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This agreement is made by deed and dated

2022

between:

Southend on Sea City Council of Civic Centre, Victoria Avenue, Southend-On-Sea, Essex SS2 6EF (“the Council”), and

(“the Owner”) and

(“the Mortgagee”)

RECITALS

- (A) The Council is both the local planning authority and local highway authority for the purposes of the Act for the area in which the Site is situated.
- (B) The Owner is the registered proprietor of the freehold estate in the land comprising the Site as shown on the Site Plan at Schedule 1 registered at HM Land Registry under title number EX.
- (C) The Mortgagee has the benefit of a registered Legal Charge over the Site.
- (D) 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.
- (E) The Council resolved on [] to grant the Planning Permission subject to the prior completion of this Deed.

- (F) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulation and facilitating the Development in the manner set out in this Deed.
- (G) The Council is satisfied that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and fairly and reasonably relate in scale and kind to the Development.

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 (as amended).
- “Affordable Housing” housing for Social Rent, Affordable Rent and Shared Ownership Dwellings 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

Dwelling	Tenure
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[] x 1 bedroom dwellings	
---------------------------	--

[] x 2 bedroom dwellings	
---------------------------	--

[] x 3 bedroom dwellings	
---------------------------	--

[] x 4 bedroom dwellings	
---------------------------	--

[(The specific numbers are based upon XXX Dwellings in the Application but will be adjusted by the Council in accordance with the number and make up of Dwellings approved in the Reserved Matters Application).]

“Alteration to the Traffic Regulation Order”

the alteration to the Traffic Regulation Order required to facilitate [] in association with the Development.

“Application”

the application for [outline] planning permission to develop the Site registered by the Council on [] together with the application plans and other materials deposited with the Council and bearing reference no [].

“Chargee”

any 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) of the whole or any part of the Affordable Housing Units or the successors in title to such mortgagee or chargee.

“Chargee’s Duty” the tasks and duties set out in paragraph [1.4] of Schedule 2.

“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” “Commencing” and “Commence Development” shall be construed accordingly.

“Costs” all costs, expenses, payments, contributions, fees, charges and other sums paid or payable including interest and VAT where paid or payable.

“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.

“Education Contribution”

£[figure] [(in words)] [(based upon XXX Dwellings in the Application but will be adjusted by the Council in accordance with the Education Formula based upon the number and make up of Dwellings approved in the Reserved Matters Application)] as increased by the Inflation Provision to be paid by the Owner to the Council and expended in accordance with Schedule 3.

[“Education Formula”

In respect of each 2 bed flat

The multiplier of 0.03 multiplied by the cost per new pupil place of £18,469 multiplied by the number of 2 bed flats to be provided in a Reserved Matters Application multiplied by the regional multiplier of 1.02

In respect of each 2 bed houses

The multiplier of 0.07 multiplied by the cost per new pupil place of £18,469 multiplied by the number of 2 bed houses to be provided in a Reserved Matters Application multiplied by the regional multiplier of 1.02

In respect of each 3 or more bed dwelling (flat/house)

The multiplier of 0.25 multiplied by the cost per new pupil place of £18,469 multiplied by the number of 3 bed dwellings to be provided in a Reserved Matters Application multiplied by the regional multiplier of 1.02]

“Essex Coast Recreational Disturbance Avoidance Mitigation Contribution”

Means a contribution based on the number of Dwellings in the Application [(as will be adjusted by the Council in

accordance with the number of Dwellings approved in the Reserved Matters Application)) multiplied by the charge per Dwelling as published on the Council’s website.

Example contribution based on current information:

£xxx [TOTAL IN WORDS]

Being: xxx [NUMBER IN WORDS] (being the total number of Dwellings provided by the Development); multiplied by [£137.71 (one hundred and thirty-seven pounds and seventy-one pence)] (being the current charge due per Dwelling as of 1 April 2022 amount to comply with the RAMS Document at the date of this Deed which will be updated each year in line with the All Items Index of Retail Prices, with any increase coming into force on the 1st April each year.)

“Expert” a person appointed in accordance with clause 15 to resolve a dispute or difference under this Deed.

“Highway Works” those works as set out in Schedule 5 hereof.

