

THIS DEED is made the [ ] day of [ ] by:

(1) [ ] of [ ] (“the Applicants”)

(2) [ ] (Company registration number [ ] whose registered office is at [ ] (“the Mortgagee”))

and constitutes a planning obligation by unilateral undertaking for the purposes of Section 106 of the 1990 Act

**WHEREAS:-**

- A. The Council is the Local Planning Authority for the purposes of the 1990 Act for the Borough of Colchester within which borough the Application Site is located
- B. The Applicants are the proprietors of the freehold title absolute in the Application Site which title is registered at the Land Registry with the Title Number [ ] and have an interest in the Application Site within the meaning of Section 106 of the 1990 Act
- C. The Mortgagee is the owner of a legal charge in respect of the Application Site and as such has an interest in the Application Site within the meaning of Section 106 of the 1990 Act
- D. By executing this Deed the Mortgagee has consented to the Applicants binding the Application Site by the giving of the planning obligations herein
- E. The Council has resolved to grant to the Applicants the Planning Permission (subject to conditions) PROVIDED THAT the Applicants first enter into this unilateral undertaking and covenants in the manner hereinafter appearing

**NOW THIS DEED WITNESETH as follows: -**

**1. Definitions**

1.1 In this Deed the following terms shall have the following meanings: -

- |                    |  |
|--------------------|--|
| “1990 Act”         | means the Town and Country Planning Act 1990, as amended by: (a) the Planning and Compensation Act 1991 (b) the Planning and Compulsory Purchase Act 2004  |
| “Application Site” | means the land known as [ ] shown edged red on the Application Plan  |
| “Borough Projects” | means the projects in the Borough of Colchester that are for the benefit of all persons residing in the Borough of Colchester and which projects include the provision and/or improvement and/or maintenance of open space |

sport and recreational facilities such as swimming pools and indoor leisure facilities

“Commencement Of the Development”

means the implementation of the Planning Permission by the carrying out of a material operation described in Section 56 of the 1990 Act and “Commence the Development” shall mutatis mutandis be construed accordingly

“Community Facilities”

means the provision of a building or space where community led activities are carried out for the benefit of the community as shall be agreed with the local planning authority

“Community Facilities Contribution”

means the sum of [ ] [ ] which sum shall be increased in accordance with any increase in the RPI figures (as published before the date of this Deed and the RPI figures last published before the date the said Community Facilities Contribution is due

“Community Facilities Contribution Purposes”

means the use of Community Facilities Contribution towards community benefits

“Council”

means Colchester Borough Council, Rowan House, 33 Sheepen Road, Colchester CO3 3WG

“Development”

means the development described in the Planning Application and permitted by the Planning Permission

“Notice of Commencement”

means notice in writing to advise of the date that Commencement of the Development occurred

“Planning Application”

means the planning application (including plans, statements and appraisals in support of the said application) submitted by the Applications to the Council (and which the Council has given reference number [ ] seeking planning permission for the erection of [ ]

“Planning Permission”

means the planning permission (with conditions) granted by the Council in accordance with the Planning Application

“Open Space Sport and Recreational Facilities Contribution”

means the sum of [ ] [ ] which sum shall be increased or decreased in accordance with any increase or decrease in the RPI figures last published before the date of this Deed and the RPI figures (as published before the date that the

Open Space Sport and Recreation Facilities  
Contribution is due

“Open Space Sport  
and Recreational  
Facilities Contribution  
Purposes”

means the use of the Open Space Sport and  
Recreational Facilities Contribution towards both  
(a) the provision and/or improvement and/or  
maintenance of open space sport and recreational  
facilities in the vicinity of the Application Site, and (b)  
the Borough Projects

“RPI”

means the Retail Price Index published by or on behalf  
of the Government of the United Kingdom or if the  
same index shall cease to be published such other  
index as may be substituted therein

## **2. INTERPRETATION AND LEGAL EFFECT**

- 2.1 The covenants in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act in respect of which:
- (a) The Applicants are the owners of the freehold title to the Application Site and the said Application Site is free from any third-party interests and encumbrances other than those of the Mortgagee
  - (b) The Council is the Local Planning Authority entitled to enforce the provision of this Deed and the covenants contained in this Deed shall be so enforceable
  - (c) This Deed is entered into in respect of the Application Site with the intent that it shall bind the Mortgagee and any persons claiming under or through them
  - (d) This Deed shall be binding on all successors and assigns in title of the Applicant and any persons claiming under or through them
  - (e) This Deed has been executed as a Deed and shall be registered by the Council as a local land charge against the Application Site in accordance with Section 106(11) of the Act
- 2.2 This Deed is made pursuant to Section 106 of the Act and all other powers enabling the parties to enter into such a Deed
- 2.3 Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval
- 2.4 This Deed has immediate effect, but the covenants contained herein shall take effect upon the date that the Council issues the Planning Permission
- 2.5 If the Planning Permission shall expire before the Commencement of the Development or shall at any time be revoked this Deed shall forthwith determined and cease to have effect but without prejudice to any of the covenants that arise to be performed prior to any such expiration or revocation and the Contribution shall forthwith be returned to the Applications (or is nominated person) if already paid
- 2.6 No person shall be liable for a breach of a covenant in this Deed unless they hold an interest in the Application Site or held such an interest at the date of the breach

## **3. THE APPLICANTS' COVENANTS**

The Applicants HEREBY COVENANT AND UNDERTAKE with the Council that the Applicants will:-

- 3.1 Pay to the Council the Open Space Sport and Recreational Facilities Contribution before the Commencement of the Development and shall not commence the Development unless and until the Open Space Sport and Recreational Facilities Contribution has been paid to the Council PROVIDED THAT the Open Space Sport and Recreational Facilities Contribution is given on the condition that;
    - 3.1.1 the Council will use the Open Space Sport and Recreational Facilities Contribution towards the Open Space Sport and Recreational Facilities Contribution Purposes.
    - 3.1.2 the Council will use no more than thirty five percent (35%) of the Open Space Sport and Recreational Facilities Contribution towards the Borough Projects
    - 3.1.3 the Applicants shall be entitled to request in writing that the Council return to the Applicants any unused part the Open Space Sport and Recreational Facilities Contribution (plus interest that has accrued on that unused part) on the tenth (10<sup>th</sup>) anniversary of the date that the Council received the said Open Space Sport and Recreational Facilities Contribution
  - 3.2 Pay to the Council the Community Facilities Contribution before the Commencement of the Development and shall not Commence the Development unless and until the Community Facilities Contribution has been paid to the Council PROVIDED THAT the Community Facilities Contribution is given on condition that;
    - 3.2.1 the Council will only use the Community Facilities Contribution towards Community Facilities Contribution Purposes.
    - 3.2.2 the Council will use no more than thirty five percent (35%) of the Community Facilities Contribution towards the Borough Projects
    - 3.2.3 the Applicants shall be entitled to request in writing that the Council return to the Applicants any unused part the Community Facilities Contribution (plus interest that has accrued on that unused part) on the tenth (10<sup>th</sup>) anniversary of the date that the Council received the said Community Facilities Contribution
  - 3.3 Serve on the Council a Notice of Commencement (marked for the attention of the Council's Section 106 Compliance Officer) not more than (7) days after Commencement of the Development has occurred.
- 4. FEES**
- 4.1 The Applicants shall on completion of this Deed pay to the Council a Contribution of £400 (Four Hundred Pounds) towards the Council's administration costs and the cost of monitoring the performance of the planning obligations that the Applicants are required to observe and perform pursuant to the terms of this Deed should Planning Permission be granted. If Planning Permission is not granted the Applicants will be entitled to a refund of the £400 (Four Hundred Pounds) monitoring fee.

- 4.2 The Applicants shall pay to the Council on the date of this Deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with its approval and registration of this Deed being the sum of £500 (Five Hundred Pounds).

## **5. INDEXATION OF CONTRIBUTION**

- 5.1 All financial contributions payable to the Council shall be Index Linked
- 5.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner and the Developer in writing.

## **6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 6.1 it is hereby acknowledged that it is not intended that a third party should have the right to enforce a provision of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights that arise under the said 1999 Act are hereby excluded

## **7. THE MORTGAGEE'S CONSENT AND ACKNOWLEDGEMENT**

- 7.1 The Mortgagee consents to the completion of this Deed and declares that its interest in the Property shall be bound by the terms of this Deed as if it had been executed and registered as a land charge prior to the creation of the Mortgagee's interest in the Property.
- 7.2 The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Property.

## **8. DETERMINATION OF DEED**

This Deed shall be determined and have no further effect if the Planning Permission:

- (a) expires before the Commencement of Development;
- (b) is varied or revoked other than at the request of the Owner or Developer; or
- (c) is quashed following a successful legal challenge.

## **9. LOCAL LAND CHARGE**

This Deed is a local land charge and shall be registered as such by the Council.

**10. INTEREST ON LATE PAYMENT**

If the Contribution has not been paid to the Council prior to or on the due dates for payment, the Owner shall pay the Council interest on the Contribution or relevant part thereof at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the Commencement Date to and including the actual dates of the payments.

**11. GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by [ ]  
acting by in the presence of

.....

SIGNATURE OF

[ ]

.....

Executed as a deed by [ ]  
acting by [ ]  
in the presence of

.....

SIGNATURE OF

[ ]

.....

**MORTGAGEE EXECUTION CLAUSE**

.....

Executed as a deed by [ ]  
acting by [NAME OF DIRECTOR] a  
director, in the presence of:

[SIGNATURE OF DIRECTOR]

Director

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND OCCUPATION]  
OF WITNESS]