

**DATED**

**2024**

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**UTTLESFORD DISTRICT COUNCIL**

**- and -**

**ESSEX COUNTY COUNCIL**

**- and -**

**ROGER FRANCOIS VILA & ALMA VILA**

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**SECTION 106 AGREEMENT**

**- relating to Land to the West of Clatterbury Lane, Clavering -**

**S62A/2023/0030**

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SCHEDULE 1 PLAN 1 - THE LAND

SCHEDULE 2 OBLIGATIONS ENTERED INTO WITH UDC)

PART 1 AFFORDABLE HOUSING

PART 2 FIRST HOMES

PART 3 MANAGEMENT COMPANY

PART 4 PUBLIC OPEN SPACE

SCHEDULE 3 EDUCATION CONTRIBUTION

SCHEDULE 4 LIBRARY

SCHEDULE 5 HIGHWAYS IMPROVEMENT WORKS

SCHEDULE 6 BIODIVERSITY NET GAIN

SCHEDULE 7 HEALTHCARE CONTRIBUTION

PART 1 – HEALTH OBLIGATIONS OF UDC

THIS DEED is dated

2024

**BETWEEN**

- (1) **UTTLESFORD DISTRICT COUNCIL** of Council Offices, London Road, Saffron Walden, Essex, CB11 4ER ("UDC")
- (2) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford CM1 1QH (the 'County Council')
- (3) [REDACTED] both of [REDACTED] ("the Owners")

Together known as the "Parties"

1. **DEFINITIONS**

- "the 1964 Act"** shall mean the Public Libraries & Museums Act 1964
- "the 1972 Act"** shall mean the Local Government Act 1972.
- "the 1990 Act"** shall mean the Town & Country Planning Act 1990.
- "the 1999 Act"** shall mean the Contracts (Rights of Third Parties) Act 1999.
- "the 2011 Act"** shall mean the Localism Act 2011.
- "the Land"** shall mean Land West of Clatterbury Lane, Clavering shown on the Plan 1 edged in red and registered at HM Land Registry with freehold title under title number EX491127
- "Additional First Homes Contribution"** means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs 7, 8 or 7of Schedule 2, Part 2hereto, 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 Home 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 First Homes Owner 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 First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home.

<b>"Affordable Housing"</b>	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
<b>"Affordable Housing Land"</b>	shall mean the land on which the Affordable Housing Units will be constructed in accordance with the Permission.
<b>"Affordable Housing Units"</b>	shall mean the units of accommodation to be constructed on the Land for persons unable to compete for housing on the open market.
<b>"Affordable Rented Units"</b>	shall mean rented housing provided by an Approved Body that has the same characteristics as social rented housing except that it is outside the national rent regime but is subject to other rent controls that require it to be offered to those in identified housing need at a rent of up to 80% of local market rents inclusive of service charges.
<b>"Affordable Housing Scheme"</b>	means a scheme to: construct in accordance with the Permission 40% of the total of the Housing Units comprised in the Development as Affordable Housing Units to: <ul style="list-style-type: none"> <li>(a) Identify the size and mix of the Affordable Housing Units;</li> <li>(b) Identify the design of each Affordable Housing Unit;</li> </ul>
<b>"Allocations Policy"</b>	means the UDC's Allocations Policy dated June 2021 appended at Annex A or any subsequent Allocations Policy replacing the policy of June 2021
<b>"Approved Body"</b>	shall mean any registered provider registered 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 the 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.
<b>"Armed Services Member"</b>	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
<b>"Completion Notice"</b>	means the notice served by the Owners on the County Council pursuant to Clause 10.3.3

<b>“Compliance Certificate”</b>	means the certificate issued by the UDC confirming that a Housing Unit is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 5.1.3 of Part 2 of Schedule 2 applies the Eligibility Criteria (Local) in a form to be provided by UDC and approved by the Owner.
<b>“County Council Monitoring Fee”</b>	shall mean a fee of £ ( ) per obligation due to the County Council under this Deed and for the avoidance of doubt this is a total of £ ( ) (no VAT) towards the County Council’s reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed;
<b>“Deed”</b>	shall mean this Deed
<b>"the Development"</b>	shall mean the development authorised by the Permission.
<b>“Discount Market Price”</b>	means a sum which is the Market Value discounted by at least 30%
<b>“Disposal”</b>	means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than: <ul style="list-style-type: none"> <li>(a) a letting or sub-letting in accordance with paragraph 6.1 of Part 2 Schedule 2</li> <li>(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner</li> <li>(c) an Exempt Disposal</li> </ul> and "Disposed" and “Disposing” shall be construed accordingly
<b>"Development Standard"</b>	means a standard to fully comply with the following:- <ul style="list-style-type: none"> <li>(a) "Technical housing standards – nationally described space standards" published by the Department for Communities and Local Government in March 2015</li> <li>(b) all national construction standards and planning policy relating to design which may be published by the Secretary of State or by the UDC from time to time</li> <li>(c) Approved Document Q: Security- Dwellings published by HM Government or any document which supersedes it.</li> <li>(d) Optional requirement M4(2) of Building Regulations 2010 (Part M) (Accessible and Adaptable Dwellings)</li> </ul>

and the same may be amended by written agreement of the Parties

<b>“Eligibility Criteria (Local)”</b>	means in relation to the First Home(s) the criteria set out in Paragraphs 4.1 – 4.3 of the First Homes Planning Advice Notice
<b>"Eligible Person"</b>	shall mean a person or persons on the Housing Register that meets the qualifying criteria within the Allocations Policy (unless otherwise agreed by UDC in writing)
<b>“Eligibility Criteria (National)”</b>	means criteria which are met in respect of a purchase of a First Home if:  (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and  (b) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed the Income Cap (National).
<b>“Exempt Disposal”</b>	means the Disposal of a First Home in one of the following circumstances:  (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner  (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner  (c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order  (d) Disposal to a trustee in bankruptcy prior to sale of the relevant Housing Unit (and for the avoidance of doubt paragraph 8 shall apply to such sale)  Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 5.4 of Part 2 of Schedule 2.
<b>"Final Certificate"</b>	means a certificate to be issued by UDC on expiration of the Open Space Maintenance Period when the Open Space has been maintained to the reasonable satisfaction of UDC;
<b>“First Home(s)”</b>	means an Affordable Housing Unit 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

<b>"First Homes Owner"</b>	means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than: <ul style="list-style-type: none"> <li>(a) the Owner; or</li> <li>(b) another owner or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or</li> <li>(c) the freehold a tenant or sub-tenant of a permitted letting</li> </ul>
<b>"First Homes Planning Advice Notice"</b>	means the First Homes Planning Advice Notice published by UDC and dated 2022 a copy of which is annexed to this Deed as Annex B
<b>"First Time Buyer"</b>	means a first-time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
<b>"Flat"</b>	means a Housing Unit that occupies a single floor and /or does not benefit from private open space for the exclusive use of the residents of the Housing Unit and no other persons.
<b>"Healthcare Contribution"</b>	shall mean the sum of £36,176.00 to mitigate the impact of the Development to be used toward the provision of the additional capacity to accommodate patient growth generated by the Development.
<b>"Highways Works Plan"</b>	shall mean the plans attached at Annex 2 showing the indicative layout of the Highways Works
<b>"Highway Works Scheme"</b>	shall mean a detailed scheme of Highway Works submitted in writing by the Owners to the County Council prior to Implementation of the Development for the written approval of the County Council detailing the Highway Works proposed to be completed and timetable for completion of such Highway Works
<b>"Homes England"</b>	shall mean the body set up by section 1 of the Housing and Regeneration Act 2008 or any successor organisation.
<b>"Housing Units"</b>	shall mean the dwellings to be constructed in accordance with the Permission being the Affordable Housing Units and the Open Market Housing Units.
<b>"House"</b>	means a Housing Unit that does not meet the definition of a Flat.
<b>"Implementation"</b>	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 PROVIDED ALWAYS for the purposes of this Deed Implementation shall exclude: <ul style="list-style-type: none"> <li>(a) land survey;</li> </ul>

- (b) ecological survey;
- (c) archaeological survey;
- (d) remediation;
- (e) erection of fences or hoardings in association with securing the land;
- (f) investigations of ground conditions;
- (g) remedial works in respect of construction, any contamination or other adverse ground conditions;
- (h) land access formation works;
- (i) diversion and laying of services;
- (j) site clearance;
- (k) erection of any temporary means of enclosure, temporary access for construction works and the temporary display of site notices or advertisements,

and Implement and Implemented shall mutatis mutandis be construed accordingly.