“Highway Works Contribution” £[figure] ([words] pounds), as increased by the Inflation Provision, to be paid by the Owner to the Council and expended by the Council on the Highway Works as set out in Schedule 3.

“Inflation Provision” means the increasing of a sum by reference to Clause 11 by reference to the All Items Index of Retail Prices as published by the Office for National Statistics 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.
“Nominations Agreement”	means a deed or deeds of nomination rights to be entered into between the Council and the Registered Provider in a form to be agreed with the Council taking into account the guidance set out in the South Essex Housing Group Nomination Agreement Best Practice Guide dated 1 October 2018 (together with such amendments as may be agreed in writing between the Council and the Registered Provider) which sets out the allocation process for the Social Rent and Affordable Rent.
“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.
[“Phase”	any single phase of the Development as shown on the Phasing Plan.

“Phasing Plan”	the phasing plan approved by the Council pursuant to the conditions of the Planning Permission.]
“Plan”	the plan depicting the Site attached as Schedule 1 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”	<p>any tenant who:</p> <ul style="list-style-type: none"> <li data-bbox="737 1024 1484 1276">(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 <li data-bbox="737 1318 1484 1465">(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit <li data-bbox="737 1507 1484 1703">(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/or architectural detailing as the Owner and Council may agree PROVIDED THAT any temporary works have a legacy relevant to the Site 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 £[figure] ([words] pounds), as increased by the Inflation Provision to be paid by the Owner to the Council and expended by the Council in accordance with Schedule 3.

“RAMS Document” means the Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS) Supplementary Planning Document dated May 2020 to avoid and mitigate recreational disturbance on European designated sites along the Essex Coast.

“Registered Provider” means a body registered as a provider of social housing under the Housing and Regeneration Act 2008 or such other class of bodies as fulfil a similar function.

[“Reserved Matters Application” means any application for approval of any reserved matters under the Application.]

“S106 Monitoring Contribution” the financial contribution in the sum of [] pounds (£) to be paid by the Owner to the Council to go towards the cost of monitoring and reporting on the delivery of the Owner’s compliance with the terms of this Deed

"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 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.
"Traffic Regulation Order"	means the traffic regulation order [].
"Traffic Regulation Order"	

Contribution”	£[figure] ([words] pounds), as increased by the Inflation Provision, to be paid by the Owner to the Council and expended by the Council in accordance with Schedule 3.
“Travel Pack”	<i>(only relevant if development includes residential)</i> a pack dealing with the matters outlined in Schedule 4 which, upon approval by the Council, shall be deemed to have been incorporated in the terms of this Deed.
“Travel Plan”	<i>(applies to commercial element of the scheme)</i> a plan dealing with the matters outlined in Schedule 4 which, upon approval by the Council, shall be deemed to have been incorporated in the terms of this Deed [and which plan shall include all matters as set out in Appendix x of the Transport Assessment submitted with the Application]
“Travel Plan Monitoring Contribution”	the financial contribution in the sum of _____ pounds (£_____) per year for five years increased by the Inflation Provision to be paid by the Owner to the Council and expended by the Council in accordance with Schedule 3.
“Working Day”	any day which is not a Saturday or Sunday or bank or other public holiday in England.

2 INTERPRETATION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital, such reference (unless the context otherwise requires) is a reference to a clause, paragraph, 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 Where 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 1 of the Localism Act 2011.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner by this Deed executed as a 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 The obligations in this Deed may be modified or discharged in part or in full at any time after the date of this Deed by agreement made between the parties in the form of a deed.

3.4 This Deed is a local land charge and shall, upon completion, 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, 17 and 18 legal costs clause, jurisdiction and delivery clauses which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

The Owner covenants with the Council as set out in Schedule 2.

6 THE COUNCIL'S COVENANTS

The Council covenants with the Owner as set out in Schedule 3.

