing on the grounds that either:

6.6.1 the Dwelling has been actively marketed as First Homes Housing for six (6) months in accordance with [XXXX] (and in the case of a first disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to practical completion) and all reasonable

endeavours have been made to dispose of the Dwelling as First Homes Housing but it has not been possible to dispose of that Dwelling as First Homes Housing; or

6.6.2 requiring the owner of a First Homes Unit to undertake active marketing for the period specified in paragraph [XXXX] before being able to dispose of the Dwelling other than as First Homes Housing would be likely to cause the owner of the First Homes Unit undue hardship

1.12 Upon receipt of an application served in accordance with paragraph [XXXX] the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

1.13 If the Council is satisfied that either of the grounds in paragraph [XXXX] above have been made out it shall confirm in writing within fifteen (15) Working Days of receipt of the written request made in accordance with paragraph [XXXX] that the relevant Dwelling may be disposed of:

6.8.1 to the Council at the Discount Market Price; or

6.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Homes Unit

1.14 and on the issue of that written confirmation the obligations in this Deed which apply to First Homes Housing shall cease to bind and shall no longer affect that Dwelling apart from paragraph [XXXX] which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Homes Unit

1.15 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph [XXXX] above have been made out then it shall within fifteen (15) Working Days of receipt of the written request made in accordance with paragraph [XXXX] serve notice on the owner setting out the further steps it requires the owner to take to secure the disposal of the Dwelling as a First Homes Unit and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to dispose of the Dwelling as a First Homes Unit he may serve notice on the Council in accordance with paragraph [XXXX] following which the Council must within ten (10) Working Days issue confirmation in writing that the Dwelling may be disposed of other than as a First Homes Unit

1.16 Where a Dwelling is disposed of other than as a First Homes Unit or to the Council at the Discount Market Price the owner of the First Homes Unit shall pay to the Council forthwith upon receipt of the proceeds of sale the First Homes Contribution

1.17 Upon receipt of the First Homes Contribution the Council shall:

6.11.1 within [XXXX] Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph [XXXX] where such restriction has previously been registered against the relevant title

6.11.2 apply all monies received towards the provision of Affordable Housing

1.18 Any person who purchases a First Homes Unit free of the restrictions relating to First Homes Housing in this Deed pursuant to the provisions in paragraphs [XXXX] shall not be liable to pay the Additional First Homes Contribution to the Council.

2 It is hereby agreed and declared

2.1 The affordable housing obligations and restrictions contained in this deed (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 2
SUSTAINABLE TRANSPORT CONTRIBUTION**

- 1 Provided always that UDC has entered into and delivered the written undertaking in the form set out in Schedule [3] hereto the Owners hereby covenant with UDC as follows
- 2 To pay the Sustainable Transport Contribution to UDC in the following instalments:

- (a) Twenty-five percent (25%) prior to Implementation
- (b) Fifty (50%) before first Occupation of more than twenty-five per cent (25%) of the Dwellings
- (c) The residual twenty-five percent (25%) before first Occupation of more than forty-five per cent (45%) of the Dwellings

And for the avoidance of doubt these covenants shall not take effect or be enforceable until such time as such written undertaking is irrevocably delivered by UDC to the Owners

SCHEDULE 2

OBLIGATIONS GIVEN TO ECC

PART 1 HIGHWAYS

The Owners covenant with ECC as follows -

1 HIGHWAYS IMPROVEMENTS

1.1 The Owners shall 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 The Owners shall carry out the Highway Works prior to [%] Occupation

2 EDUCATION CONTRIBUTION

2.1 Provided always that ECC has entered into and delivered the written undertaking in the form set out in Schedule [3] hereto the Owners hereby covenant with ECC as follows -

2.1.1 To pay fifty per cent (50%) of the Education Contribution to ECC before first Occupation of any Dwelling

2.1.2 To pay the residual fifty per cent (50%) of the Education Contribution to ECC before first Occupation of more than fifty per cent (50%) of the Dwellings

2.2 And for the avoidance of doubt these covenants shall not take effect or be enforceable until such time as such written undertaking is irrevocably delivered by ECC to the Owners

3 PUBLIC LIBRARY CONTRIBUTION

3.1 Provided always that ECC has entered into and delivered the written undertaking in the form set out in Schedule [3] hereto the Owners hereby covenant with ECC as follows -

3.1.1 To pay fifty per cent (50%) of the Public Library Contribution to ECC before first Occupation of any Dwelling

3.1.2 To pay the residual fifty per cent (50%) of the Public Library Contribution to ECC before first Occupation of more than fifty per cent (50%) of the Dwellings

And for the avoidance of doubt these covenants shall not take effect or be enforceable until such time as such written undertaking is irrevocably delivered by ECC to the Owners

SCHEDULE 3

**PART 1
UNDERTAKING BY UDC**

UNDERTAKING

Uttlesford District Council of Council Offices, London Road, Saffron Walden, Essex CB11 4ER ('UDC')

hereby irrevocably undertakes to [Paying Party] as follows:

- 1 To place the Sustainable Transport Contribution in an interest bearing account on receipt and in the event of repayment UDC shall repay to the person who paid the Sustainable Transport Contribution ("the Paying Party") any part which remains unexpended together with any accrued interest thereon
- 2 To keep an up-to-date record of all payments from the Sustainable Transport Contribution
- 3 UDC hereby covenants to commit all sums received in respect of the Sustainable Transport Contribution within 5 years of receiving it and to repay any monies which have not been committed and/or spent after 5 years to the Paying Party together with accrued interest from the date of receipt until and including the date of repayment
- 4 UDC hereby covenants to use all sums received within the administrative area in which it operates and for the purposes specified in the s106 unilateral undertaking given by (inter alia) Weston Homes PLC dated [] ("the s106 UU")
- 5 UDC shall provide such evidence as the Paying Party shall reasonably require in order to confirm the expenditure of the sums paid under the s106 UU
- 6 At the written request of the parties to the s106 UU UDC shall provide written confirmation of the discharge of the obligations contained in the s106 UU and this deed when satisfied that such obligations have been performed
- 7 If UDC refuses any request for approval under any of the provisions in the s106 UU 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

IN WITNESS whereof this Undertaking has been executed as a deed the day and year first before written

The Common Seal of)
Uttlesford District Council)
was hereunto affixed in the presence of)

Authorised Signatory

**PART 2
UNDERTAKING BY ECC**

UNDERTAKING

Essex County Council of County Hall, Market Road, Chelmsford CM1 1QH ('ECC')

hereby irrevocably undertakes to [Paying Party] as follows:

- 1 To place the Education Contribution and the Public Library Contribution in an interest bearing account on receipt and in the event of repayment ECC shall repay to the person who paid the relevant Contribution ("the Paying Party") any part which remains unexpended together with any accrued interest thereon
- 2 To keep an up-to-date record of all payments from the Education Contribution and the Public Library Contribution
- 3 ECC hereby covenants to commit all sums received in respect of the Education Contribution and the Public Library Contribution within 5 years of receiving it and to repay any monies which have not been committed and/or spent after 5 years to the Paying Party together with accrued interest from the date of receipt until and including the date of repayment
- 4 ECC hereby covenants to use all sums received within the administrative area in which it operates and for the purposes specified in the s106 unilateral undertaking given by (inter alia) Weston Homes PLC dated [] ("the s106 UU")
- 5 ECC shall provide such evidence as the Paying Party shall reasonably require in order to confirm the expenditure of the sums paid under the s106 UU
- 6 At the written request of the parties to the s106 UU ECC shall provide written confirmation of the discharge of the obligations contained in the s106 UU and this deed when satisfied that such obligations have been performed
- 7 If ECC refuses any request for approval under any of the provisions in the s106 UU 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

IN WITNESS whereof this Undertaking has been executed as a deed the day and year first before written

The Common Seal of)
Essex County Council)
was hereunto affixed in the presence of)

Attesting Officer

ANNEX 1

PLAN

ANNEX 2
HIGHWAY WORKS PLAN

ANNEX 3
AFFORDABLE HOUSING PLAN