<b>"Implementation Date"</b>	shall mean the date specified by the Owner to UDC in a written notice served upon UDC as the date upon which the development authorised by the Permission is to be commenced or if no such notice is served the date of Implementation.
<b>"Income Cap (Local)"</b>	means the Income Cap (National) or such other local income cap as may be published from time to time by UDC and is in force at the time of the relevant disposal of the First Home it being acknowledged that at the date of this agreement UDC has not set an Income Cap (Local)
<b>"Income Cap (National)"</b>	means eighty thousand pounds (£80,000)  or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home
<b>"Index"</b>	shall mean the Index of Retail Prices compiled and published by Her Majesty's Government from time to time.
<b>"Index Linked"</b>	shall mean that the sum shall be changed by an amount equal to the change in the Index.
<b>"Land"</b>	means the land edged in red on Plan 1



<b>"Leaseholder"</b>	shall mean the person or persons to whom an Affordable Housing Unit sold as a Shared Ownership Unit shall be allocated in accordance with this Deed
<b>"Local Eligibility Criteria"</b>	means the criteria set out in Paragraphs 4.1 – 4.3 of the First Homes Planning Advice Notice published by UDC and dated 2022 a copy of which is annexed as Annex B.
<b>"Management Company"</b>	shall mean a company body or other entity responsible for the long-term management and maintenance of the Public Open Space.
<b>"Management Company Responsibilities"</b>	means the maintenance of the Public Open Space over the lifetime of the Development to a comparable standard achieved on the issue of the Final Certificate by diligently applying monies received by the Management Company for those purposes;
<b>"Market Value"</b>	means the open market value as assessed by a Valuer of an Affordable Housing Unit as confirmed to UDC 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
<b>"Notice of Implementation"</b>	means the written notice served pursuant to Clause 10.3.1
<b>"UDC Monitoring Fee"</b>	shall mean the sum of [£            ]            Index Linked from the date of this Deed to the date of payment to reflect UDC planning officer time in monitoring compliance with this Deed by the Owner which will include but not be limited to:- <ul style="list-style-type: none"> <li>(a) recording of payments;</li> <li>(b) proof of expenditure;</li> <li>(c) meetings;</li> <li>(d) all correspondence - site visits;</li> <li>(e) data entry.</li> </ul>
<b>"Mortgagee"</b>	means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring a First Home
<b>"National Eligibility Criteria"</b>	means the criteria set out in Paragraph 1.4 of the First Homes Planning Advice Notice published by UDC and dated 2022 a copy of which is annexed as Annex B

<b>"Nominated Person"</b>	shall mean a person or persons nominated by UDC in accordance with the provisions of the Nomination Rights Agreement from their housing register to be offered an Affordable Housing Unit by the Approved Body
<b>"Nomination Rights Agreement"</b>	shall mean the nomination agreement in substantially the form of the draft appended to this Deed at Annex C (unless otherwise agreed in writing by UDC) in respect of the rights of UDC to nominate the occupants on the first and subsequent lettings in respect of the Affordable Rented Units (as Nominated Persons)
<b>"Occupation"</b>	shall mean occupation of a building constructed as part of the Development for the purposes permitted by 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 Occupied and Occupy shall mutatis mutandis be construed accordingly.
<b>"Open Market Housing Units"</b>	shall mean the dwellings to be constructed in accordance with the Permission which are not Affordable Housing Units.
<b>"Parish Council"</b>	shall mean [ ] Parish Council or any successor that takes on the obligations Clavering Parish Council.
<b>"Payment Notice"</b>	means a written notice advising of a proposed payment served pursuant to Clause 10.3.2
<b>"the Permission"</b>	shall mean the planning permission granted pursuant to the Planning Application.
<b>"Plan 1"</b>	shall mean the plan attached at Schedule 1Schedule 1 to this Deed
<b>"the Planning Application"</b>	shall mean the full application allocated reference number S62A/2023/0030 for the erection of up to 28 dwellings with all matters reserved except for access.
<b>"Practical Completion"</b>	in relation to the Affordable Housing Units, the issue of a certificate of practical completion by the Owners' architect (or other such suitably qualified position) certifying the completion of any part of the Development so that such part can be used for the purpose and operate in the manner for which it was designed
<b>"Price Cap"</b>	means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
<b>"Provisional Certificate"</b>	means a certificate or certificates which is/are issued by UDC when it is satisfied that the Public Open Space (or part thereof) has been provided laid out and landscaped in accordance with the Public Open Space Scheme;

<b>"Public Open Space"</b>	shall mean an area of landscaped land in such position on the Land as shall be agreed between UDC and the Owner.
<b>"Public Open Space Commuted Sum"</b>	means the sum for funding the maintenance and upkeep of the Public Open Space to demonstrate that the Public Open Space is able to be maintained by the Parish Council such sum to be agreed in writing between UDC and the Owners in accordance with this Deed.
<b>"Public Open Space Maintenance Period"</b>	means a period of twelve months from the date of issue of the Provisional Certificate for the Public Open Space or such other period as may be agreed in writing by the Owner and UDC;
<b>"Public Open Space Management Plan"</b>	means a plan establishing the long term management and maintenance of the Public Open Space;
<b>"Public Open Space Scheme"</b>	means a scheme: <ul style="list-style-type: none"> <li>(a) detailing how the Public Open Space and will be laid out and constructed; and</li> <li>(b) which sets out the detailed technical specification of all the works to be carried out on the Public Open Space;</li> </ul>
<b>"Qualifying Flats"</b>	means the number of Flats that shall be constructed on the Land that have two or more rooms that may by design be used as bedrooms.

<b>"Qualifying Houses"</b>	means the number of Houses that shall be constructed on the Land that have two or more rooms that may by design be used as bedrooms.
<b>"Residential Travel Pack"</b>	<p>means a specified district or borough or city tailor-made booklet aimed at promoting the benefits of sustainable transport in support of the objective to secure a modal shift from the private car and increase the use of sustainable modes of travel and sha;; contain the following:</p> <ul style="list-style-type: none"> <li>(a) guidance and promotional material on the use of sustainable mode of travel;</li> <li>(b) details on walking, cycling, trains, buses, park &amp; ride, taxis, car sharing, car clubs, electric vehicles, school transport and personalised journey planning services;</li> <li>(c) reference to travel websites, resources and support services for each mode of travel, information provided by the County Council and the Council;</li> <li>(d) details of local ravel campaigns and networking/support groups; and</li> <li>(e) to include six one day travel vouchers for use with the relevant local public transport operator;</li> </ul>
<b>"Travel Vouchers"</b>	means tickets/passes/vouchers or other means of accessing transport or journey planning information as agreed with the County including the following as a minimum (six scratch card bus tickets per household OR season ticket voucher) and/or (incentives for rail travel with the local rail operator) for each eligible member of the household AND access to an online tool to generate personalised travel plans using a home and destination postcode to provide details of different travel modes/options travel routes/maps and timetable information
<b>"Secretary of State"</b>	means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
<b>"Shared Ownership Units"</b>	shall mean Affordable Housing Units which will be offered on Shared Ownership Terms by the Owner to persons in need of affordable housing in accordance with Schedule 2.
<b>"Shared Ownership Terms"</b>	<p>shall mean the Affordable Housing Unit is let:-</p> <ul style="list-style-type: none"> <li>(a) In accordance with 'shared ownership arrangements' within the meaning of section 70(4) of the Housing and Regeneration Act 2008; and</li> </ul>

- (b) On a lease in the form of the Homes England standard lease on terms where:-
- (i) the percentage of the value of the dwelling paid as a premium on the day on which a lease is granted under the shared ownership arrangement does not exceed 75 per cent of the market value (where the market value at any time is the price which the dwelling might reasonably be expected to fetch if sold at that time on the open market);
  - (ii) on the day on which a lease is granted under the shared ownership arrangements, the annual rent payable is not more than three per cent of the value of the unsold interest; and
  - (iii) in any given year the annual rent payable does not increase by more than the percentage increase in the CPI for the year to September immediately preceding the anniversary of the day on which the lease was granted plus one per cent.

**"Unit Mix"**

means the number of flats and the number of houses the sum of which shall for the avoidance of doubt equal the total number of Housing Units to be constructed on the Land including a breakdown of houses and flats by number of bedrooms.

**"Wheelchair Accessible"**

means the Affordable Housing Units designed to meet the requirements of Part M, Category 3 (Wheelchair user dwellings) M4(3)(2)(B) of Schedule 1 (paragraph 1) of the Building Regulations 2010 (as amended) and which, so far as is appropriate, are constructed in accordance with the relevant guidance contained within approved document part M (March 2015) or subsequent equivalent or similar replacement guidance.

**"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 District Planning Authority within the meaning of the 1990 Act for the District in which the Land is situated and is the authority by whom the planning obligations contains in this Deed are enforceable.
- 2.2 The County Council is a local planning authority and the local authority for statutory age education and pre-statutory age education and childcare and the highway authority for the county in which the Land is situated. The County Council is also the local library authority for the provision of library services under the 1964 Act and the County Council is required to provide a comprehensive and efficient service for all persons resident working or studying in the area in which the Property is located.

- 2.3 The Owners are registered at HM Land Registry as proprietor of the Land with freehold title under the Title Number EX491127.
- 2.4 The Parties 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.
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 any 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 the County Council.
- 3.3 No person shall be liable for a breach of a covenant, obligation or restriction relating to any part of the Land in which it has no interest at the date of the breach but without prejudice to liability for any breach occurring at a time when the party held an interest in the relevant part of the Land.
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 per covenant with UDC and the County Council to:-
- 4.1.1 observe and comply with the obligations contained in this Deed and
- 4.1.2 pay to UDC its legal fees associated with the drafting negotiating and completion of this Deed; up to a maximum of [£.....]
- 4.1.3 pay to the County Council its legal fees associated with the drafting negotiating and completion of this Deed, up to a maximum of [£.....]
- 4.2 The liability of the Owners under this Deed shall cease once they have parted with their 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) but not so as to release them from liability for any breaches hereof arising prior to the transfer.
5. **CONDITIONALITY**
- 5.1 Subject to Clause 4.1.2 and 4.1.36.2, this Deed will take effect on delivery.
- 5.2 Other than the obligation in Clause 4.14.1.2 and 4.1.3, the planning obligations in this Deed are conditional on, and will not take effect until, the grant of the Permission.
6. **NOTICE OF IMPLEMENTATION**
- 6.1 The Owners will give UDC and the County Council not less than 20 Working Days' notice of intention to Implement the Permission specifying the intended Implementation Date.
- 6.2 Forthwith upon Implementation the Owners will give UDC and the County Council notice of Implementation.

**7. PROVISOS AND INTERPRETATION**

- 7.1 No provision of this Deed shall be interpreted so as to affect contrary to law the rights powers duties and obligations of UDC and the County Council 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 No waiver (whether express or implied) by UDC or the County Council 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 UDC or the County Council from enforcing any of the said obligations covenants or terms and conditions or from acting upon any subsequent breach or default.
- 7.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 7.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established
- 7.6 The headings in this Deed do not affect its interpretation.
- 7.7 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 7.8 Any words following the term(s) including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 7.9 Where an obligation fails to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 7.10 Unless the context otherwise requires references to subclauses clauses and schedules are to subclause clauses and schedules of this Deed.
- 7.11 Unless the context otherwise so requires:-
- 7.11.1 references to any party shall include that party's personal representatives, successors and permitted assigns and in the case of UDC and the County Council the successors to their respective statutory functions
  - 7.11.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and
  - 7.11.3 references to any gender include both genders.
  - 7.11.4 words in the singular shall include the plural and in the plural shall include the singular
  - 7.11.5 references to sub-clauses clauses and schedules are to sub-clause clauses and schedules of this Deed
- 7.12 Representatives of UDC may enter upon the Land at any reasonable time and on reasonable notice to ascertain whether the terms of this Deed and of the Permission are or have been complied with,

subject to complying with all health and safety and/or security requirements of the Owners or of any developer carrying out the Development.

- 7.13 No compensation shall be payable by UDC to any party to this Deed or their successors in title and assigns arising from the terms of this Deed and unless specified otherwise in this Deed all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) and (save where expressly provided otherwise) are to be at the sole expense of the Owners and at no cost to UDC.
- 7.14 In the event that the Owners fail to serve on UDC any of the notices that they are required by the provisions of this Deed to serve then UDC shall be entitled to payment of the various financial contributions contained in this Deed at any time following them becoming aware that an event or a level of Occupancy of Housing Units has occurred that would trigger the payment of the relevant financial contribution, and the time period for the return of the relevant financial contribution shall be extended accordingly.
- 7.15 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Land or the part of the Land in respect of which such breach occurs, but they will remain liable for any breaches of their obligations in this Deed occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land will constitute an interest for the purposes of this clause.

## 8. **AGREEMENTS AND DECLARATIONS**

- 8.1 The obligations contained in this Deed shall take effect only upon the Implementation Date (save where expressly stated to the contrary in this Deed) and in the event that the Permission is not implemented and expires the obligations contained in this Deed shall absolutely cease and determine without further obligation upon the Owners or their successors in title.
- 8.2 The obligations contained in 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 save for the Permission.
- 8.4 The obligations under this Deed shall not be enforceable against:-
- 8.4.1 persons who purchase or take leases of the Housing Units other than in respect of restrictions on the use of the Affordable Housing Units or where specified in this Deed (or their successors in title chargees mortgagees or receivers) nor;
- 8.4.2 any statutory undertaker/utility provider which acquires any part of the Land or an interest in it for the purposes of its statutory function.
- 8.5 This Deed constitutes a Local Land Charge and shall be registered as such provided that UDC will upon the happening of any of the eventualities referred to in Clauses 8.1 and 8.2 procure the removal of any entry made on the Local Land Charges Register (subject to the payment of UDC's reasonable and proper costs) 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 the purchaser tenant or residential occupier of any Housing Unit or their mortgagees shall not be required to vary any part of this Deed.



9. **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.

10. **NOTICES**

10.1 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.

10.2 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:-

10.2.1 to UDC shall be addressed to the Council Offices, London Road, Saffron Walden, Essex CB11 4ER marked for the attention of the Assistant Director Planning and Building Control;

10.2.2 for the County Council marked for the attention of the s106 Officer Planning Service Place and Public Health County Hall Chelmsford CM1 1QH AND to [development.enquiry@essex.gov.uk](mailto:development.enquiry@essex.gov.uk)

10.2.3 to the Owners shall be addressed to the addresses at the top of this Deed unless the Owners notify the parties of a different address.

10.3 The Owners shall serve on the County Council

10.3.1 the Notice of Implementation not less than three (3) months prior to Commencement stating the expected Implementation Date an estimate of the Triggers and any further information stipulated in the Schedules to this Deed

10.3.2 the Payment Notice between sixty (60) and thirty (30) Working Days prior to the date that each and any payment is due to be made to the County Council under this Deed stating the date that such payment becomes due and any further information stipulated in the Schedules to this Deed

10.3.3 the Completion Notice within thirty (30) Working Days of all Housing Units being Occupied for the first time stating the date that the last Dwelling was Occupied for the first time and any further information stipulated in the Schedules to this Deed and for the avoidance of doubt any dispute regarding any notice to be served under this Deed may be resolved through the 2 mechanisms set out in Clause 17 of this Deed.

10.3.4 to serve on the County Council notice of Occupation of the first (1st) Housing Unit within 1 (one) month thereof and thirty (30) Working Days' notice prior to fifty percent (50%) Occupation of the Housing Units to include the expected date of fifty percent (50%) Occupation each notice indicating the Unit Mix of Occupied Housing Units the Unit Mix of Housing Units that are completed but not Occupied the Unit Mix of Housing Units that are under construction and the Unit Mix of Housing Units where construction work has yet to start at the time the notice is served

11. **ENTIRE AGREEMENT**

This Deed the schedules and the documents annexed hereto or otherwise referred to herein contain the whole agreement between the parties relating to the subject matter hereof and

supersede all prior agreements arrangements and understandings between the parties relating to that subject matter.

12. **MONITORING FEE**

12.1 Upon Implementation the Owner will pay the UDC Monitoring Fee to UDC.

12.2 Upon Implementation the Owner will pay to the County Council the County Council Monitoring Fee.

13. **OWNERSHIP**

13.1 The Owner warrants that that no persons other than the Owner has any legal or equitable interest in the Land.

13.2 Subject to Clause 8.4, until the covenants, restrictions and obligations in Schedule 2 have been complied with, the Owners will give to UDC within twenty (20) Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Land excluding any conveyance, transfer, lease, assignment, mortgage or other disposition of any individual Housing Unit:

13.2.1 the name and address of the person to whom the disposition was made;

13.2.2 the nature and extent of the interest disposed of.

14. **SECTION 73 VARIATION**

In the event that UDC or planning inspector on appeal shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the 1990 Act in respect of the conditions attached to the Permission (and for no other purpose whatsoever) references in this Deed to the Permission and the Development shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Deed shall henceforth take effect and be read and construed accordingly PROVIDED THAT where any obligations in this Deed have already been discharged at the date of a consent issued pursuant to Section 73 of the 1990 Act they shall remain discharged for the purposes of any new consent.

15. **INDEXATION**

All Contributions payable to the Council shall be Index Linked from the date of this Deed until the date the payment is due.

16. **JURISDICTION**

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

17. **DETERMINATION OF DISPUTES**

17.1 Subject to Clause 17.7 if any dispute arises relating to or arising out of the terms of this Deed either party may give to the other written notice requiring the dispute to be determined under this Clause 17 and the notice shall propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute

17.2 For the purposes of this Clause 17 "Specialist" means a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to the matters in dispute

- 17.3 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 17.4
- 17.4 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 and 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)
- 17.5 The Specialist is to act as an independent expert and
- 17.5.1 each party may make written representations within twenty (20) Working Days of his appointment and will copy the written representations to the other party
- 17.5.2 each party is to have a further fifteen (15) Working Days to make written comments on the others representations and will copy the written comments to the other party
- 17.5.3 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
- 17.5.4 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
- 17.5.5 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
- 17.5.6 the Specialist is to use all reasonable endeavours to publish his decision within twenty (20) Working Days from the last submission of evidence
- 17.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 17 including costs connected with the appointment of the Specialist and the Specialists own costs but not the legal and other professional costs of any party in relation to a dispute will be decided by the Specialist
- 17.7 This Clause 17 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts of England.

18. **COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010**

18.1 In the event that the Inspector appointed to determine the Planning Application expressly states in their decision letter that in their opinion:

18.1.1 any one or more provisions of this Deed is not compatible with any of the tests for planning obligations set out in the Community Infrastructure Levy Regulations 2010; and/or

18.1.2 decides to impose a condition upon the Planning Permission instead of one or more of the planning obligations in this Deed; and

18.1.3 accordingly attaches no weight to that obligation in determining the Planning Application

then the relevant provisions/obligations of this Deed shall thereafter have no legal effect and the Owners shall be under no obligation to comply with them, but the remainder of the obligations in this Deed (if any) shall remain legally effective and binding.

19. **COUNTERPARTS**

19.1 This Deed may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement

**IN WITNESS WHEREOF** the parties hereto have executed this Deed as a deed and it is delivered on the day and year before written.

**THE COMMON SEAL OF UTTLESFORD DISTRICT COUNCIL**  
was hereunto affixed in the presence of:

Authorised Signatory

**THE COMMON SEAL OF ESSEX COUNTY COUNCIL** was  
hereunto affixed in the presence of:

Attesting Officer

SIGNED AS A DEED BY

████████████████████

in the presence of:

Witness Name:

Witness Occupation:

Witness Address:

SIGNED AS A DEED BY

██████████

in the presence of:

Witness Name:

Witness Occupation:

Witness Address:

**SCHEDULE 1**  
**PLAN - THE LAND**

## SCHEDULE 2

### (OBLIGATIONS ENTERED INTO WITH UDC)

The Owners covenant with UDC so as to bind their interests in the Land:-

#### PART 1

#### AFFORDABLE HOUSING

1. The Affordable Housing Units shall comprise 40% of the total of all Housing Units constructed in accordance with the Permission 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%.
2. 5% of the Affordable Housing Units shall be Wheelchair Accessible 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%.
3. The Affordable Housing Units shall comprise 40% of the Housing Units constructed in accordance with the Permission (unless otherwise agreed in writing between UDC and the Owners).
4. Not to cause or permit Implementation until the Affordable Housing Scheme have been submitted to and approved by UDC
5. To provide the Affordable Housing Units in accordance with Schedule 2 of this Deed, the approved Affordable Housing Scheme
6. Prior to the Occupation of the first (1st) Open Market Housing Unit the Owners shall:-  

EITHER

transfer the whole of the Affordable Housing Land as a freehold estate (excluding any land upon which any First Homes are to be constructed) to an Approved Body (proof of which is to be supplied to UDC if requested);

OR

complete a binding agreement with an Approved Body (documentary proof of which to be supplied to UDC if requested) for the completion of the Affordable Housing Units and the transfer of the Affordable Housing Units (excluding any First Homes) and the Affordable Housing Land (excluding any land upon which any First Homes are to be constructed).
7. To procure that the terms of any transfer pursuant to paragraph 4 above shall include a covenant that the Approved Body shall comply with the terms of this Schedule 2 Part 1
8. Prior to the Occupation of 75% of the Open Market Housing Units the Affordable Housing Units shall be substantially completed and ready for Occupation and transferred to an Approved Body as a freehold estate (if not already transferred in accordance with paragraph 6 above).
9. After the substantial completion of any of the Affordable Housing Units no Affordable Housing Unit shall be Occupied unless there is compliance with the following paragraphs 9.1 9.6:-
  - 9.1 Upon completion of the Affordable Housing Units and thereafter the Approved Body will allocate each Affordable Housing Unit to a Nominated Person and in accordance the following provisions;

- 9.1.1 Not later than twenty (20) Working Days from the date of completion of each Affordable Housing Unit or a notice from a tenant of an Affordable Rented Unit that he wishes to relinquish his tenancy the Approved Body will give notice thereof to UDC as regards the Affordable Rented Unit;
  - 9.1.2 Within twenty (20) Working Days or such other time as is agreed between the Approved Body and UDC of receiving the notice from the Approved Body under the provisions of paragraph 9.1.1 of this Schedule as regards an Affordable Rented Unit UDC will give details of the Nominated Person for each Affordable Rented Unit to the Approved Body;
  - 9.1.3 Upon receiving details of the Nominated Person under the provisions of paragraph 9.1.2 of this Schedule from UDC to procure that the Approved Body will within twenty (20) Working Days or such other time as is agreed between the Approved Body and UDC offer to grant the tenancy of the Affordable Rented Unit to the Nominated Person;
- 9.2 If UDC fails to give details of a Nominated Person under the provisions of paragraph 9.1.2 of this Schedule to procure that the Approved Body shall have the right to grant an Affordable Rented Unit tenancy to any Eligible Person who is considered by the Approved Body to be in need of an Affordable Housing Unit.
- 9.3 Where UDC fails to give details of a Nominated Person under the Nomination Rights Agreement and the provisions of paragraph 9.1.2 of this Schedule and the Approved Body does not have notice or details of an Eligible Person who it can nominate or house pursuant to paragraph 9.2 above to procure that the Approved Body may grant a tenancy of an Affordable Rented Unit to any person who it considers to be in need of an Affordable Housing Unit and who complies with its lettings policy.
- 9.4 In respect of any of the Affordable Rented Units becoming vacant after the initial allocation following the completion of the Affordable Housing Units UDC shall in accordance with paragraph 9.1 above be given the sole opportunity by the Approved Body to nominate the Nominated Persons up to a maximum of 75% (seventy-five per cent) of such vacant Affordable Rented Units.
- 9.5 To procure that the terms of the tenancy agreements for the Affordable Rented Units shall be in accordance with the regulations and guidance of Homes England.
- 9.6 The Approved Body will not:-
- 9.6.1 Transfer the freehold or leasehold interest in the land on which the Affordable Housing Units are constructed or any Affordable Housing Unit (save for an occupier of an Affordable Rented Unit who has exercised the right to acquire) to any person firm or company other than an Approved Body and the transfer to the Approved Body shall include a covenant that the Approved Body comply with the terms of this Deed;
  - 9.6.2 Sell let or dispose (except by way of legal charge) of any Affordable Housing Unit or allow or permit or suffer any Affordable Housing Unit to be sold let or disposed of other than in accordance with paragraphs 9.1 to 9.5 of this Schedule.
- 9.7 To procure that the Approved Body will give UDC one month's written notice of the intended transfer of the freehold or leasehold interest in the Land or of any Affordable Housing Unit to another Approved Body for the avoidance of doubt this does not include an occupier of an Affordable Rented Unit who has exercised the right to acquire or other statutory right.



- 9.8 The affordable housing provisions set out in this Part shall not be binding on 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:
- 9.8.1 such mortgagee or chargee or Receiver shall first give written notice to the Council (together with official copies of the relevant Land Registry Entries) of its intention to dispose of the Affordable Housing Units and/or the Affordable Housing Land and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units and/or the Affordable Housing Land to another Approved Body or to the Council 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
- 9.8.2 if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units and/or the Affordable Housing Land free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely.
- 9.9 A tenant of an Affordable Rented Unit who exercises the right to acquire (or their mortgagee or any party deriving title from them) shall not be bound by the terms of this Deed.
- 9.10 If the Affordable Housing Units are vested or transferred to another Approved Body pursuant to a proposal made by Homes England pursuant to Section 152 of the Housing and Regeneration Act 2008 then the provisions of this Deed shall continue (notwithstanding paragraph 9.8. above) in respect of such other Approved Body

## **PART 2**

### **FIRST HOMES**

#### **1. OBLIGATIONS**

- 1.1 Unless otherwise agreed in writing by UDC, the Owners for and on behalf of themselves and their successors in title to the Land with the intention that the following provisions shall bind the Land and every part of it into whosoever’s hands it may come covenants with UDC as below save that:
- 1.2 paragraphs 22, 3 3and 4 shall not apply to a First Homes Owner;
- 1.3 paragraphs 5 to 6 apply as set out therein but and for the avoidance of doubt where a First Home is owned by a First Homes Owner they shall apply to that First Homes Owner only in respect of the First Home owned by that First Homes Owner.
- 1.4 Paragraph 7 applies as set out in therein.

#### **2. QUANTUM**

- 2.1 The Owners hereby covenant with UDC to provide and retain 2 Affordable Housing Units on the Land identified as First Homes in the Affordable Housing Plan (unless otherwise agreed in writing with UDC) as First Homes in perpetuity subject to the terms of this Schedule.

3. **APPEARANCE AND SPECIFICATION**

3.1 The First Homes shall not be visually distinguishable from the Open Market Housing Units based upon their external appearance.

3.2 The internal specification of the First Homes shall not by reason of their being First Homes be inferior to the internal specification of the equivalent Open Market Housing Units but, subject to that requirement, variations to the internal specifications of the First Homes shall be permitted

4. **DEVELOPMENT STANDARD**

4.1 All First Homes shall:

4.1.1 be constructed to the Development Standard current at the time of the Planning Permission approval; and

4.1.2 no less than the standard applied to the Open Market Housing Units.

5. **DELIVERY MECHANISM**

5.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

5.1.1 the Eligibility Criteria (National); and

5.1.2 the Eligibility Criteria (Local).

5.1.3 If after a First Home has been actively marketed for 3 (three) months (such period to expire no earlier than 3 (three) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 5.1.2 shall cease to apply.

5.2 Subject to paragraphs 5.6- 5.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.

5.3 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

5.3.1 UDC has been provided with evidence that:

(a) the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 5.1.3 applies meets the Eligibility Criteria (Local);

(b) the Housing Unit is being Disposed of as a First Home at the Discount Market Price; and

(c) the transfer of the First Home includes:

(i) a definition of the "Council" which shall be 'Uttlesford District Council';

(ii) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in Part 2 of Schedule 2 of the S106 Agreement a copy of which is attached hereto as the Annexure.

(iii) A definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) UTTLESFORD DISTRICT COUNCIL (2) ESSEX COUNTY COUNCIL (3) [REDACTED]

(iv) a provision that the Land is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the Property or any part of it other than in accordance with the First Homes Provisions;

(v) a copy of the First Homes Provisions in an Annexure.

5.3.2 UDC has issued the Compliance Certificate and UDC hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 5.3 and 5.4.1 have been met.

5.4 On the first Disposal of each and every First Home 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:

5.4.1 *“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 Uttlesford District Council of Council Offices, London Road, Saffron Walden CB11 4ER 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”*

5.5 The owner of a First Home (which for the purposes of this paragraph shall include the Owner and any First Homes Owner) may apply to UDC to Dispose of it other than as a First Home on the grounds that either:

5.5.1 the Affordable Housing Unit has been actively marketed as a First Home for six (6) months in accordance with paragraphs 5.1 and 5.2 (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 Affordable Housing Unit as a First Home but it has not been possible to Dispose of that Affordable Housing Unit as a First Home in accordance with paragraphs 5.3 and 5.4.1; or

5.5.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 5.5.1 before being able to Dispose of the Affordable Housing Unit other than as a First Home would be likely to cause the First Homes Owner undue hardship.

5.6 Upon receipt of an application served in accordance with paragraph 5.5 UDC shall have the right (but shall not be required) to direct that the relevant Affordable Housing Unit is disposed of to it at the Discount Market Price.

5.7 If UDC is satisfied that either of the grounds in paragraph 5.5 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.5 that the relevant Affordable Housing Unit may be Disposed of:

5.7.1 To UDC at the Discount Market Price; or

5.7.2 (if UDC confirms that it does not wish to acquire the relevant Affordable Housing Unit) other than as a First Home;

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Affordable Housing Unit apart from paragraph 5.10 which shall cease to apply on receipt of payment by UDC where the relevant Affordable Housing Unit is disposed of other than as a First Home

- 5.8 If UDC does not wish to acquire the relevant Affordable Housing Unit itself and is not satisfied that either of the grounds in paragraph 5.5 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.5 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of an Affordable Housing Unit as a First Home 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 Affordable Housing Unit as a First Home he may serve notice on the UDC in accordance with paragraph 5.5 following which UDC must within 28 days issue confirmation in writing that the Affordable Housing Unit may be Disposed of other than as a First Home.
- 5.9 Where an Affordable Housing Unit is Disposed of other than as a First Home or to UDC at the Discount Market Price in accordance with paragraphs 5.7 or 5.8 above the Owner of the First Home shall pay to UDC forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 5.10 Any person who purchases a First Home free of the restrictions in Part 2 of Schedule 2 of this Deed pursuant to the provisions in paragraphs 5.7 and 5.8 shall not be liable to pay the Additional First Homes Contribution to UDC.

6. **USE**

- 6.1 Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 6.1.1 - 6.3 below.
- 6.1.1 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies UDC in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 6.1.2 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies UDC and UDC consents in writing to the proposed letting or sub-letting. UDC covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below
- (a) the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
  - (b) the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the for the duration of the letting or sub-letting;
  - (c) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - (d) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
  - (e) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
  - (f) the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person

6.2 A letting or sub-letting permitted pursuant to paragraph 6.1 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

6.3 Nothing in paragraph 6 of this Part 2 of Schedule 2 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation provided that the First Home remains at all times the First Home Owner's main residence.

## 7. **MORTGAGEE EXCLUSION**

7.1 The obligations in this Part 2 Deed in relation to First Homes shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed (each a Receiver)) of any individual First Home or any persons or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

7.1.1 such Mortgagee or Receiver shall first give written notice to UDC of its intention to Dispose of the relevant First Home; and

7.1.2 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to UDC the Mortgagee or Receiver shall be free to sell that First Home at its full Market Value and subject only to paragraph 7.1.3 of this Part 2 of Schedule 2;

7.1.3 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to UDC the Additional First Homes Contribution;

## **PART 3**

### **MANAGEMENT COMPANY**

In the event that the circumstances pursuant to paragraph 11 of Part 4 of this Deed occur, the Owners shall set up a Management Company and the details of the set-up of the Management Company and the arrangements with the Management Company in relation to the Public Open Space shall be agreed in writing by UDC in accordance with this Deed.

## **PART 4**

### **PUBLIC OPEN SPACE**

1. The Owners covenant with UDC as follows:

1.1 Prior to first Occupation of the Development to submit the Public Open Space Scheme and Public Open Space Management Plan to UDC for approval and not to allow or permit the first Occupation of the Development until the Public Open Space Scheme and Public Open Space Management Plan has been submitted to and approved in writing by UDC.

1.2 To provide the Public Open Space and LAP in accordance with the approved Public Open Space Scheme and Public Open Space Management Plan.

1.3 Prior to the Occupation of more than 70% of the Open Market Housing Units the Owners shall apply for the Provisional Certificate from UDC and shall not cause or permit Occupation of more than 70% of the Open Market Housing Units until a Provisional Certificate for all of the Public Open Space has been issued by UDC.

## **Provisional Certificate**

2. After the Public Open Space (or part thereof) has been provided laid out and landscaped in accordance with the Public Open Space Scheme to apply to UDC in writing requesting issue of the Provisional Certificate and for the avoidance of doubt Provisional Certificates may be issued for the whole of the Public Open Space or in relation to parts of Public Open Space as they are provided and laid out.
3. Within twenty (20) Working Days after a first inspection of the Public Open Space by UDC if it considers that the Public Open Space has not been provided laid out and landscaped satisfactorily in accordance with the Public Open Space Scheme the UDC shall provide the Owners with details of any defects and the Owners shall at their own expense rectify any deficiencies and carry out such works or operations as may reasonably be required by UDC to bring the Open Space up to the standard required by the Public Open Space Scheme and the procedures referred to in paragraphs 2 and 3 of Part 4 of this Schedule shall be repeated as often as necessary until the Provisional Certificate is issued save that UDC must inspect the Public Open Space within 15 Working Days of receipt of the application for the Provisional Certificate or within 15 Working Days of written notification that any defects have been remedied (as applicable) and report any defects within ten (10) Working Days of any inspection otherwise it shall be deemed that the Provisional Certificate is issued by the UDC and within ten (10) Working Days of deemed approval the UDC shall provide the Provisional Certificate.
4. From the date of issue of the Provisional Certificate for the Public Open Space the Owners shall make the Public Open Space and all the facilities on the Public Open Space available for use by the public as an open amenity or recreation area for the lifetime of the Development and shall allow the public to have unrestricted access at all times to the Public Open Space save for temporary or emergency closures for maintenance of the Public Open Space.
5. From the date of issue of the Provisional Certificate for the Public Open Space the Owners covenant:
  - 5.1 not to use or permit the use of the Public Open Space for any purpose other than as a public recreation or amenity area save the Owners may grant such rights to any statutory undertaker as the Owners consider necessary on under or over the Public Open Space; and
  - 5.2 to manage and maintain the Public Open Space during the Public Open Space Maintenance Period (including maintenance of all soft and hard landscaping built features lighting drainage and any other features on the Open Space) and to make good to the reasonable satisfaction of UDC any damage or defects in the Open Space arising during the Public Open Space Maintenance Period.

## **Final Certificate**

6. At the expiration of the Public Open Space Maintenance Period to apply to UDC for the issue of the Final Certificate for the Public Open Space.
7. If after inspection of the Public Open Space by UDC (acting reasonably) it considers that the Public Open Space has not been maintained satisfactorily in accordance with the Public Open Space Scheme and Public Open Space Management Plan the Owners shall at their own expense rectify any deficiencies and carry out such works or operations as may reasonably be required by UDC to bring the Public Open Space up to the standard required by the Public Open Space Scheme and Public Open Space Management Plan and this procedure shall be repeated as often as necessary until the Final Certificate is issued provided always that if UDC does not inspect the Public Open Space within 15 Working Days of receipt of an application for a Final Certificate or fails to provide

written notification of any defects within 15 Working Days of any inspection then the Final Certificate shall be deemed to have been granted on expiry of the said period of 15 Working Days.

**[Transfer of the Open Space]**

8. Three (3) months prior to completion of the Public Open Space Maintenance Period the Owners shall provide to UDC its calculation of the Public Open Space Commuted Sum such calculation to be agreed between the Owners and UDC.
9. Following the agreement required by paragraph 8, the Owners shall offer to transfer the Public Open Space to the Parish Council at a sum to be proposed by the Owners (“the Offer”). The Owners shall make the Offer prior to completion of the Public Open Space Maintenance Period and the Parish Council shall confirm in writing whether it accepts the Offer within 28 Working Days of receipt “the Acceptance Period”.
10. If the Parish Council confirms in writing that it accepts the Offer within the Acceptance Period the Owners shall transfer to the Parish Council the Public Open Space within 3 (three) months of the issue of the Final Certificate in accordance with the terms of this Deed and shall pay the Public Open Space Commuted Sum to the Parish Council upon completion of the transfer of the Public Open Space to the Parish Council.
11. If the Parish Council confirms in writing that it does not accept the Offer or fails to respond to the Offer within the Acceptance Period or if the Owners and UDC do not agree the Public Open Space Commuted Sum prior to the expiration of the Acceptance Period the Owners shall transfer the Public Open Space to the Management Company in accordance with the terms of this Deed and for the avoidance of doubt the Public Open Space Commuted Sum shall not be payable.
12. In the event that the circumstances pursuant to paragraph 11 of Part 4 of this Deed occur, the Owners shall prior to the transfer of the Public Open Space to a Management Company submit details of the Management Company to UDC for approval in writing and shall not transfer the Public Open Space to the Management Company until the details of the Management Company have been approved by UDC in writing.
13. The details of any Management Company referred to in paragraph 12 above shall include (where applicable):
  - 13.1 its corporate structure
  - 13.2 its registered office and correspondence address
  - 13.3 its directors and officers (where known)
  - 13.4 The means of funding the Management Company in respect of the Public Open Space to demonstrate that the Public Open Space is able to be maintained by the Management Company in perpetuity including details of any service charge to be paid by residents of the Development.
  - 13.5 Details of insurances as shall be appropriate in respect of the use of the Public Open Space managed by the Management Company and against damage by those comprehensive risks as are reasonable to insure against.
14. After UDC has issued the Final Certificate for the Public Open Space to transfer the Public Open Space to the Management Company:
  - 14.1 for nominal consideration;



- 14.2 free of all financial charges and other encumbrances that may materially affect use of the Public Open Space by the public; and
- 14.3 with vacant possession;
- within 12 (twelve) months of the issue of the Final Certificate by UDC PROVIDED ALWAYS THAT the Owners shall continue to maintain the Public Open Space in a clean and tidy condition until the transfer to the Management Company has been completed.
15. The Owners covenant as follows:
- 15.1 Prior to 90% Occupation of the Development or no more than 12 (twelve) months following the issue of the Final Certificate by UDC (whichever is the earliest):
- 15.1.1 the Owners shall transfer the Public Open Space to the Management Company; and
- 15.1.2 not to cause or permit 90% Occupation of the Development until the earlier of the transfer of the Public Open Space to the Management Company or 12 months of the provision of the Final Certificate
- 15.1.3 to provide to UDC a copy of the transfer for the Public Open Space to the Management Company within 28 days following completion of the transfer.
16. The Owners further covenant:
- 16.1 Subject to sub-paragraphs 13.2, 13.3 and 16.4 below the obligations under this Part 4 of Schedule 2 shall not be binding upon any owner occupier tenant or their mortgagees or chargees or any successor in title of the respective owner occupier tenant or their mortgagees or chargees of any of the Housing Units; and
- 16.2 Where the Public Open Space is transferred to the Management Company each owner occupier or tenant of any Open Market Housing Unit or their mortgagees or chargees or their respective successors in title shall be liable for a proportionate sum of the total annual cost of carrying out the Management Company Responsibilities and associated costs which may be attributable to that residential plot (such proportionate amount to be calculated as a ratio of that residential plot area to the total aggregated residential plot areas permitted by the Permission); and
- 16.3 Pursuant to sub-paragraph 16.2 above to pay the proportionate sum of the total annual cost of carrying out the Management Company Responsibilities and associated costs which may be attributable to any Open Market Housing Unit in respect of which a first sale or first occupation or first letting has not occurred following transfer of the Public Open Space to the Management Company (such proportionate amounts to be calculated as a ratio of such residential plot areas to the total aggregated residential plot areas permitted by the Permission); and
- 16.4 For the avoidance of doubt each liability of the Owners pursuant to sub-paragraph 16.3 above in respect of any Open Market Housing Unit that has not been subject to a first sale or first occupation or first letting following transfer of the Public Open Space to the Management Company shall cease absolutely upon the first sale or first occupation or first letting of each such residential plot



**SCHEDULE 3**  
**PART ONE - THE EDUCATION CONTRIBUTION**

In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

**Early Years and Childcare Contribution** means the Early Years and Childcare Pupil Product multiplied by the cost generator of nineteen thousand four hundred and twenty five pounds sterling (£19,425 ) to which the Relevant Education Indexation shall be added;

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

**Early Years and Childcare Purposes** means the design (including feasibility work) and or delivery and or provision of facilities for the education and/or childcare of children between the ages of 0 to 11 (both inclusive) including those with special educational or additional needs up to the age of 19 within a 3 mile radius of the Development and including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Early Years and Childcare Contribution;

**Education Contribution** means the sum of the Early Years and Childcare Contribution and (subject to the provisions of Part Two and Part Three of this Schedule) the Secondary Education Contribution, the Primary Education Contribution and the Secondary School Transport Contribution;

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

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

**Education Purposes** means the Early Years and Childcare Purposes and the Secondary Education Purposes and the Primary Education Purposes (if applicable);

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

**House** means a Housing Unit that does not meet the definition of a Flat;

**Primary Education Contribution** means the Primary Pupil Product multiplied by the cost generator of nineteen thousand four hundred and twenty five pounds sterling (£19,425) to which the Relevant Education Indexation shall be added;

**Primary Education Purposes** means the design (including feasibility work) and/or delivery and or provision of facilities for the education and/or childcare of children between the ages of 4 to 11 (both inclusive) and including those with special educational needs within a 3 mile radius of the Development and or at a facility that in the opinion of the County Council serves the Development and including the reimbursement of capital funding for such provision made by the County Council and or the County Council's nominee in anticipation of the Primary Education Review Contribution;

**Primary Education Contribution Review** shall mean a two-stage review to be carried out by the County Council in consultation with UDC (i) Prior to Implementation of Development and (ii) on 50% Occupation of the Development of the Primary Education Contribution to be conducted to determine whether a Primary Education Contribution is due to the County Council taking into account the demand anticipated to be generated by the Development against the baseline at Implementation

**Primary Education Review** shall mean a review to be conducted by the County Council in consultation with UDC to determine whether a Primary Education Contribution is due to the County Council taking into account the demand generated by the Development

**Primary Pupil Product** means the sum of the Qualifying Flats multiplied by 0.15 plus the Qualifying Houses multiplied by 0.3;

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

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

**Qualifying Housing Units** means the Qualifying Houses and Qualifying Flats;

**Relevant Education Indexation** means the amounts that the Owner shall pay with and/or agree in addition to each part of the Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Education Contribution being paid and multiplying this amount by the percentage change in the Education Index between the Education Index Point pertaining to January 2023 and Education Index Point pertaining to the date payment is made to the County Council;

**Secondary Education Contribution** means the Secondary Pupil Product multiplied by the cost generator of twenty six thousand seven hundred and seventeen pounds sterling (£26,717) to which sums the Relevant Education Indexation shall be added;

**Secondary Education Purposes** means the design (including feasibility work) and or delivery and or provision of facilities for the education and/or childcare of children between the ages of 11 to 19 (both inclusive) and including those with special educational needs at Forest Hall School and or within a 3 mile radius of the Development and or at a facility that in the opinion of the County Council serves the Development and including the reimbursement of capital funding for such provision made by the County Council and or the County Council's nominee in anticipation of the Secondary Education Contribution;

**Secondary Education Contribution Review** shall mean a two-stage review to be carried out by the County Council in consultation with UDC (i) Prior to Implementation of Development and (ii) on 50% Occupation of the Development of the Secondary Education Contribution to be conducted to determine whether a Secondary Education Contribution is due to the County Council taking into account the demand anticipated to be generated by the Development against the baseline at Implementation

**Secondary Education Review** shall mean a review to be conducted by the County Council in consultation with UDC to determine whether a Secondary Education Contribution is due to the County Council taking into account the demand generated by the Development

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

**Secondary School Transport Contribution** means the Secondary Pupil Product multiplied by the cost generator of five pounds forty pence (£5.40) multiplied by one hundred and ninety (190) being the average days in the academic year multiplied by (5) (being the number of years a pupil in secondary school);

**Secondary School Transport Purposes** means the transportation of children generated by the Development to a secondary school with capacity;

**Sterling Overnight Index Average (SONIA) Rate** means an assessment of the rate of interest the County Council can expect to earn on investments through the British sterling market, the rate used being the average interest rate at which banks are willing to borrow sterling overnight from other financial institutions and other institutional investors and SONIA Rate shall be construed accordingly;

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

2. The Owners hereby covenant with the County Council so as to bind their interest in the Land as follows:
  - 2.1 to pay fifty percent (50%) of the Education Contribution to the County Council prior to Implementation;
  - 2.1.2 not to cause allow or permit Implementation unless and until fifty percent (50%) of the Education Contribution has been paid to the County Council in full;
  - 2.1.3 to pay the remaining fifty percent (50%) of the Education Contribution to the County Council prior to first Occupation of any Housing Unit;
  - 2.1.4 not to cause allow or permit the Occupation of any Housing Unit unless and until one hundred percent (100%) of the Education Contribution (save for any part of the Education Contribution which arises pursuant to the second phase of the Primary Education Review) has been paid to the County Council in full;
- 2.3 In the event that the Education Contribution is paid later than the date set out in paragraph 2.1 then the amount of the Education Contribution or part thereof payable by the Owners shall in addition

include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the date of payment is due and the Education Index Point prevailing at the date of actual payment multiplied by the Education Contribution due or if greater an amount pertaining to interest on the Education Contribution or part thereof due calculated at the SONIA Rate from the date of payment is due until the date payment of the Education Contribution is received by the County Council; and

- 2.4 In addition to the requirement of paragraph 2.3 above in the event that any sum due to be paid by the Owners to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owners hereby covenant to pay to the County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) for each and every letter sent to the Owners [pursuant to the debt.
3. The Notice of Commencement shall in addition to that information stipulated in clause 10.3.1 to this Deed state the Unit Mix and in the event that the Unit Mix constructed or to be constructed should at any time differ from the Unit Mix notified to the County Council then the Owners shall serve on the County Council a further notice stating the revised Unit Mix within ten (10) Working Days of the revised Unit Mix being decided and in the further event that the Owners fail to serve any notice set out in this Paragraph 3 of this Schedule 3 the County Council may estimate and determine the Unit Mix as it sees fit acting reasonably.
- 4 The Payment Notice stipulated in clause 10.3.2 to this Deed shall state the Unit Mix on which the payment is to be based.
- 5 The Completion Notice stipulated in clause 10.3.3 to this Deed shall state the final Unit Mix.
6. The County Council hereby covenants with the Owners as follows:
  - 6.1 To place the Education Contribution when received into an interest-bearing account and to utilise the same solely for the Education Purposes;
  - 6.2 If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Education Contribution any part of the relevant Education Contribution that remains unexpended when the Education Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of any Education Purposes the unexpended part of the Education Contribution shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid shall not include such payment;
  - 6.3 Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the date of receipt of the Education Contribution in full the County Council shall provide the Owners with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent.
7. It is hereby agreed and declared:

- 7.1 In the event that the Unit Mix to be constructed on the Land does not match the Unit Mix on which the Education Contribution or part thereof paid was based the Owners hereby covenant to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Education Contribution paid and the amount of the Education Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Education Contribution;
- 7.2 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owners and received by the County Council within twenty (20) Working Days of receipt by the Owners of the County Council's statement referred to in paragraph 6.3 and shall clearly state the grounds on which the expenditure is disputed;
- 7.3 In the event that no written request is received by the County Council from the Owners pursuant to paragraph 6.3 above or no valid dispute is raised by the Owners pursuant to paragraph 7.2 the Owners shall accept the Education Contribution has been spent in full; and
- 7.4 In the event that the Education Contribution is overpaid by the Owners then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Education Contribution or have entered into a legally binding contract or obligation to spend the Education Contribution otherwise the County Council shall upon the Occupation of the final Housing Unit or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owners (in excess of those sums calculated as due for payment under this Deed) together with interest calculated at the SONIA Rate within twenty (20) Working Days of the County Council being informed by the Owners of such overpayment.

## **PART TWO - THE PRIMARY EDUCATION REVIEW MECHANISM**

1. IT IS HEREBY AGREED AND DECLARED:
  - 1.1. The County Council shall provide the Owners with written confirmation of the outcome of stage (i) of the Primary Education Contribution Review within twenty (20) Working Days of the review being completed;
  - 1.2. The County Council shall provide the Owners with written confirmation of the outcome of stage (ii) of the Primary Education Contribution Review within twenty (20) Working Days of the review being completed;
  - 1.3. Should the Primary Education Contribution Review determine that a Primary Education Contribution is required, the Owners shall pay to the County Council in full one hundred percent (100%) of the Primary Education Contribution within thirty (30) Working Days of receipt of the Primary Education Contribution Review.
  - 1.4. Should the Primary Education Contribution Review determine that a Primary Education Contribution is required, the Owners shall make payment to the County Council as follows:

- 1.4.1. to pay fifty percent (50%) of the stage (i) review Primary Education Contribution prior to Implementation and not to cause allow or permit Implementation unless and until fifty percent (50%) of the stage (i) review Primary Education Contribution has been paid to the County Council
- 1.4.2. to pay the remaining fifty percent (50%) of the stage (i) review Primary Education Contribution prior to first Occupation of any Housing Unit and not to cause allow or permit the Occupation of any Housing Unit unless and until one hundred percent (100%) of the stage (i) review Primary Education Contribution has been paid to the County Council in full;
- 1.4.3. to pay one hundred percent (100%) of the stage (ii) review Primary Education Contribution in full within thirty (30) Working Days of service of the outcome of the Primary Education Contribution Review as notified under 1.2 immediately above.
- 1.5. Should a Primary Education Contribution be made it will form part of the Education Contribution as defined in Part One of this Schedule and be treated as such for the remainder of 2.3-7.4 inclusive of Part One of this Schedule subject to the following changes:
- 1.6. Instead of 'In the event that the Education Contribution is paid later than the date set out in paragraph 2.1' to 'In the event that the Education Contribution is paid later than the date of the payment in accordance with clause 1.4 of Part Two of this Schedule'
- 1.7. Instead of 'If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Education Contribution any part of the relevant Education Contribution that remains unexpended when the Education Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part)' to 'If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Primary Education Contribution part of the Education Contribution any part of the relevant Primary Education Contribution part of the Education Contribution that remains unexpended when the Primary Education Contribution part of the Education Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part)'
- 1.8. Instead of 'Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the date of receipt of the Education Contribution in full the County Council shall provide the Owners with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent.' To 'Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the date of receipt of the Primary Education Contribution part of the Education Contribution in full the County Council shall provide the Owners with a statement confirming whether the Primary Education Contribution part of the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent.
- 1.9. Should a Primary Education Contribution be made it will form part of the Education Contribution Purposes as defined in Part One of this Schedule and be treated as such for the remainder of Part One of this Schedule
- 1.10. Should notices fail to be served in accordance with Clause 10.3 the County Council reserves the right to carry out a Primary Education Review at any time with written confirmation of the outcome to be provided to the Owners within twenty (20) Working Days of the review being completed;

- 1.11. Should the Primary Education Review determine that a Primary Education Contribution is required, the Owners shall pay to the County Council in full one hundred percent (100%) of the Primary Education Contribution within thirty (30) Working Days of service of the outcome of the Primary Education Review as notified under 1.10 of this Part Two.

### **PART THREE - THE SECONDARY EDUCATION REVIEW MECHANISM**

#### **2. IT IS HEREBY AGREED AND DECLARED:**

- 2.1. The County Council shall provide the Owners with written confirmation of the outcome of stage (i) of the Secondary Education Contribution Review within twenty (20) Working Days of the review being completed;
- 2.2. The County Council shall provide the Owners with written confirmation of the outcome of stage (ii) of the Secondary Education Contribution Review within twenty (20) Working Days of the review being completed;
- 2.3. Should the Secondary Education Contribution Review determine that a Secondary Education Contribution is required, the Owners shall pay to the County Council in full one hundred percent (100%) of the Secondary Education Contribution within thirty (30) Working Days of receipt of the Secondary Education Contribution Review.
- 2.4. Should the Secondary Education Contribution Review determine that a Secondary Education Contribution is required, the Owners shall make payment to the County Council as follows:
  - 2.4.1. to pay fifty percent (50%) of the stage (i) review Secondary Education Contribution prior to Implementation and not to cause allow or permit Implementation unless and until fifty percent (50%) of the stage (i) review Secondary Education Contribution has been paid to the County Council
  - 2.4.2. to pay the remaining fifty percent (50%) of the stage (i) review Secondary Education Contribution prior to first Occupation of any Housing Unit and not to cause allow or permit the Occupation of any Housing Unit unless and until one hundred percent (100%) of the stage (i) review Secondary Education Contribution has been paid to the County Council in full;
  - 2.4.3. to pay one hundred percent (100%) of the stage (ii) review Secondary Education Contribution in full within thirty (30) Working Days of service of the outcome of the Secondary Education Contribution Review as notified under 1.2 immediately above.
- 2.5. Should a Secondary Education Contribution be made it will form part of the Education Contribution as defined in Part One of this Schedule and be treated as such for the remainder of 2.3-7.4 inclusive of Part One of this Schedule subject to the following changes:
  - 2.6. Instead of 'In the event that the Education Contribution is paid later than the date set out in paragraph 2.1' to 'In the event that the Education Contribution is paid later than the date of the payment in accordance with clause 1.4 of Part Two of this Schedule'
  - 2.7. Instead of 'If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Education Contribution any part of the relevant Education Contribution that remains unexpended when the



Education Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part)' to 'If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Primary Education Contribution part of the Education Contribution any part of the relevant Primary Education Contribution part of the Education Contribution that remains unexpended when the Primary Education Contribution part of the Education Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part)'

- 2.8. Instead of 'Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the date of receipt of the Education Contribution in full the County Council shall provide the Owners with a statement confirming whether the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent.' To 'Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of the date of receipt of the Primary Education Contribution part of the Education Contribution in full the County Council shall provide the Owners with a statement confirming whether the Primary Education Contribution part of the Education Contribution has been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent.
- 2.9. Should a Secondary Education Contribution be made it will form part of the Education Contribution Purposes as defined in Part One of this Schedule and be treated as such for the remainder of Part One of this Schedule
- 2.10. Should notices fail to be served in accordance with Clause 10.3 the County Council reserves the right to carry out a Secondary Education Review at any time with written confirmation of the outcome to be provided to the Owners within twenty (20) Working Days of the review being completed;
- 2.11. Should the Secondary Education Review determine that a Secondary Education Contribution is required, the Owners shall pay to the County Council in full one hundred percent (100%) of the Secondary Education Contribution within thirty (30) Working Days of service of the outcome of the Secondary Education Review as notified under 1.10 of this Part Two.



**SCHEDULE 4**  
**LIBRARY CONTRIBUTION**

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

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

**Library Index Point** means a point on the most recently published edition of the Library Index at the time of use;

**Library Contribution** means the sum of seventy-seven pounds and eighty pence (£77.80) per Housing Unit to which sum the Relevant Library Indexation shall be added;

**Library Contribution Purposes** means the use of the Library Contribution towards the upgrading of existing facilities at Stansted Library to include but not limited to, additional furniture, technology and stock;

**Relevant Library Indexation** means the amount that the Owner shall pay with and in addition to the Library Contribution paid that shall in each case equal a sum calculated by taking the amount of the Library Contribution being paid and multiplying this amount by the percentage change shown in the Library Index between the Library Index Point pertaining to April 2020 and the date of the most recent Library Index Point published in relation to the date the payment is due to be made to the County Council.

2. The Owners hereby covenant with the Council and the County Council so as to bind their interest in the Land as follows:

2.1 to pay the Library Contribution to the County Council prior to Implementation of the Development and not to Commence or cause or allow or permit Implementation of the Development unless and until the Library Contribution has been paid to the County Council in full.

2.2. In the event that the Library Contribution is paid later than dates set out in paragraph 2.1 of this Schedule 3 then the amount of the Library Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Library Index between the Library Index Point prevailing at the date the payment is due and the Library Index Point prevailing at the date of actual payment to the County Council multiplied by the Library Contribution due or if greater an amount pertaining to interest on the Library Contribution (or the part thereof) due calculated at the SONIA Rate from the date that the payment is due until the date payment of the Library Contribution is received by the County Council; and

- 2.3 In addition to the requirement of paragraph 2.2 above in the event that any sum due to be paid by the Owners to the County Council pursuant to this Deed should not be received by the County Council by the date that the sum is due then the Owners hereby covenant to pay to County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) for each and every letter sent to the Owners pursuant to the debt.
3. The County Council hereby covenants with the Owners as follows:
- 3.1 to place the Library Contribution when received into an interest-bearing account and to utilise the same for the Library Contribution Purposes;
- 3.2 If requested in writing by the Owners no sooner than the tenth (10th) anniversary of the date that the Library Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Library Contribution any part of the Library Contribution that remains unexpended when the Library Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of any Library Contribution Purposes the unexpended part of the Library Contribution shall not be repaid until such payment is made and the unexpended part of the Library Contribution to be repaid shall not include such payment
- 3.3 Upon receipt of a written request from the Owners prior to the eleventh (11th) anniversary of receipt of the Library Contribution in full the County Council shall provide the Owners with a statement confirming whether the Library Contribution has been spent and if the Library Contribution has been spent in whole or in part outlining how the Library Contribution has in whole or in part been spent.
4. It is hereby agreed and declared:
- 4.1 In the event that the Unit Mix to be constructed on the Land does not match the Unit Mix on which the Library Contribution or part thereof paid was based the Owners hereby covenant to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Library Contribution paid and the amount of the Library Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Library Contribution;
- 4.2 Any dispute in relation to how the Library Contribution has been spent must be raised in writing by the Owners and received by the County Council within twenty (20) Working Days of receipt by the Owners of the County Council's statement referred to in paragraph 4.3 and shall clearly state the grounds on which the expenditure is disputed;
- 4.3 In the event that no written request is received by the County Council from the Owners pursuant to paragraph 3.2 above or no valid dispute is raised by the Owners pursuant to paragraph 4.2 the Owners shall accept the Library Contribution has been spent in full on the Library Contribution Purposes as appropriate; and

4.4 In the event that the Library Contribution is overpaid by the Owners then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council have spent the Library Contribution or have entered into a legally binding contract or obligation to spend the Library Contribution otherwise the County Council shall upon the Occupation of the final Dwelling on the Development or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owners (in excess of those sums calculated as due for payment under this Agreement) together with interest calculated at the SONIA Rate within twenty (20) Working Days of the County Council being informed by the Owners of such overpayment.

## SCHEDULE 5

### BIODIVERSITY NET GAIN

#### THE OWNERS COVENANT WITH THE DISTRICT COUNCIL

1. That a Biodiversity Net Gain Scheme which includes the following will be submitted:
  - 1.1 A report evidencing a net gain in biodiversity will be achieved compared to the biodiversity baseline on the site as existing when measured against the biodiversity baseline to be calculated in accordance with the principals as set out in the submitted by Ecology Solutions Biodiversity Net Gain report dated December 2023.
  - 1.2 The scheme to be submitted will include details of how biodiversity net gain will be delivered in accordance with the hierarchical approach set out below:
    - a) the required biodiversity net gain focussing first on maximising the delivery of biodiversity within the Site,
    - b) delivering off Site biodiversity enhancement at a site as agreed with the District Council that is within the District Council's administrative area and land within the Owner's control, or
    - c) delivering of off-Site biodiversity through the purchase of biodiversity unit credits
2. Where works are proposed under 1.2 (a) and / or 1.2 (b) above the Biodiversity Net Gain Scheme will include the following details
  - a) evidence of the existing habitats including their ecological condition together with full details of any proposed biodiversity enhancements with reference to DEFRA biodiversity metric 4.0
  - b) a management plan (including responsible bodies) to cover a period of at least 30 years from the date of the completion of the biodiversity enhancements
  - c) details of a monitoring and reporting plan which shall include details of the biodiversity enhancement works and confirmation that the monitoring report shall be submitted on the first anniversary of the completion of the biodiversity enhancement works and thereafter each year on years one, two, three, four, five ten, fifteen, twenty, twenty five and thirty
  - d) evidence of compliance with any actions reasonably required by the District Council in its written response to the Owner pursuant to the submission of a Biodiversity Net Gain monitoring report

3. Where the biodiversity credits are to be purchased from an off Site habitat bank the applicants shall include within the Biodiversity Net Gain Scheme evidence that the credits have been purchased.

## **SCHEDULE 6**

### **HIGHWAYS IMPROVEMENTS**

1. The Owners covenant with the County Council as follows: -
  - 1.2 To submit the Highways Works Scheme to the County Council in writing prior to Implementation of the Development and not to cause allow or permit Implementation of the Development unless and until the Highways Works Scheme has been submitted to the County Council for their written approval;
  - 1.3 to enter into a Highway Works Agreement for the Approved Highway Works Scheme prior to commencement of such works or such other timescale as shall be agreed in writing with the County Council PROVIDED always that the Owners shall enter into the Highway Works Scheme prior to first Occupation of any Dwellings on the Development; and
  - 1.4 to undertake and complete the Approved Highway Works Scheme prior to first Occupation of any Dwellings on the Development and in accordance with the Highway Works Agreement;
  - 1.5 and not to Occupy allow cause or permit to be Occupied and Dwellings unless and until the Highway Works have been properly completed in accordance with the Highway Works Agreement and the relevant certificate confirming such completion has been issued under the provisions of the Highway Works Agreement; and
2. The County Council shall not unreasonably withhold and or delay approval of the Highway Works Scheme.

## **SCHEDULE 7**

### **HEALTH CARE CONTRIBUTION**

1.
  - 1.1 The Owners shall pay the Health Care Contribution to UDC in the following instalments:
    - 1.1.1 50% of the Health Care Contribution prior to the Occupation of the final Dwelling.
  - 1.2 The Owners shall not permit or allow the Occupation of more than 50% of the Dwellings until 50% of the Health Care Contributions has been paid to UDC and shall not permit or allow the Occupation of the final Dwelling until the residual 50% of the Health Care Contribution has been paid to UDC.

### **PART 1**

#### **OBLIGATIONS UNDERTAKEN BY UDC**

UDC hereby covenants with the Owners as follows:

1. To place the Healthcare Contribution in an interest bearing account on receipt and in the event of repayment UDC shall repay t the person who paid the Healthcare Contribution any part which remains unexpended together with any accrued interest thereon
2. To keep an up-to-date record of all payments from the Healthcare Contribution and if some or all of the monies are not used or committed for the specified purposes within five years of payment of those monies, to repay those unexpended or uncommitted monies to the person who paid the Healthcare Contribution along with any interest accrued thereon prior to the expiry of 42 days from the end of the five-year period referred to
3. UDC hereby covenants with the Owners to use all sums received within the administrative area in with it operates and for the purposes specified in this Agreement
4. UDC shall provide the Owners with such evidence as the Owners shall reasonably require in order to confirm the expenditure of the sums paid under this Agreement
5. At the written request of the Owners UDC shall provide written confirmation of the discharge of the obligations contained in this Agreement when satisfied that such obligations have been performed
6. If UDC refuses any request for approval under any of the provisions in this Agreement it shall simultaneously provide the reasons for that refusal in writing and shall set out the actions or works necessary to enable approval to be issued

## **SCHEDULE 8**

### **TRAVEL PACKS**

1. The Owners hereby covenant with the County Council:
  - 1.1 to submit a draft Residential Travel Information Pack (including Travel Vouchers) to the County for written approval prior to first Occupation of a Dwelling and not to cause or allow first Occupation of a Dwelling prior to the Residential Travel Information Pack (including Travel Vouchers) being submitted to and approved in writing by the County Council;
  - 1.2 to provide the first occupier of each Dwelling with an approved Residential Travel Information Pack and Travel Vouchers prior to Occupation of any Dwelling and not to cause or permit Occupation of any Dwellings on the Development unless and until the Owners have provided the first occupiers with an approved Residential Travel Information Pack and Travel Voucher at the expense of the Owners.
  - 1.3 to provide the first occupier of each Dwelling a voucher in the sum of £1,000 (one thousand pounds sterling) per household towards the purchase of an electric bike

## Annex A – Allocations Policy



Annex B - First Homes Planning Advice Notice

Annex C – Nomination Rights Agreement