7. MISCELLANEOUS

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

7.2 Prior to the Commencement of Development the Owner shall pay the S106 Monitoring Contribution.

- 7.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.4 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 Group Manager of Planning and Building Control 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.
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall upon written request of the Owner forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.6 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.
- 7.7 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.
- 7.8 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 have occurred but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 7.9 [Except for the planning obligations contained in this Deed specifically regulating the use of land or buildings after construction, no] [No] planning obligations contained in this Deed shall be binding on any freehold or leasehold owners or occupiers of individual dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or land held by any of the statutory utilities for their operational purposes.
- 7.10 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.
- 7.11 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 this Deed are hereby waived.
- 7.12 All works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are, unless expressly provided otherwise, to be at the sole expense of the Owner at no cost to the Council.
- 7.13 In the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of that application references to Planning Permission in this Deed shall be to the new planning permission granted pursuant to Section 73 of the Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act PROVIDED ALWAYS THAT nothing in this clause shall prevent the Council from deciding in determining any such Section 73 application that the issue of any planning permission under Section 73 as aforesaid should be subject to prior completion of a supplemental deed pursuant to Section 106A of the Act and/or other relevant powers.

THE COMMON SEAL of SOUTHEND ON SEA)
CITY 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:

months prior to the date of this Deed until three months prior to the date on which such sum is payable.

- 11.2 The Essex Coast Recreational Disturbance Avoidance Mitigation Contribution as payable by the Owner shall be increased by an amount equivalent to the increase in the Inflation Provision from three months prior to [April 2021] until three months prior to April of the year it is paid.

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

Principal Planning Officer (CIL and S106)
Strategic Planning
Growth and Housing
Southend-on-Sea City Council

Civic Centre Victoria Avenue
Southend-On-Sea
Essex SS2 6ER

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 If any dispute or difference arises between the parties to this Deed about any matter contained in it, then such dispute or difference shall be referred to an independent and suitable Expert holding appropriate professional qualifications to be appointed to resolve it. Such a person shall act as an Expert and not as an arbitrator 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 party as follows:

- 15.2.1 if the dispute or difference relates to highway works engineering demolition building or constructions works it shall be referred to the President for the time being of the Institution of Civil Engineers for him to appoint a chartered civil engineer to determine the dispute.

- 15.2.2 if the dispute or difference relates to the value of any interest in property it shall be referred to the President for the time being of the Royal Institution of Chartered Surveyors for him to appoint a chartered surveyor to determine the dispute.
- 15.2.3 if the dispute or difference relates to planning and related matters it shall be referred to the President for the time being of the Royal Town Planning Institute for him to appoint a chartered town planner to determine the dispute.
- 15.2.4 if the dispute or difference relates to the rights and liabilities of either party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed not already covered by clauses 15.2.1 – 15.2.3 it shall be referred to the President for the time being of the Law Society for him to appoint a solicitor to determine the dispute.
- 15.3 Such individual referred to in clauses 15.2.1 – 15.2.4 above, howsoever appointed, acting as an Expert and not as an arbitrator whose decision shall be final and binding on all 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 or, failing such determination, shall be borne by the parties in equal shares.
- 15.4 The Expert shall be required to give notice to each of the parties requiring them to submit to him within 10 working days of notification of his appointment written submissions and supporting material and then each party will be entitled to make a counter written submission within a further 10 working days.
- 15.5 An Expert, howsoever appointed, shall be subject to the express requirement that a decision is 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 28 working days after the conclusion of any hearing that takes place or 28 working days after he has received any final written representations.

- 15.6 An Expert, howsoever appointed, shall be entitled to call for such independent expert advice (using persons who shall have at least 10 years post-qualification experience in the subject matter) as the Expert shall think fit.
- 15.7 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 15.8 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching their determination.
- 15.9 Unless this Deed has already been terminated each of the parties shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this clause 15 but without prejudice to the rights and obligations of the parties in relation to the termination of the Deed.
- 15.10 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, an injunction, a decree of specific performance, payment of any sum due, damages, or any other means of enforcing this Deed and consequential and interim orders and relief.

16. PAYMENT REGIME

- 16.1 Without prejudice to the Owner's liability to make any payment due under this Deed, the Owner shall request an invoice or confirmation from the Council's Principal Planning Officer (CIL and S106) of the sum due and, on receipt of it, 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-on-Sea City Council" and marked for the attention of the Principal Planning Officer (CIL and S106), Strategic Planning, Growth and Housing Southend-on-Sea City Council, Civic Centre, Victoria Avenue,

Southend-on-Sea SS2 6ER). When making a payment in respect of an invoice it is essential that the invoice number is 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 Principal Planning Officer (CIL and S106) to confirm the amount payable as increased by the Inflation Provision. Cheques must be accompanied by a written statement detailing the following:

- a) the date of this Deed;
- b) the Application reference number;
- c) the address of the land affected by this Deed; and
- d) what the payment relates to, including the relevant clause in the Deed to which it relates,

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

16.2 Compliance with the requirements of this Deed is the responsibility of the Owner and it is not reliant upon prior invoicing by the Council.

16.3 Where the Owner covenants under this Deed to pay any money to the Council or perform any obligation prior to, on, or following 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 of the occurrence of such a triggering event to the Council within 5 days of any such triggering event.

17. 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.

18. 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.

Schedule 1 SITE PLAN

Schedule 2 THE OWNER'S COVENANTS WITH THE COUNCIL

1. AFFORDABLE HOUSING

- 1.1 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.
- 1.2 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 upon:
- 1.2.1 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;
- 1.2.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty; or
- 1.2.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 1.3 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.
- 1.4 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 or otherwise give not less than one month's 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 reasonable endeavours to complete such a transfer;

- (b) if the Council does not serve its response to the notice served under paragraph 1.4.(a) within one month then the Chargee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 2 which restrictions shall determine absolutely;
- (c) if the Council or any other person (as the intended transferee) cannot within three months of the date of service of the Chargee's notice under paragraph 1.4 complete a transfer of the Affordable Housing Units then provided that the Chargee shall have complied with its obligations under paragraph 1.4 the Chargee shall be entitled to dispose free of the restrictions set out in this Part of Schedule 2 which restrictions shall determine absolutely;
- (d) the sale price of any disposal of any interest in an Affordable Housing Unit entitles the Chargee to not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses together with all professional fees or costs incurred by it in affecting such a disposal;

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.

- 1.5 The Owner shall not Occupy nor permit to be Occupied any Social Rent or Affordable Rent [within a Phase or Sub Phase] until a Nominations Agreement has been entered into between the Council and the Registered Provider for the Social Rent and Affordable Rent [within that Phase or Sub Phase] and thereafter shall not Occupy or permit the Occupation of such Social Rent and / or Affordable Rent otherwise than in accordance with the Nominations Agreement.

2. EDUCATION CONTRIBUTION

- 2.1 Prior to Commencement of the Development the Owner shall pay the Education Contribution to the Council which it shall use to undertake the works as set out in Schedule 3.

- 2.2 The Owner shall neither permit, nor cause to be permitted, Commencement of the Development unless the Education Contribution have been paid to the Council in accordance with paragraph 2.1 above.

3. PUBLIC ART

- 3.1 To include as part of the Development Public Art details of which shall be submitted and 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 Schedule 3.

- 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 Schedule 5.

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. TRAFFIC REGULATION ORDER CONTRIBUTION

5.1 Prior to the Commencement of the Development the Owner shall pay the Traffic Regulation Order Contribution to the Council which shall be used by it in accordance with the details set out in Schedule 3.

5.2 The Owner shall neither permit, nor cause to permit, the Development to be Commenced unless the Traffic Regulation Order Contribution has been paid to the Council in accordance with paragraph 5.1 above.

5.3 Prior to Commencement of the Development the Alteration to the Traffic Regulation Order must be authorised for implementation.

- 5.4 The Owner shall neither permit, nor cause to permit, the Development to be Commenced unless the Alteration to the Traffic Regulation Order has been authorised by the Council in accordance with paragraph 5.3 above.
- 5.5 Prior to the Occupation of any part of the Development the Alteration to the Traffic Regulation Order must be implemented.
- 5.6 The Owner shall not permit nor cause to permit any part of the Development to be occupied unless the Alteration to the Traffic Regulation Order has been implemented in accordance with paragraph 5.5 above.

6. TRAVEL PLAN AND TRAVEL PACK

- 6.1 Prior to Commencement the Owner shall submit the draft Travel Plan to the Council and thereafter the Owner shall comply with the provisions of Schedule 4 in relation to the Travel Plan and Travel Pack.
- 6.2 Prior to Occupation the Owner shall pay the Travel Plan Monitoring Contribution to the Council and thereafter the Owner shall continue to pay the Travel Plan Monitoring Contribution to the Council annually for a period of five years on the yearly anniversary of Occupation of the Development.
- 6.3 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.
- 6.4 The Owner will implement at its own expense and shall comply at all times with the terms of the Travel Plan.

6.5 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 Schedule 4.

7. Essex Coast Recreational Disturbance Avoidance Mitigation

7.1 The Owner covenants with the Council to pay the Essex Coast Recreational Disturbance Avoidance Mitigation Contribution prior to Commencement of the Development in full to the Council.

7.2 The Owner shall not Commence the Development unless and until the Essex Coast Recreational Disturbance Avoidance Mitigation Contribution has been paid in full to the Council.

Schedule 3 THE COUNCIL'S COVENANTS WITH THE OWNER

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 and agrees to transfer the Essex Coast Recreational Disturbance Avoidance Mitigation Contribution to Chelmsford City Council as the accountable body for Essex Coast Recreational Disturbance Avoidance Mitigation Contribution for the City of Southend or any successor to that role, to be used for the RAMS Contribution Purposes.:

Contribution	Authorised Use
Affordable Housing Contribution	To provide Affordable Housing within the City of Southend on Sea.
Education Contribution	For expansion project(s) at secondary schools within the area of the Development as required to address the increased demand for school places created as a consequence of this Development.
Essex Coast Recreational disturbance Avoidance Mitigation Contribution	To contribute to strategic mitigation measures seeking to avoid harm to Protected Habitats (European) Sites from increased visits to the coast from new residents in the wider area.
Highway Works Contribution	For the provision of the Highway Works.
Public Art Contribution	For the provision and maintenance of Public Art visible from the public realm in the vicinity of the Development or on the Site.

Traffic Regulation Order Contribution	To cover the cost of the Alteration to the Traffic Regulation Order.
Travel Plan Monitoring Contribution	To cover the cost of monitoring the Travel Plan implementation and operation, reviewing the annual reports and providing feedback.

- 1.2 In procuring any works set out in paragraph 1.1 above the Council shall use its reasonable endeavours to ensure the delivery of the works in the most economic and efficient manner and, in so doing, the Council shall use such measures or contracts as it deems appropriate - acting 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 Subject to the terms of this paragraph 1, the Council covenants with the Owner that with the exception of the Essex Coast Recreational Disturbance Avoidance Mitigation Contribution, it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been spent , or committed to be spent, under a written contract in accordance with the provisions of this Deed within 5 years for all other payments 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 the payment to the date of refund, provided that the Owner shall give no less than 3 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 3 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 the Owner with such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner to the Council 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.

Schedule 4 TRAVEL PACKS

1. Travel Packs must be provided for each new Dwelling in the Development (or be made available for new resident/purchaser) as part of the house-purchaser's Travel Pack. The Travel Packs should include the following information:

1.1. Map of Southend (Forward Motion Travel Map if available)

1.2. Information leaflet that provides key information on the following:-

- Key websites – including local bus and train operators and travel advice
- Websites that provide advice on how to find out the sustainable travel options and local active travel events that are available through the Forward Motion website
- Cycling – Cycle Southend website, route maps and local facilities
- Walking – Forward Motion website, routes and information points
- Electric Bikes and Electric Cars – options and opportunities
- Opportunities for car sharing
- Car clubs if relevant
- Add links to Forward Motion website Personal Travel Plan portal for house purchasers to plan their new routes/journeys to places of work, training or education.
<https://forwardmotionsouthessex.co.uk/travel-info/personal-travel-plans>

2. 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.

3. 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.

4. The Travel Packs should be approved by the Council (which is obliged to act reasonably) prior to the distribution of the packs to ensure relevant and up-to-date information has been provided.

TRAVEL PLANS

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 cars 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 Plan and the Local Transport Plan (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, add links to Cycle Southend and ForwardMotion websites for further local information.

- The Travel Plan must include a commitment to the establishment and implementation of a Car Sharing Scheme. Include a link to the ForwardMotion Liftshare group <http://seat.liftshare.com>
- 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 Owner 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 it 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 Occupation of the development.

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

Schedule 5 HIGHWAY WORKS

1. [define works]
- 2.

THE COMMON SEAL of SOUTHEND ON SEA)
CITY 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: