Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 relating to the development of [ ] Southend on Sea Essex

Dated: [200 ]

Southend On Sea Borough Council (1) (2) (3)
INTRODUCTION
1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
2 The Council is the local highway authority for the area where the Site is situated.
3 The ownership and other interests in the Site are as is set out in the First Schedule.
4 The Mortgagee has the benefit of those charges as are set out in the First Schedule.
5 The Owner has submitted the Application to the Council and the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
6 The Council resolved on [ ] to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FollowS:

1 DEFINITIONS
For the purposes of this Deed the following expressions shall have the following meanings:

“Act” the Town and Country Planning Act 1990
“Affordable Housing” housing for Social Rent, Affordable Rent and Shared Ownership provided to eligible households whose needs are not met by the housing market.

“Affordable Rent” housing that is let by local authorities or Registered Providers to eligible households and which is subject to rent controls that require a rent of no more than 80% of the local market rent capped at local housing allowance levels (including service charges)

“Affordable Housing Units” [ ] no. of the Dwellings to be provided on the Site [in groups of no more than [ ] Dwellings] pursuant to the Planning Permission and made available for Affordable Housing of which [ ] no. *(equivalent to 60%)* of the dwellings shall be for [Affordable Rent] [Social Rent] and [ ] no. *(equivalent to 40%)* shall comprise [Shared Ownership Dwellings] and in respect of each tenure the actual mix of dwellings shall be

<table>
<thead>
<tr>
<th>Dwelling</th>
<th>Tenure</th>
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<tbody>
<tr>
<td>[ ] x 1 bedroom dwellings</td>
<td></td>
</tr>
<tr>
<td>[ ] x 2 bedroom dwellings</td>
<td></td>
</tr>
<tr>
<td>[ ] x 3 bedroom dwellings</td>
<td></td>
</tr>
<tr>
<td>[ ] x 4 bedroom dwellings</td>
<td></td>
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“Application” the application for [outline] planning permission to develop the Site and dated [ ] submitted to the Council in accordance with the Application plans and other materials deposited with the Council and bearing reference no [ ]
“CCTV Contribution” means the sum of [ ] pounds (£ ) as increased by the Inflation Provision to be paid by the Owner to the Council and expended by the Council in accordance with the Third Schedule.

“Chargee” any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925.

“Chargee’s Duty” the tasks and duties set out in paragraph [2.4] of the Second Schedule.

“Commencement of Development” the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence” and “Commence Development” shall be construed accordingly.

“Development” the development of the Site as set out in the Application.
**“Dwelling”**
a dwelling (including a house flat or maisonette) to be constructed pursuant to the Planning Permission

**“Highway Works”**
those works as set out in the [Fifth] Schedule hereof

**“Inflation Provision”**
the increasing of a sum by reference to the All Items Index of Retail Prices as published by the Office for National Statistics as more particularly described in clause 11 [OR] All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation

**“Interest”**
interest at four per cent above the base lending rate of the Barclays Bank Plc from time to time

**“Market Housing Units”**
that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing

**“Monetary Contributions”**
those contributions listed in the Sixth Schedule hereof increased by the Inflation Provision to be paid by the Owner to the Council and expended by the Council in accordance with the Third Schedule

**“Occupation” and “Occupied”**
occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or
occupation for marketing or display or occupation in relation to security operations

“Plan” the plan attached to this Deed

“Planning Permission” the [outline/full] planning permission subject to conditions to be granted by the Council pursuant to the Application

“Practical Completion” issue of a certificate of practical completion by the Owner’s architect or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect

“Protected Tenant” any tenant who:

(a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

(c) has been granted a shared ownership lease by the Registered Provider in exercise of that persons’ statutory right in respect of a particular Affordable Housing Unit
“Public Art” permanent or temporary physical works of art visible to the general public from the public realm, whether part of the building or free standing within the Site or its vicinity, and can include sculpture, lighting effects, street furniture and architectural detailing as the Owner and Council may agree PROVIDED THAT any temporary works to be provided as part of the Public Art shall have been first agreed in writing with the Council prior to their being installed or provided and PROVIDED FURTHER THAT the cost of the Public Art shall be at least to the value of the Public Art Contribution

“Public Art Contribution” means the sum of [ ] pounds (£ ) as increased by the Inflation Provision to be paid by the Owner to the Council and expended by the Council in accordance with the Third Schedule

“Registered Provider” means a body registered as a provider of Affordable Housing under the Housing and Regeneration Act 2008

“Shared Ownership Dwelling” means an Affordable Housing Unit to be made available by a Registered Provider by means of a Shared Ownership Lease

"Shared Ownership Lease" a lease or sub-lease of an Affordable Housing Unit whereby no less than twenty five per cent (25%) and no more than seventy five percent (75%) of the equitable interest in the Affordable Housing Unit is to be paid by the tenant or sub-tenant upon the initial completion of such
lease or sub-lease or raised by mortgage or charge from a reputable bank or building society and which lease or sub-lease shall also include arrangements for rent but enable him to acquire the balance of the legal and equitable interest in the Affordable Housing Unit at a future date or dates

“Site” the land against which this Deed may be enforced as shown edged red on the Plan.

“Social Rent” housing that is owned by local authorities and Registered Providers (as defined in section 80 of the Housing and Regeneration Act 2008) for which target rents are determined by the national rent regime or by other persons and provided under equivalent rental arrangements as agreed by the local authority or Homes England.

“Travel Pack” (only relevant if development includes residential) a pack dealing with the matters outlined in the [ ] Schedule which upon approval shall be deemed to have been incorporated in the terms of this Agreement

“Travel Plan” (applies to commercial element of the scheme) a plan dealing with the matters outlined in the [ ] Schedule which upon approval by the Council shall be deemed to have been incorporated in the terms of this Agreement [and which plan shall include all matters as set out in Appendix x of the Transport Assessment submitted with the Application]
2 CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 Any reference in this Deed to any enactment regulation order or circular shall include any statutory modification extension re-enactment or replacement thereof (as the case may be) for the time being in force.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council the successors to their respective statutory functions.

3 LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000.

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as local planning authority against the Owner.

3.3 This Agreement is a Deed and may be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a Deed.

3.4 This Agreement is a local land charge and upon completion shall be registered by the Council as such.
4 CONDITIONALITY

This Deed is conditional upon:

(i) the grant of the Planning Permission; and
(ii) the Commencement of Development

save for the provisions of [Clauses 7.1, 16 and 17 legal costs clause jurisdiction and delivery clauses and any other relevant provisions] which shall come into effect immediately upon completion of this Deed.

5 THE OWNER’S COVENANTS

5.1 The Owner covenants with the Council as set out in the Second Schedule.

6 THE COUNCIL’S COVENANTS

6.1 The Council covenants with the Owner as set out in the Third Schedule.

7. MISCELLANEOUS

7.1 The Owner shall pay to the Council on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed.

7.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

7.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Director of Planning and Transport and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

7.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7.5 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

7.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or the part in respect of which a breach shall occur but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.8 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them nor against any service authority and/or utility company. [Remove paragraph for non-residential schemes]

7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

7.10 The Owner and the Mortgagee further agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived.

7.11 All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner or the Mortgagee at no cost to the Council.

8. **MORTGAGEE’S CONSENT**

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.
9. **WAIVER**
No waiver (whether expressed or implied) by the Council the Owner or Mortgagee of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council the Owner or the Mortgagee from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. **CHANGE IN OWNERSHIP**
The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee’s full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

11. **INDEXATION**
Any sum referred to in the Second [and Third] Schedule[s] payable by the Owner shall be increased by an amount equivalent to the increase in the Inflation Provision from three months prior to the [date hereof] until three months prior to the date on which such sum is payable.

12. **INTEREST**
If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

13. **VAT**
All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

14. **NOTICES**
14.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if received by facsimile, delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that
the notice or other written communication is addressed and delivered or sent by facsimile or by recorded delivery post to the address of the party concerned as nominated in clause.

14.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

Section 106 & CIL Officer
Southend Borough Council
Development Control
12th floor Civic Centre
Victoria Avenue
Southend-On-Sea
Essex SS2 6ZQ

The Owner

The Mortgagee

14.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer.

15 DISPUTE PROVISIONS

15.1 In the event of any dispute or difference arising between [any of] the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion
as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

15.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 15.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

15.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.

15.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.

15.5 The provisions of this clause shall not affect the ability of the Council or County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

16. **PAYMENT REGIME**

16.1 Without prejudice to the legal liability of the Owner to make any payment due under this Deed the Owner shall request an invoice or confirmation from the Council’s Section 106 & CIL Officer of the sum due and on receipt thereof payment can be made to the Council by such form of electronic transfer as is acceptable to the Council, on-line via the Council’s website, over the phone, at the Customer Service Centre or by sending a cheque (made payable to “Southend Borough Council” and
marked for the attention of the Section 106 & CIL Officer, Development Control, 12\textsuperscript{th} floor Civic Centre, Victoria Avenue, Southend-on-Sea SS2 6ZQ) and when making a payment in respect of an invoice it is essential that the invoice number be quoted and if payments are made in advance of an invoice being received this should be by cheque only, and contact should first be made with the Section 106 & CIL Officer to confirm the amount payable as increased by the Inflation Provision and cheques must be accompanied by a written statement detailing the following:

a) The date of this Deed

b) Planning application reference number

c) The address of the land affected by this Deed

d) What the payment relates to and the relevant clause in the Deed to which it relates

or payment may be by such other methods or in accordance with such other arrangements as the Council may reasonably require of the Owner.

15.2 For the avoidance of doubt compliance with the requirements of this Deed is the responsibility of the Owner of the Site and it is not reliant upon invoicing by the Council.

15.3 Where the Owner covenants under this agreement to pay any money to the Council or perform any obligation prior to, on or following the Occupation, the Commencement of the Development, the bringing in to use of the Development, Practical Completion or on any other event triggering the payment or the performance of the obligation whichever shall be the case the Owner shall give written notice to the Council within 5 days thereof.
16. **JURISDICTION**  
This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

17. **DELIVERY**  
The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.
FIRST SCHEDULE
FREEHOLD INTERESTS

The Owner is the freehold owner of the following properties as registered at the Land Registry under the title numbers shown below

LEASEHOLD INTERESTS

MORTGAGEES INTERESTS
SECOND SCHEDULE
The Owner’s Covenants with the Council

1. CCTV
   1.1 Prior to the Commencement of the Development the Owner shall pay the CCTV Contribution to the Council which shall be used by the Council to increase the CCTV monitoring capacity within vicinity of the Site.
   1.2 The Owners shall not permit nor cause to permit any part of the Development to be Commenced unless the CCTV Contribution has been paid to the Council in accordance with paragraph 1.1 above.

2. AFFORDABLE HOUSING
   2.1 Subject to the provisions hereof no more than [ ] no. (equivalent to 35%) of Market Housing Units shall be Occupied until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and made ready for residential occupation and written notification of such has been received by the Council.
   2.2 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
      2.1.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
      2.1.2 any Chargee provided that the Chargee shall have first complied with the Chargee’s Duty
      2.1.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
2.3 Subject to the provisions hereof no more than [ ] no. (equivalent to 40%) of the Market Housing shall be Occupied until the Affordable Housing Units have been transferred to the Registered Provider on terms that accord with relevant Homes England funding requirements current at the date of construction of the Affordable Housing Units

2.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge give not less than one months’ prior notice to the Council of its intention to dispose and:

(a) in the event that the Council responds within one month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its best endeavours to secure such transfer

(b) if the Council does not serve its response to the notice served under paragraph 2.4.(a) within one month then the Chargee shall be entitled to dispose free of the restrictions set out in this Part of the Second Schedule

(c) if the Council or any other person cannot within three months of the date of service of its response under paragraph 2.4(a) secure a legally binding contract for such transfer with a completion date no later than 28 days thereafter then provided that the Chargee shall have complied with its obligations under paragraph 2.4(a) the Chargee shall be entitled to dispose free of the restrictions set out in this Part of the Second Schedule

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage

3. PUBLIC ART

3.1 To include as part of the Development Public Art the precise nature of which and its precise location on the Development to be approved by the Council prior to
Occupation of any part of the Development PROVIDED THAT the Council and the Owner may agree that instead of providing Public Art on the Site it shall pay the Public Art Contribution to the Council to be used by the Council in accordance with the Third Schedule.

3.2 Where the Public Art is to be provided by the Owner the said work shall be provided prior to Occupation of any part of the Development.

3.3 Where the Public Art Contribution is to be paid to the Council it shall be paid prior to Occupation of any part of the Development.

3.4 The Owners shall not permit nor cause to permit any part of the Development to be Occupied until the Public Art has been provided pursuant to clause 3.2 above or the Public Art Contribution has been paid to the Council in accordance with paragraph 3.3 above.

4. HIGHWAY WORKS

4.1 The Owner shall at its own expense carry out and complete the Highway Works in accordance with the requirements of any necessary agreements in such form as required by the Council under section 38 or section 278 of the Highways Act 1980 and shall not permit nor cause to permit the Occupation of any part of the Development until such time as the Highway Works have been completed and certified as such in writing by the Council.

Or

4.1 Prior to [Commencement] of the development the Owner shall pay the Highway Works contribution to the Council which shall be used by the Council to undertake the works set out in the Fifth Schedule.

4.2 The Owner shall not [Commence] or allow [Commencement] of any part of the Development unless the Highway Works Contribution has been paid to the Council in accordance with paragraph 4.1 above.
5. MONETARY CONTRIBUTIONS

5.1 Prior to the Commencement of any part of the Development the Owner shall pay the Monetary Contributions to the Council which shall be used by the Council to undertake the works as set out in the [Sixth] Schedule.

5.2 The Owners shall not permit nor cause to permit any part of the Development to be Commenced unless the Monetary Contributions have been paid to the Council in accordance with paragraph 5.1 above.

6. TRAVEL PLAN AND TRAVEL PACK

6.1 The Owner shall comply with the provisions of the Fourth Schedule in relation to the Travel Plan and Travel Pack.

6.2 The Owner will include in the Travel Plan or the Travel Pack or any review thereof any reasonable comments as are made in writing by the Council provided such comments are made within a period of 28 days from the date of submission of the draft Travel Plan or Travel Pack or the date of submission of any review of the Travel Plan or Travel Pack.

6.3 The Owner will implement at its own expense and shall comply at all times with the terms of the Travel Plan.

6.4 The Owner shall not permit nor cause to permit any part of the Development to be Occupied unless the Travel Plan and Travel Pack has first been approved in writing by the Council and the Travel Pack provided as set out in the Fourth Schedule.
THIRD SCHEDULE

Council’s Covenants

1. Repayment of contributions

1.1 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council shall agree:

<table>
<thead>
<tr>
<th>Contribution</th>
<th>Authorised Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordable Housing Contribution</td>
<td>To provide affordable Housing within the borough of Southend</td>
</tr>
<tr>
<td>CCTV Contribution</td>
<td>[specify project on which contribution will be spent]</td>
</tr>
<tr>
<td>Monetary Contributions</td>
<td>As set out in the Sixth Schedule</td>
</tr>
<tr>
<td>Public Art Contribution</td>
<td>To provide Public Art including sculpture, street furniture, landscaping and/or architectural detailing visible from the public realm in the vicinity of the Development or on the Site</td>
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</table>

1.2 In procuring any works set out in paragraph 1.1 of this Third Schedule the Council shall use its reasonable endeavours to ensure the delivery of the works in the most economic and efficient manner and in doing so the Council shall use such measures or contracts as it deems appropriate (the Council to act reasonably in determining what is appropriate) to achieve the objectives of this paragraph PROVIDED THAT in procuring the works the Council shall be deemed to have complied with the provisions of this paragraph if it uses any pre-existing contract with a third party in circumstances where the Council is of the view that this is the most economic means of procuring the works.
1.3 The Council covenants with the Owner that it will subject to the terms of this paragraph pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended or committed to be spent by a contract in writing in accordance with the provisions of this Deed within five years of the date of receipt by the Council of such payment together with interest at the Barclays Bank Plc base rate from time to time for the period from the date of payment to the date of refund provided that the Owner shall give no less than three months notice of its intention to seek repayment of any monies in accordance with this clause failing which the period for expending or committing the expenditure of the money shall be extended and shall expire three months after the date on which the Council receives written notice from the Owner of their intention to seek repayment of any monies then unspent or uncommitted to be spent.

1.4 The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

2. **Discharge of obligations**

2.1 At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
FOURTH SCHEDULE

TRAVEL PLAN REQUIREMENTS

TRAVEL PACKS

Travel Packs must be provided for each new Dwelling in a Development (or be made available for new employee/student) as part of the house purchaser’s/business’s/organisation’s Travel Pack. The Travel Packs should include the following information:

Map of Southend (possibly use the Ideas in Motion Travel Map if available)

Information leaflet that provides key information on the following:

- Key websites that provide advice on how to find out the sustainable travel options and local active travel events that are available through the Ideas In Motion website
- Bus – local operators websites and travel advice
- Train – local operators and travel advice
- Cycling – cycle southend website, route maps and local facilities
- Walking – routes and information points
- Electric Bikes and Electric Cars – options and opportunities
- Opportunities for car sharing
- Car clubs if relevant

In addition, up to date bus and train timetables, details of local taxi companies, community transport and school transport should be included. All reasonable endeavours should be made to ensure that the Travel Packs are passed on to future tenants/home owners.

Ideally discount Vouchers or Free Train or Bus Tickets for people to try the local public transport should be included. The vouchers/tickets will depend on the location and type of development.

The Travel Packs should be approved by Southend on Sea Borough Council prior to the distribution of the packs to ensure relevant and up-to-date information has been provided.

TRAVEL PLAN

1 General provisions

A Travel Plan is a long-term management strategy for the Site that seeks to deliver sustainable transport objectives through action and is articulated in a document that is regularly reviewed.

The Travel Plan will set the general objective to a) reduce journeys to the site by single occupancy car and all car traffic and; b) not adversely affect parking in the local area.
The Travel Plan must be consistent with the objectives of the National Planning Policy Framework, the Local Transport Plan and the Local Development Framework (departures from this will generally be unacceptable); clearly set out the benefits of a Travel Plan including carbon reduction and the health benefits from more active travel; and demonstrate how the travel needs for all users of the new development will be met.

### 2 Site Accessibility

The Travel Plan should describe the Development and analyse and describe all potential users, both permanent users and visitors, and the travel opportunities that exist during the hours of operation including the following:

- Access to the building and local walking routes
- Local cycle routes and cycle parking facilities
- Proximity to bus and train services
- Car access and local parking provision
- Off-street parking provision and its method of operation

### 3 Travel Surveys

For extensions to existing buildings, a travel survey should be carried out at the time the draft travel plan is prepared to evidence existing travel habits and issues. For new developments, and monitoring extensions to existing buildings, the Travel Plan should provide for the collection of data on travel patterns five years commencing with the first travel survey six months after occupation and one year, three years and five years after that.

### 4 Objectives of the Travel Plan

Based upon the evidence collected to evaluate the site, the objectives of the Travel Plan should be summarised to clearly show what the outcomes of the Travel Plan should be.

### 5 Measures to promote and facilitate access to the site by public transport, cycling and on foot

- The Travel Plan should demonstrate the range of incentives that the Development will be offering to promote sustainable travel.
- Produce a legible and easy to use site access map indicating how to reach the site by all transport modes (rail, bus, cycling, walking and car). This map should also indicate other key local services/major local destinations (e.g. shops and transport hubs). This map must indicate the exact locations of bus stops and suggested walking routes to them, existing cycle routes and the railway stations. Isochrones should be used to demonstrate access times for walking and cycling.
- Advertise the local bus and rail routes serving the Site at prominent locations and provide details of service frequency, timetable information and websites for the appropriate service providers.
- The Travel Plan must clearly demonstrate how travel information will be made available to all users of the building and how it will be maintained.
- Cycle parking must be provided in accordance with the planning permission. The Travel Plan must demonstrate how the adequacy of the provision will be maintained and improved and increased if required.
- Actively market cycling as a mode of transport to the Site and allow for and encourage a bicycle user group.
- The Travel Plan must include a commitment to the establishment and implementation of a Car Sharing Scheme.
- Developers required to submit a Travel Plan under a planning obligation should join Southend Borough Councils sustainable travel network, which provides a range of travel related benefits, services and discounts to members free of charge and is endorsed by Southend-on-Sea Borough Council.
- Pedestrian access to the site must be suitably accessible for mobility-impaired users as per the terms of the Equality Act 2010 and the Disability Discrimination Act 1995.

6 Targets and Monitoring

- The Travel Plan will set out how it will be monitored and the arrangements put in place to report the outcome of this monitoring for a period of up to 5 years dependent upon the nature of the application. As part of the S106 agreement, the developer and subsequent occupiers will agree to abide by the monitoring requirements.
- The Travel Plan should demonstrate that adequate financial and staffing resources will be provided for the operation and monitoring of the Travel Plan and that is has sufficient backing at senior level. The appointment of a Travel Plan Coordinator is mandatory and their contact details must be incorporated into the Travel Plan and provided to the Council prior to first occupation.
- The Travel Plan must demonstrate how the modal split will be monitored (and undertaken) to ensure that the proportion of single occupancy vehicles does not increase over time.
- The Travel Plan should provide for the collection of data on travel patterns for the five year period referred to above commencing with the first travel survey six months after occupation.
- An annual report should be submitted to the Council, who will review progress against the targets and agree remedial actions and improvements to the Travel Plan with the developer as necessary. The annual report should be submitted within three months following the anniversary of first occupation of the development.
- Depending upon the complexity and detail of the Travel Plan the Council reserves the right to make a reasonable charge (up to a maximum of £4,000) for reviewing the annual reports and providing feedback. This charge will be agreed on approval of the Travel Plan.

7 Action Plan

All actions to be undertaken should be clearly summarised in an action plan using the following headings:
- Action (description)
- Purpose (link to objectives)
- Status of Action
- Target/Monitoring
- Name of person responsible for the action
- Timescale
FIFTH SCHEDULE

HIGHWAY WORKS

1. Creation of……..
SIXTH SCHEDULE

- Contribution for [ ] (£ )
- Contribution for [ ] (£ )
- Contribution for [ ] (£ )
THE COMMON SEAL of SOUTHEND ON SEA

BOROUGH COUNCIL was pursuant to a resolution

of the Council hereunto affixed to this Deed in the

presence of:

Proper Officer of the Council

Executed as a Deed by

by a Director

In the presence of:

Witness:

Address:

Occupation: