

DATED

2022

COLCHESTER CITY COUNCIL (1)

-and-

ESSEX COUNTY COUNCIL (2)

-and-

TAYLOR WIMPEY UK LIMITED (3)

SECTION 106 AGREEMENT

relating to land in Wivenhoe, Essex being on the south side of
Brightlingsea Road and the south-east side of Elmstead Road and
which land is now known as the Broadfields development

THIS AGREEMENT is made on this day of 2022

BETWEEN:

- (1) **COLCHESTER CITY COUNCIL** (formerly Colchester Borough Council) of Rowan House, 33 Sheepen Road, Colchester, Essex, CO3 3WG (**"the City Council"**); and
- (2) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex, CM1 1QH (**"the County Council"**); and
- (3) **TAYLOR WIMPEY UK LIMITED** (Co. Regn. No. 01392762) of Gate House, Turnpike Road, High Wycombe, HP12 3NR (**"the Owner"**).

BACKGROUND

- (A) For the purposes of the 1990 Act, the City Council and the County Council are the local planning authorities for the area within which the Site is located and are the authorities entitled to enforce the obligations set out in this Agreement. The County Council is also the local education authority responsible for statutory age education and early years and childcare and the local highway authority for the County of Essex.
- (B) The Owner is the freehold owner of the Site pursuant to a Transfer dated 05 January 2022 and made between the Previous Owners and the Owner.
- (C) An application dated 24 January 2022 has been submitted to HM Land Registry to apply to register the Owner as the freehold owner of the Site.
- (D) The Owner submitted the Planning Application to the City Council. By notice dated 14 June 2022 the City Council refused to grant the planning permission applied for in the Planning Application and that refusal is now the subject of the Appeal.
- (E) The Owner has submitted the Appeal and as part of that Appeal the Parties request that the Inspector includes this Agreement in his/her deliberations when determining the Appeal.
- (F) The City Council is satisfied that the planning obligations contained in this Agreement 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.

(G) The Parties have entered into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the City Council and (where appropriate) the County Council against the Owner and its successors in title to the Site, except as expressly provided for in this Agreement.

1. **OPERATIVE PROVISIONS**

1.1 In this Agreement, the following words and expressions have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990, as amended;

"Appeal" means the appeal submitted by the Owner to the Secretary of State to appeal the City Council's refusal to the Planning Application and which appeal has been given the reference APP/A1530/W/22/3305697;

"Commencement Date" means the date that Commencement of Development occurs;

"Commencement of Development" means, subject to clause 3.2 herein, the carrying out pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and the use in this Agreement of the terms **"Commence the Development"** or **"Commence Development"** or **"Commenced"** shall be construed accordingly;

"Contributions" means together the RAMS Contribution (as defined and referred to in Schedule 3), the Archaeology Contribution (as defined and referred to in Schedule 3), the Community Facilities Contribution (as defined and referred to in Schedule 4), the Football Pitch Delivery Contribution (as defined and referred to in Schedule 5) and the Football Pitch

Maintenance Contribution (as defined and referred to in Schedule 5) and "Contribution" shall mean any one of them as appropriate;

"County Council Monitoring Fee"

means a fee of £550 per obligation due to the County Council under this Agreement and for the avoidance of doubt this is a total of £1,650.00 (one thousand six hundred and fifty pounds) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Agreement;

"Development"

means the development of the Site as set out in the Planning Application for the construction of up to one hundred and twenty (120) residential dwellings (all houses) along with access, landscaping, public open space, and associated infrastructure works;

"Dwellings"

means the houses within Use Class C3 (as defined in the Town and Country Planning (Use Classes) Order 1987 as amended) and or self-contained flat bungalow maisonette or other domestic property constructed as part of the Development and the use in this Agreement of the term "Dwelling" shall be construed accordingly;

"Index"

means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as shall replace such index or as the City Council reasonably requires in the event that the Index

of Retail Prices shall no longer be published or its name or methodology be materially altered;

"Index Linked"

means the increase of any Contribution to reflect any increase in the Index during the period from and including 9 June 2022 (that date being the date the City Council's Planning Committee voted to refuse the Planning Application) to and including the date of actual payment of the Contribution to which it relates;

"Inspector"

means the inspector appointed by the Secretary of State to determine the Appeal;

"Market Dwellings"

means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings (as defined in Schedule 2 hereof);

"NPPF"

means the National Planning Policy Framework first published in March 2012 and last updated in July 2021;

"Notice A"

means a written notice confirming the proposed Commencement Date;

"Notice B"

means a written notice confirming that Commencement of Development has taken place;

"Occupation"

means physical beneficial occupation for the purposes permitted by the Planning Permission and shall not include:

(a) any occupation associated with the construction, fitting out, decoration, landscaping or management of the Development or any part of it including

daytime occupation by workmen involved in the construction of the Development; and

(b) in so far as such uses are ancillary to the construction of the Development the use of finished buildings or associated areas for sales purposes, for use as temporary offices or for show homes, or for the storage of plant and materials or in relation to security operations

and the use in this Agreement of the terms "Occupy" or "Occupied" or "Occupancy" shall be construed accordingly;

"Parties"

means together the City Council, the County Council, and the Owner and "Party" shall mean any one of them;

"Planning Application"

means the planning application (to which application the City Council applied the reference 210965) seeking FULL planning permission for the Development;

"Planning Permission"

means the detailed planning permission granted for the Development pursuant to the Appeal;

"Previous Owner"

means Ian Bernard Woolf and Helene Rosehill and Melvyn Victor Rosehill;

"Secretary of State"

means the Secretary of State for Levelling Up, Housing and Communities or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Levelling Up, Housing and Communities by the 1990 Act;

"Site" means the land on the south side of Brightlingsea Road, Wivenhoe and on the south-east side of Elmstead Road, Wivenhoe and which land is: (a) known as the Broadfields development; and (b) identified as being the land shown edged in red on the Site Plan and (c) at the date hereof is registered at HM Land Registry with title numbers EX157443 and EX308509;

"Site Plan" means the drawing numbered TW027-PL01-01 Revision 00 (dated March 2021 and marked 'Location Plan') a copy of which is annexed hereto at the Appendix;

"Statutory Undertaker" has the meaning given to such term in the 1990 Act and for the avoidance of doubt shall include any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator;

"Working Days" means any day(s) upon which banks in the City of London are open to the general public.

1.2 In this Agreement:

1.2.1 the clause or Schedule headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a part or paragraph are to a part or paragraph of that Schedule;

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in England as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;

1.2.4 references to the Site include any part of it;

1.2.5 references to any party in this Agreement include the successors in title of that party and to any person deriving title through or under that party and in addition, references to the City Council and the County Council includes any successor local planning authority exercising planning powers under the 1990 Act or any successor authority exercising statutory powers in respect of matters concerning education and/or highways and/or transportation;

1.2.6 "including" means "including, without limitation";

1.2.7 words importing the singular meaning where the context so admits shall include the plural meaning and vice versa;

1.2.8 words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner;

1.2.9 words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to cause permit or allow infringement of the restriction;

1.3 The Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS AGREEMENT

2.1 This Agreement is a Deed and is made pursuant to the provisions of Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act, the covenants contained in the Schedules to this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the City Council and (where appropriate) the County Council.

- 2.2 To the extent that any of the covenants contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the City Council and/or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 The covenants in this Agreement will not be enforceable against a Statutory Undertaker after the transfer of its apparatus (and any part of the Site upon or in which the apparatus is situated) by the Owner to that Statutory Undertaker.
- 2.5 The covenants in this Agreement will not be enforceable against individual owners or lessees or Occupiers of the individual Dwellings or their mortgagees or successors in title to either the owner or lessee or Occupier or mortgagee, save in respect of the restriction on Occupation in paragraph 2.7 of Schedule 2 which shall apply to the Affordable Housing Dwellings.
- 2.6 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.7 For the avoidance of any doubt, if the Inspector in his/her decision letter concludes that any of the planning obligations set out in this Agreement do not constitute a reason for granting the Planning Permission in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) and/or is not a material planning consideration and accordingly attaches no weight to that obligation or obligations in determining the Appeal then the relevant obligation or obligations shall, from the date of the decision letter, cease to have effect and the Owner shall be under no obligation to comply with the relevant obligation or obligations.

3. **COMMENCEMENT DATE**

- 3.1 The covenants within this Agreement take effect on the date of this Agreement Save in respect of any covenants that do not require compliance until after the Commencement Date and which therefore will take effect on the Commencement Date.

3.2 For the purposes of this Agreement only the Commencement Date and Commencement of Development will not be triggered by any of the following operations:

- 3.2.1 archaeological or site investigations or surveys;
- 3.2.2 site or soil surveys or site decontamination or remediation works;
- 3.2.3 the clearance of the Site including any works of demolition;
- 3.2.4 works connected with groundworks;
- 3.2.5 works for the provision of drainage or mains services to prepare the Site for development;
- 3.2.6 erection of fencing or boarding;
- 3.2.7 erection of boards advertising the Development (including the erection of advertising hoardings);
- 3.2.8 the construction of a temporary site compound or temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite;
- 3.2.9 construction of temporary access roads;
- 3.2.10 landscaping works;
- 3.2.11 creation of any noise attenuation works.

4. OBLIGATIONS OF THE PARTIES

4.1 The Owner so as to bind the Site hereby covenants with the City Council and the County Council to comply with the obligations set out in the Schedules to this Agreement and within this Agreement.

4.2 The Owner hereby covenants with the City Council and the County Council to provide the City Council and the County Council with: (a) a Notice A not less than twenty (20) Working Days before the expected Commencement Date; and (b) a Notice B not more than ten (10) Working Days after the Commencement Date.

- 4.3 The City Council and the County Council hereby covenant with the Owner to comply with their obligations set out in the Schedules to this Agreement.
- 4.4 The City Council and the County Council hereby covenant with the Owner to act reasonably, properly and diligently in exercising any discretion and in discharging their respective functions under this Agreement. In particular, where any agreement, approval, authorisation, consent or other similar affirmation is required from the City Council or the County Council under the terms of the Agreement, the City Council and the County Council will not unreasonably withhold or delay such agreement, approval, authorisation, consent or other similar affirmation PROVIDED ALWAYS that such agreement, approval, authorisation, consent or other similar affirmation may only be given in writing and only prior to the act or event to which it applies (unless otherwise agreed by the City Council or the County Council as appropriate).
- 4.5 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 4.6 Any obligation that prohibits the Owner from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owner to positively carry out those certain events by no later than the number of Occupations set out therein unless the context otherwise requires.
- 4.7 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs except to the extent that they have caused or contributed to that breach, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.7.
- 4.8 No compensation shall be payable by the City Council or the County Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed by the Owner hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the City Council or the County Council.

- 4.9 Representatives of the City Council and/or the County Council may enter upon the Site at any reasonable time upon reasonable written notice (and immediately in the event of an emergency) to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with subject to complying with all health and safety and security requirements required by the Owner as appropriate Provided That this right shall cease and determine in relation to any Dwelling on first Occupation of that Dwelling.
- 4.10 Any agreement, covenant or obligation contained herein by any of the Parties which comprise more than one person or entity shall be joint and several and where any agreement, covenant or obligation is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.11 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the Parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.12 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent seal signature execution or approval of the owner, lessee or Occupier of any Dwelling or their mortgagee or chargee or any person deriving title from them shall not be required to vary any part of this Agreement.
- 4.13 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.14 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

4.15 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the City Council as such and the City Council covenants with the Owner that it will note on the local land charges register when compliance with all of the said obligations has occurred.

4.16 That in the event that the Owner fails to serve any of the notices that they are required by the provisions of this Agreement to serve then the City Council and/or the County Council (as appropriate) shall be entitled to payment of the relevant Contribution(s) contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of the relevant Contribution and the time period for the return of the relevant Contribution shall be extended accordingly.

4.17 If there is a delay in making the payment of any Contribution(s) required pursuant to this Agreement interest shall be payable on the amount due at the rate of four percent (4%) above the National Westminster Bank plc base lending rate from time to time in force from the date that the relevant payment falls due until the date of actual payment.

5. TERMINATION OF THIS AGREEMENT

5.1 This Agreement will come to an end if:

5.1.1 the Appeal is unsuccessful and the Inspector on behalf of the Secretary of State does not grant the Planning Permission; or

5.1.2 the Appeal is successful but the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

5.1.3 the Planning Permission expires before the Commencement of Development.

5.2 Where the Agreement comes to an end under Clause 5.1 above the City Council shall, on the written request of the Owner vacate or cancel the entry made in the local land charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

6. NOTICES

6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following address (or to such other address as one party may notify in writing to the others at any time as its address for service):

6.1.1 for the Owner:

(a) Taylor Wimpey UK Limited, Gate House, Turnpike Road, High Wycombe, Buckinghamshire HP12 3NR and marked for the Urgent attention of the Land Director, Taylor Wimpey London; and

(b) to the divisional offices of Taylor Wimpey London, Ground Floor East Wing, BT Brentwood, 1 London Road, Brentwood, Essex CM14 4QP or such other address as is updated to the Parties from time to time, and marked for the urgent attention of the Land Director

and for the avoidance of doubt, for a notice to be validly served on the Owner it shall be served in accordance with both (a) and (b) above;

6.1.2 for the City Council as set out above and all notices shall: (a) be marked to the attention of the Head of Development Management; and (b) quote the planning application reference 210965;

6.1.3 for the County Council all notices (etc) shall be sent to County Hall, Market Road, Chelmsford, Essex, CM1 1QH and all such notices (etc) shall: (a) be marked for the attention of the s106 Officer Planning Service Place and Public Health; and (b) quote the planning application reference 210965; and (c) sent to development.enquiry@essex.gov.uk.

6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.2.1 if delivered by hand, at the time of delivery;

6.2.2 if sent by post, on the second Working Day after posting; or

6.2.3 if sent by recorded delivery, at the time delivery was signed for.

6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

6.4 Otherwise than in relation to a disposal to individual owners of Dwellings or to a Statutory Undertaker, the Owner shall give to the City Council and the County Council within one month of the Owner disposing of any part of the Site written notice of the name and address of the person or persons to whom the Site or part thereof has been transferred.

7. **COSTS OF THIS AGREEMENT**

7.1 Upon completion of this Agreement the Owner covenants to pay to the City Council its reasonable and proper legal costs in a sum not to exceed NINE THOUSAND FIVE HUNDRED POUNDS (£9,500.00) (no VAT) in connection with the preparation, negotiation and completion of this Agreement.

7.2 The Owner covenants that prior to the Commencement Date the Owner will pay to the City Council a contribution of FIVE THOUSAND POUNDS (£5,000.00) (no VAT) towards the City Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Agreement.

7.3 Upon completion of this Agreement the Owner covenants to pay to the County Council its reasonable and proper legal costs in connection with the negotiation and completion of this Agreement.

7.4 To pay to the County Council the County Council Monitoring Fee prior to the Commencement Date.

8. **DETERMINATION OF DISPUTES**

8.1 Subject to Clause 8.7 herein, if any dispute arises relating to or arising out of the terms of this Agreement, either Party may give to the others written notice requiring the dispute to be determined under this Clause 8. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

8.2 For the purposes of this Clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional

experience in relation to developments in the nature of the Development and property in the same locality as the Site.

8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.4.

8.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute).

8.5 The Specialist is to act as an independent expert and:

8.5.1 each party may make written representations within fifteen (15) Working Days of his appointment and will copy the written representations to the other party;

8.5.2 each party is to have a further fifteen (15) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

8.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

8.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.

8.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

8.7 This Clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England.

9. **JURISDICTION**

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

10. **SECTION 73**

10.1 In the event that any new planning permission is granted by the City Council (or granted on appeal) pursuant to a Section 73 of the 1990 Act application relating to the Planning Permission and unless otherwise agreed between the parties:

10.1.1 the obligations in this Agreement shall relate to and bind any subsequent planning permission in respect of the Site granted pursuant to Section 73 of the 1990 Act; and

10.1.2 the definitions of Development, Planning Application and Planning Permission in this Agreement shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission; and

10.1.3 this Agreement shall be endorsed with the following words in respect of any future planning permission granted pursuant to Section 73 of the 1990 Act:

"The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

PROVIDED THAT nothing in this clause shall fetter the discretion of the City Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new agreement/deed or supplemental agreement/deed pursuant to Section 106 or Section 106A of the 1990 Act.

11. **EXECUTION**

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed on the day and year first before written.

SCHEDULE 1

PART 1 EDUCATION CONTRIBUTION

1. In this Schedule 1 Part 1 unless the context requires otherwise the following words and expressions shall have the following meanings:

“Completion Notice” means the notice served by the Owner on the County Council pursuant to paragraph 2.5;

“Early Years & Childcare Contribution” means the Early Years and Childcare Pupil Product multiplied by the cost generator of seventeen Thousand Two Hundred and Sixty-Eight Pounds Sterling (£17,268.00) to which sum the Relevant Education Indexation shall be added;

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

“Early Years & Childcare Contribution Purposes” means the use of the Early Years & Childcare Contribution towards the design (including feasibility work) and or delivery and or provision of facilities for the education and or care of children between the ages of 0 to 5 (both inclusive) including those with special educational needs within a 3 mile radius of the Development and including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Early Years and Childcare Contribution;

“Education Contribution” means together the Early Years & Childcare Contribution and the Secondary School Transport Contributions;

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

“Education Index Point” means a point on the most recently published edition of the Education Index at the time of use;

“Education Purposes” means together the Early Years & Childcare Contribution Purposes and the Secondary School Transport Contribution Purposes;

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

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

"General Index Point"	means a point on the most recently published edition of the General Index at the time of use;
"Index"	means the most recently published edition at the time of use of each index used under the terms of this Agreement to calculate any amount to be paid with or in addition to the Education Contribution due under the terms of this Schedule 1 to add to or reduce the Education Contribution to which it relates to reflect changes in cost over time;
"Index Point"	means a point shown on the relevant Index indicating a relative cost at a point in time;
"House"	means a Dwelling that does not meet the definition of a Flat;
"Notice of Commencement"	means the written notice served pursuant to paragraph 2.3;
"Payment Notice"	means a written notice advising of a proposed payment served pursuant to paragraph 2.4;
"Relevant Education Indexation"	means the amount that the Owner shall pay with and in addition to each part of the Education Contribution paid that shall in each case equal a sum calculated by taking the amount of the Education Contribution being paid and multiplying this amount by the percentage change shown in the Education Index between the Education Index Point pertaining to January 2020 and the Education Index

Point pertaining to the date the payment of the relevant part of the Education Contribution is due to be made to the County Council;

“Qualifying Flats”

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

“Qualifying Houses”

means the number of Houses that shall be constructed on the Site that have two or more rooms that may by design be used as bedrooms;

“Relevant General Indexation”

means the amounts that the Owner shall pay with and in addition to the fee set out in paragraphs 7.2 of this Schedule 1 that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change in the General Index between the General Index point pertaining to January 2020 and the date payment is made to the County Council;

“Secondary Pupil Product”

means the sum of the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2;

“Secondary School Transport Contribution”

means the Secondary Pupil Product multiplied by the cost generator of (five pounds and twenty-four pence) (£5.24) multiplied by one hundred and ninety (190) being the average days in an academic year multiplied by five (5) (being the number of years a pupil is in secondary school) to which sum the

Relevant Education Indexation shall be added;

“Secondary School Transport Contribution Purposes”

means the use of the Secondary School Transport Contribution towards the transportation of children generated by the Development to a secondary school with capacity and or deemed by the County Council as serving the Development including the reimbursement of capital funding for such provision made by the County Council in anticipation of the Secondary School Transport Contribution;

“Sterling Overnight Index Average (SONIA) Rate”

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

“Unit Mix”

means the number of Qualifying Flats and the number of Qualifying Houses and the number of Dwellings that by definition shall not be counted as Qualifying Flats or Qualifying Houses.

2. The Owner hereby covenants with the County Council:

2.1 to pay fifty percent (50%) of the Education Contribution to the County Council prior to the Commencement Date and not to Commence the Development unless and until fifty percent (50%) the Education Contribution have been received by the County Council.

2.2 to pay the remaining fifty percent (50%) of the Education Contribution to the County Council prior to the first Occupation of a Dwelling and not to Occupy any Dwelling (or cause or allow any Dwelling to be Occupied) unless and until the County Council has received payment of the remaining fifty (50%) percent of the Education Contribution and 100% of the Education Contribution has thereby been paid.

2.3 to serve on the County Council the Notice of Commencement not less than three (3) months prior to Commencement stating the expected Commencement Date an estimate of the Triggers and any further information stipulated in Schedule 1 to this Agreement.

2.4 to serve on the County Council the Payment Notice between sixty (60) and thirty (30) Working Days prior to the date that each and any payment is due to be made to the County Council under this Agreement stating the date that such payment becomes due and any further information stipulated in Schedule 1 to this Agreement.

2.5 to serve on the County Council the Completion Notice within 30 Working Days of all Dwellings being Occupied for the first time stating the date that the last Dwelling was Occupied for the first time and any further information stipulated in Schedule 1 to this Agreement and for the avoidance of doubt any dispute regarding any notice to be served under this Agreement may be resolved through the 2 mechanisms set out in Clause 8 of this Agreement.

2.6 to serve on the County Council notice of Occupation of the first Dwelling within 1 (one) month thereof and on a 6 (six) monthly basis thereafter indicating the Unit Mix of Occupied Dwellings the Unit Mix of Dwellings that are completed but not Occupied the Unit Mix of Dwellings that are under construction and the Unit Mix of Dwellings where construction work has yet to start at the time the notice is served.

3. The Notice of Commencement shall in addition to that information stipulated in paragraph 2.3 of this Schedule 1 state the Unit Mix and in the event that the Unit Mix constructed or to be constructed should at any time differ from the Unit Mix notified to the County Council then the Owner shall serve on the County Council a further notice stating the revised Unit Mix within ten (10) Working Days of the revised Unit Mix being decided and in the further event that the Owner fails to serve any notice set out in this paragraph 3 of this Schedule 1 the County Council may estimate and determine the Unit Mix as it sees fit acting reasonably.

4. The Payment Notice shall state the Unit Mix on which the payment is to be based.

5. The Completion Notice shall state the final Unit Mix.

6. The County Council covenants with the Owners as follows:

6.1 To place the Education Contribution when received into an interest bearing account and to utilise the same solely for the Education Purposes.

6.2 If requested in writing by the Owner no sooner than the tenth (10th) anniversary of the date that the Education Contribution is paid to the County Council in full but no later than one (1) year thereafter the County Council shall return to the party that made the payment of the Education Contribution any part of the relevant Education Contribution that remains unexpended when the Education Contribution is paid to the County Council in full (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT if the County Council is legally obliged to make a payment in respect of any Education Purposes the unexpended part of the Education Contribution shall not be repaid until such payment is made and the unexpended part of the Education Contribution to be repaid shall not include such payment.

6.3 Upon receipt of a written request from the Owner prior to the eleventh (11th) anniversary of receipt of the Education Contribution in full the County Council shall provide the Owner with a statement confirming whether the Education Contributions have been spent and if the Education Contribution has been spent in whole or in part outlining how the Education Contribution has in whole or in part been spent.

7. It is hereby agreed and declared:

7.1 In the event that the Education Contribution is paid later than dates set out in paragraph 2.1 and 2.2 of this Schedule 1 then the amount of the Education Contribution or part thereof payable by the Owner shall in addition include either an amount equal to any percentage increase in build costs shown by the Education Index between the Education Index Point prevailing at the date of payment is due and the Education Index Point prevailing at the date of actual payment multiplied by the Education Contribution due or if greater an amount pertaining to interest on the Education Contribution or part thereof due calculated at the SONIA Rate from the

date payment is due until the date payment of the Education Contribution is received by the County Council

7.2 In addition to the requirement of 7.1 above in the event that any sum due to be paid by the Owner to the County Council pursuant to this Schedule 1 should not be received by the County Council by the date that the sum is due then the Owner hereby covenants to pay to County Council within ten Working Days of receiving a written request all reasonable costs that the County Council has incurred as a result of or in pursuance of such late payment including the sum of fifty pounds sterling (£50) plus the Relevant General Indexation for each and every letter sent to the Owner pursuant to the debt.

7.3 In the event that the Unit Mix to be constructed on the Development does not match the Unit Mix on which the Education Contribution or part thereof paid was based the Owner hereby covenants to pay to the County Council as soon as the revised Unit Mix becomes apparent any additional amount pertaining to the difference between the amount of the Education Contribution paid and the amount of the Education Contribution that would have been payable using the revised Unit Mix and any such additional amount shall from the date payment is received by the County Council form part of the Education Contribution.

7.4 Any dispute in relation to how the Education Contribution has been spent must be raised in writing by the Owner and received by the County Council within twenty (20) Working Days of receipt by the Owner of the County Council's statement referred to in paragraph 6.3 and shall clearly state the grounds on which the expenditure is disputed.

7.5 In the event that no written request is received by the County Council from the Owner pursuant to paragraph 6.2 above or no valid dispute is raised by the Owner pursuant to paragraph 7.4 the Owner shall accept the Education Contribution has been spent in full on the Education Purposes as appropriate.

7.6 In the event that the Education Contribution is overpaid by the Owner then the County Council shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County Council has spent the Education Contribution or has entered into a legally binding contract or obligation to spend the Education Contribution otherwise the County Council shall upon the Occupation of the final Unit on the Site or at such earlier time as the County Council shall determine return any such overpaid sum or sums in whole or in part to the Owner (in excess of

those sums calculated as due for payment under this Schedule 1) together with interest calculated at the SONIA Rate within twenty (20) Working Days of the County Council being informed by the Owner of such overpayment.

PART 2- RESIDENTIAL TRAVEL PLAN MONITORING FEE

The Owner covenants with the County Council so as to bind their interest in the Site as follows:

1. In this Schedule 1 Part 2 unless the context requires otherwise the following words, expressions and terms shall have the following meanings:

"Relevant Sustainable Travel Indexation" means the amount that the Owner shall pay with and in addition to each part of the Residential Travel Plan Monitoring Fee paid that shall in each case equal a sum calculated by taking the amount of the Residential Travel Plan Monitoring Fee being paid and multiplying this amount by the percentage change shown in the Sustainable Travel Index between the index point pertaining to April 2021 and the date payment is made to the County Council;

"Residential Travel Plan" means the Travel Plan imposed by condition on the Planning Permission;

"the Residential Travel Plan Monitoring Fee" means a non-refundable annual payment of one thousand five hundred and ninety-six pounds (£1,596) plus Relevant Sustainable Travel Indexation payable towards the monitoring by the County Council of the implementation of the Residential Travel Plan to ensure that: (a) monitoring is conducted in line with Residential Travel Plan monitoring protocols; and (b) the Residential Travel Plan remains an "active" document with the overarching aim to secure a modal shift from the private car and increase the number of people using sustainable modes of travel;

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

2. The Owner hereby covenants with the County Council

2.1 To pay the first annual payment of the Residential Travel Plan Monitoring Fee to the County Council prior to the Commencement Date and not to Commence the Development until the first annual payment of the Residential Travel Plan Monitoring Fee has been paid to the County Council.

2.2 To pay the Residential Travel Plan Monitoring Fee to the County Council on each subsequent anniversary following the first annual payment of the Residential Travel Plan Monitoring Fee until the anniversary immediately following the first Occupation of the final Dwelling but in any event for no more than 10 payments in total of the Residential Travel Plan Monitoring Fee and in the case of late payments of the Residential Travel Plan Monitoring Fee interest shall be payable by the Owner from the date payment is due to the date payment is made on which late sums interest shall accrue under the SONIA Rate.

SCHEDULE 2

AFFORDABLE HOUSING

1. In this Schedule 2 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Affordable Housing Construction Standard" means the construction standard to be applied to the Affordable Housing Dwellings, and which construction standard shall be either Category M4(2) or Category M4(3)(2)(a) or Category M4(3)(2)(b) as appropriate and as set out within the Affordable Housing Plan;

"Affordable Housing Dwellings" means the Affordable Rented Dwellings and the Shared Ownership Dwellings, and the use in this Schedule 2 of the term **"Affordable Housing Dwelling"** shall be construed accordingly;

"Affordable Rented Dwellings" means the nineteen (19) Dwellings to be used exclusively for the purposes of Affordable Rented Housing, subject to the terms of this Schedule 2, and the use in this Schedule 2 of the term **"Affordable Rented Dwelling"** shall be construed accordingly;

"Affordable Rented Housing" means housing that is: (a) let at a rent that is at least twenty percent (20%) below the local market rent for similar housing in the same location; and (b) owned and managed by an Approved Body; and (c) let to Persons in Housing Need;

"Affordable Housing Plan" means a plan that shows: (a) the precise location of the Affordable Housing Dwellings within the Development; and (b) the tenure of the Affordable Housing Dwellings; and (c) the

size of each of the Affordable Housing Dwellings by reference to the number of bedrooms within each Affordable Housing Dwelling; and (d) the Affordable Housing Construction Standard to be applied to each of the Affordable Housing Dwellings and which plan may be varied from time to time as agreed between the Owner and the City Council (acting reasonably and without delay);

“Approved Body”

means any registered provider of social housing as defined in Section 80 of the Housing and Regeneration Act 2008 or such other body which is:

- (a) approved by the City Council; and
- (b) regulated by Homes England;

“Building Regulations”

means the Building Regulations 2010, as amended;

“Category M4(2)”

means category M4(2) of the Building Regulations;

“Category M4(3)(2)(a)”

means category M4(3)(2)(a) of the Building Regulations;

“Category M4(3)(2)(b)”

means category M4(3)(2)(b) of the Building Regulations;

“Chargee”

means any mortgagee or chargee or any manager or receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a Housing Administrator (each a

"Receiver") of the whole or any part of the Affordable Housing Dwellings that have been transferred to an Approved Body or any persons or bodies deriving title through such mortgagee or chargee or Receiver;

"Homes England"

means the public body set up to fund and regulate the provision of Affordable Housing (as described in Annex 2 (Glossary) of the NPPF) in England and any successor body;

"Housing Administrator"

has the meaning ascribed to it in Section 101 of the Housing and Planning Act 2016;

"Housing Needs Register"

means the register maintained by the City Council or its nominee for Persons in Housing Need;

"Nominations Agreement"

means an agreement entered into by the City Council and the Approved Body to regulate the letting of the Affordable Rented Dwellings;

"Persons in Housing Need"

means a person or persons registered on the City Council's Housing Needs Register and the use in this Agreement of the term **"Person in Housing Need"** shall be construed accordingly;

"Protected Tenant"

means any tenant who has:
(a) exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 Act or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Rented Dwelling; or
(b) exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Rented Dwelling; or

(c) exercised a contractual right to acquire a one hundred percent (100%) interest in the lease of a Shared Ownership Dwelling and for the avoidance of any doubt the term "Protected Tenants" shall include successors in title to the tenant referred to above;

"Regulator of Social Housing" means the public body set up to fund and regulate the provision of Affordable Housing (as defined in the NPPF) in England and any successor body;

"Shared Ownership Dwellings" means the five (5) Dwellings to be used exclusively for the purposes of Shared Ownership Housing, subject to the terms of this Schedule 2, and the use in this Schedule 2 of the term "Shared Ownership Dwelling" shall be construed accordingly;

"Shared Ownership Housing" means housing let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with terms in the Regulator of Social Housing capital funding guide;

"Shared Ownership Lease" means a lease of over 125 years substantially in the form of the Regulator of Social Housing model lease from time to time where:

- (a) an initial purchase shall range from 25% to 75% of the equity dependent on the ability of the lessee to obtain finance;
- (b) there is the ability for the lessee to acquire increased levels of equity (up

to 100%) in the Shared Ownership Dwelling at some time in the future;

- (c) capital receipts received from increased equity acquisitions (referred to in '(b)' above) is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re-invest such capital receipts in Affordable Housing (as defined in the NPPF) within the administrative district of the City Council subject to any contrary requirements within the Regulator of Social Housing capital funding guide.

Part One

- 2. The Owner hereby covenants with the City Council, as follows:
 - 2.1 That at least one (1) of the Affordable Housing Dwellings shall be constructed to Category M4(3)(2)(a) or Category M4(3)(2)(b) standards and the remainder of the Affordable Housing Dwellings shall be constructed to Category M4(2) standard.
 - 2.2 Not to Commence the Development unless and until the Affordable Housing Plan has been submitted to the City Council for approval and the City Council has approved the Affordable Housing Plan in writing.
 - 2.3 To provide the Affordable Housing Dwellings entirely in accordance with the approved Affordable Housing Plan.
 - 2.4 Not to Occupy (or allow, cause or permit the Occupation of) any more than fifty percent (50%) of the Market Dwellings unless and until at least fifty percent (50%) of the Affordable Housing Dwellings have been:
 - 2.4.1 constructed and are capable of being Occupied for their intended purpose; and
 - 2.4.2 transferred to the Approved Body and for the purposes of this Schedule 2 only the expression "transferred" shall mean a transfer of the freehold interest or

leasehold interest that comprises the relevant Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner (as appropriate) Provided Always that any transfer of the relevant Affordable Housing Dwellings to the Approved Body shall include the provisions contained in paragraphs A and B at Part Two of this Schedule 2.

- 2.5 Not to Occupy (or allow, cause or permit the Occupation of) any more than seventy (70) of the Market Dwellings unless and until one hundred percent (100%) of the Affordable Housing Dwellings have been:
 - 2.5.1 constructed and are capable of being Occupied for their intended purpose; and
 - 2.5.2 transferred to the Approved Body and for the purposes of this Schedule 2 only the expression "transferred" shall mean a transfer of the freehold interest or leasehold interest that comprises the relevant Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner (as appropriate) Provided Always that any transfer of the relevant Affordable Housing Dwellings to the Approved Body shall include the provisions contained in paragraphs A and B at Part Two of this Schedule 2.
- 2.6. Not to Occupy (or allow, cause or permit the Occupation of) any of the Affordable Housing Dwellings unless and until:
 - 2.6.1 the Approved Body has entered into a Nominations Agreement with the City Council in respect of those Affordable Housing Dwellings; and
 - 2.6.2 the City Council has been provided with the postal addresses (including postcodes) of all of the Affordable Housing Dwellings.
- 2.7 Subject always to paragraph 2.8 of this Schedule 2 the Affordable Rented Dwellings transferred to the Approved Body shall be Occupied for no purpose other than as Affordable Rented Housing and the Shared Ownership Dwellings shall be Occupied for no purpose other than as Shared Ownership Housing.
- 2.8. It is Hereby Agreed and Declared:
 - 2.8.1 the obligations and restrictions contained in this Schedule 2 shall not bind:

- 2.8.1.1 a Protected Tenant and their mortgagees and/or chargees and any receiver appointed by such mortgagees and/or chargees;
- 2.8.1.2 any person or body deriving title through or from a Protected Tenant (including any sub-tenant lender chargee or mortgagee);
- 2.8.1.3 a Chargee of the Approved Body with a charge over the whole or part of the Affordable Housing Dwellings PROVIDED THAT the Chargee has first provided the City Council with notice in writing that they intend to dispose of the Affordable Housing Dwelling (or Affordable Housing Dwellings) and have given the City Council at least twelve (12) weeks from the date of that notice to put forward a proposal to purchase the Affordable Housing Dwelling (or Affordable Housing Dwellings) at a fair price which at least covers the financial extent of the Chargee's charge, interest, costs and expenses AND if such disposal has not taken place within twelve (12) weeks from the date of that notice the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the obligations in Schedule 2.

Part Two

- A. The transfer of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession.
- B. The transfer deed shall contain:
1. a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;
 2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and
 3. such other covenants and reservations as the Owner may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

SCHEDULE 3

ECOLOGICAL MITIGATION AND ARCHAEOLOGY

1. In this Schedule 3 the following words and expressions shall have the following meanings:

"Archaeological Contribution" means the sum of Fifteen Thousand One Hundred and Fifty Three Pounds (£15,153.00), which sum shall be Index Linked;

"Archaeological Contribution Purposes" means the use of the Archaeological Contribution for purposes associated exclusively with archaeology at the Site including the display of any artefacts or items found within the Site and the placing of any interpretation boards in or around the Site and the enhancement of the Colchester Historic Environment Record;

"Natura 2000" has the meaning ascribed to it in section 3(1) of the Conservation and Habitats and Species Regulations 2017;

"RAMS" means a recreation avoidance and mitigation strategy in relation to Essex Coast Natura 2000 Designations (in particular Hamford Water SAC/SPA/RAMSAR; Colne Estuary SPA/RAMSAR; Stour and Orwell Estuaries SPA/RAMSAR; Blackwater Estuary SPA/RAMSAR; Dengie SPA/RAMSAR and Essex Estuaries SAC);

"RAMS Contribution" means the sum of Sixteen Thousand Five Hundred and Twenty Five Pounds and Twenty Pence (£16,525.20), which sum shall be Index Linked;

"RAMS Contribution Purposes" means the use of the RAMS Contribution towards the funding of strategic "off-site" measures identified by the City Council's adopted RAMS to mitigate any increased use as a result of the Development at Essex Coast Natura 2000 Designations (in particular Hamford Water SAC/SPA/RAMSAR; Colne Estuary SPA/RAMSAR; Stour and Orwell Estuaries SPA/RAMSAR; Blackwater Estuary SPA/RAMSAR; Dengie SPA/RAMSAR and Essex Estuaries SAC).

2. The Owner hereby covenants with the City Council, as follows:
 - 2.1 Not to Commence the Development unless and until the Archaeological Contribution and the RAMS Contribution have been paid to the City Council.
 - 2.2 To pay the Archaeological Contribution and the RAMS Contribution to the City Council before Commencement of Development.
3. The City Council hereby covenants with the Owner, as follows:
 - 3.1 To provide a written form of receipt for payment of the Archaeological Contribution and the RAMS Contribution pursuant to this Schedule 3.
 - 3.2 To place the Archaeological Contribution when received into an interest-bearing account with a clearing bank and to use the Archaeological Contribution exclusively towards the Archaeological Contribution Purposes.
 - 3.3 That upon receipt of a written request to do so the City Council shall provide the Owner with a statement confirming how the Archaeological Contribution has in whole or in part been spent.
 - 3.4 That upon receipt of a request in writing to do so to be received by the City Council no sooner than the fifth (5th) anniversary of the date that the Archaeological Contribution is paid to the City Council to return to the party who paid the Archaeological Contribution any unexpended part of the Archaeological Contribution together with interest accrued PROVIDED THAT this paragraph 3.4 is subject to the provisions of paragraph 3.6 of this Schedule 3.

- 3.5 Where at the fifth (5th) anniversary of the date of payment to the City Council a legally binding contract has been entered into by the City Council in respect of the Archaeological Contribution Purposes the City Council shall be entitled to utilise the Archaeological Contribution to make payment under such a contract PROVIDED THAT this paragraph 3.5 is subject to paragraph 3.6 of this Schedule 3.
- 3.6 That in the event that no artefacts or evidence or items of archaeological interest are found anywhere within the Site before or during construction of the Development then the City Council will return to the person who paid the Archaeological Contribution to the City Council all but three hundred and forty eight pounds (£348.00) of the Archaeological Contribution (along with accrued interest) and the City Council further covenants to use the three hundred and forty eight pounds (£348.00) exclusively towards updating the City Council's Historic Environment Record (HER) to record that no artefacts or evidence or items of archaeological interest were found within the Site.
- 3.7 To place the RAMS Contribution when received into an interest -bearing account with a clearing bank and to use the RAMS Contribution exclusively towards the RAMS Contribution Purposes.
- 3.8 That upon receipt of a request in writing to do so to be received by the City Council no sooner than the fifth (5th) anniversary of the date that the RAMS Contribution is paid to the City Council to return to the party who paid the RAMS Contribution any unexpended part of the RAMS Contribution together with interest accrued.
- 3.9 Where at the fifth (5th) anniversary of the date of payment to the City Council a legally binding contract has been entered into by the City Council in respect of the RAMS Contribution Purposes the City Council shall be entitled to utilise the RAMS Contribution to make payment under such a contract.
- 3.10 That upon receipt of a written request to do so the City Council shall provide the Owners with a statement confirming how the RAMS Contribution has in whole or in part been spent.

SCHEDULE 4

COMMUNITY FACILITIES CONTRIBUTION

1. In this Schedule 4 unless the context requires otherwise the following words and expressions shall have the following meanings:

“Broad Lane Sports Ground” means the Broad Lane Sports Ground, Elmstead Road, Wivenhoe, Essex, CO7 9HX (which is where Wivenhoe Town Football Club plays its home matches);

“Community Facilities Contribution” means the sum of Three Hundred and Twenty Thousand and Forty Pounds and Sixty Five Pence (£320,040.65), which sum shall be Index Linked;

“Community Facilities Contribution Purposes” means the use of the Community Facilities Contribution towards: (a) the provision or improvement of the playing surface and facilities at the Broad Lane Sports Ground; and/or (b) improvements to the Swimming Pool with the intention that the Swimming Pool will be transformed and become a community use facility for the residents of Wivenhoe;

“Community Use Agreement” means an agreement entered into by the Broomgrove Junior School and the City Council to provide for the regulated community use of the Swimming Pool by members of the public outside of normal school hours;

“Swimming Pool” means the swimming pool located at the Broomgrove Junior School, Broom Grove, Wivenhoe, Essex, CO7 9QB.

2. The Owner hereby covenants with the City Council, as follows:
 - 2.1 Not to Occupy (or allow, cause or permit the Occupation of) any more than fifty (50) of the Dwellings unless and until the Community Facilities Contribution has been paid to the City Council.
 - 2.2 To pay the Community Facilities Contribution to the City Council before any more than fifty (50) of the Dwellings are Occupied.
3. The City Council hereby covenants with the Owner, as follows:
 - 3.1 To provide a written form of receipt for payment of the Community Facilities Contribution pursuant to this Schedule 4.
 - 3.2 To place the Community Facilities Contribution when received into an interest-bearing account with a clearing bank and to apply the Community Facilities Contribution exclusively towards the Community Facilities Contribution Purposes PROVIDED THAT for the avoidance of any doubt the City Council will not apply any part of the Community Facilities Contribution towards the Swimming Pool unless and until a Community Use Agreement is in place.
 - 3.3 That upon receipt of a request in writing to do so to be received by the City Council no sooner than the fifth (5th) anniversary of the date that the Community Facilities Contribution is paid to the City Council to return to the party who paid the Community Facilities Contribution any unexpended part of the Community Facilities Contribution together with interest accrued.
 - 3.4 Where at the fifth (5th) anniversary of the date of payment to the City Council a legally binding contract has been entered into by the City Council in respect of the Community Facilities Contribution Purposes the City Council shall be entitled to utilise the Community Facilities Contribution to make payment under such a contract.
 - 3.5 That upon receipt of a written request the City Council shall provide the Owner with a statement confirming whether the Community Facilities Contribution has been spent and if the Community Facilities Contribution has been spent in whole or in part then the statement shall provide details on how the money has been spent.

SCHEDULE 5

FOOTBALL PITCHES AND OPEN SPACE

1. In this Schedule 5 the following words and expressions shall have the following meanings:

“Access Rights” means full rights of access over any part of the Open Space in order to enable the Football Pitch Land to be used as football pitches for use by members of the public, and for the avoidance of any doubt the full rights of access includes pedestrian access over any pedestrian areas within the Open Space and any access for vehicles/machinery across any roadways within the Open Space associated with the use and maintenance of the Football Pitch Land;

“Football Pitch Delivery Contribution” means the sum of Three Hundred and Ninety Thousand One Hundred and Nine Pounds and Seventy Seven Pence (£390,109.77), which sum shall be Index Linked;

Football Pitch Delivery Contribution Purposes” means the use of the Football Pitch Delivery Contribution towards providing football pitches within the Football Pitch Land;

“Football Pitch Land” means the land identified as such on the Football Pitch Land Plan;

“Football Pitch Land Plan” means a HM Land Registry compliant plan that precisely identifies the extent and location of the Football Pitch Land;

“Football Pitch Maintenance Contribution” means the sum of One Hundred and Thirty Nine Thousand and Five Hundred Pounds (£139,500.00), which sum shall be Index Linked;

“Football Pitch Maintenance Contribution Purposes” means the use of the use of the Football Pitch Maintenance Contribution towards the maintenance of the football pitches provided within the Football Pitch Land;

“LEAP” means a Locally Equipped Area for Play;

“Locally Equipped Area for Play” means an area of land within the Open Space which is designed and laid out with features including equipment for children who are beginning to play independently;

“Open Space” means all of the land within the Site to which members of the public will have access for the purposes of recreational activities, but for the avoidance of any doubt this does not include: (a) the Dwellings and parking areas and garden space associated with those Dwellings; (b) the estate roads; (c) any land to be used for highway purposes including highway verges; and (d) the Football Pitch Land;

“Open Maintenance Contribution” means the sum of Four Hundred and Thirty Thousand Four Hundred and Seventy Three Pounds and Fifty Two Pence (£430,473.52), which sum shall be Index Linked;

“Open Management Company” means a company or body as may be established or nominated by the Owner whose purpose is or includes the provision of maintenance of the Open Space;

“Open Space Specification” means the specification for: (a) the clearing, decontamination (if necessary), levelling/profiling (as appropriate), planting and seeding of the Open Space to enable the Open Space to be used by all members of the public for recreational activities at all times without cost, exclusion or hindrance; and (b) the provision of a LEAP.

2. The Owner hereby covenants with the City Council, as follows:
 - 2.1 Not to Commence the Development unless and until:
 - 2.1.1 the Football Pitch Land Plan has been submitted to the City Council for the City Council's approval; and
 - 2.1.2 the Open Space Specification has been provided to the City Council for the City Council's approval.

- 2.2 Not to Occupy (or allow, cause or permit the Occupation of) any of the Dwellings unless and until:
- 2.2.1 the City Council has approved the Football Pitch Land Plan in writing; and
 - 2.2.2 the City Council has approved the Open Space Specification in writing; and
 - 2.2.3 the Open Space Management Company is in place and the City Council has been provided with evidence in writing of its existence
- 2.3 Not to Occupy (or allow, cause or permit the Occupation of) any more than fifty (50) of the Dwellings unless and until:
- 2.3.1 the freehold interest in the Football Pitch Land has been transferred to the City Council along with the Access Rights for the nominal consideration of One Pound (£1.00) for the provision of football pitches for public use; and
 - 2.3.2 the Football Pitch Delivery Contribution has been paid to the City Council; and
 - 2.3.3 the Football Pitch Maintenance Contribution has been paid to the City Council.
- 2.4 Not to Occupy (or allow, cause or permit the Occupation of) more than eighty (80) of the Dwellings unless and until:
- 2.4.1 the Open Space has been laid out entirely in accordance with the Open Space Specification (including the provision of the LEAP) and made available to members of the public for the purposes of recreational activities entirely in accordance with the Open Space Specification; and
 - 2.4.2 the Open Space (including the LEAP) has been transferred to the Open Space Management Company for the nominal consideration of One Pound (£1.00) PROVIDED THAT in the event that the Owner agrees with the City Council in writing (both parties acting reasonably and without delay) before the eightieth (80th) Dwelling is Occupied that the Open Space should instead be transferred to the City Council then the obligation at this paragraph 2.4.2 of Schedule 5 shall be to transfer the Open Space to the City Council PROVIDED FURTHER THAT if the Open Space is transferred to the City

Council then the Owner shall at the same time as the transfer is completed pay the Open Space Maintenance Contribution to the City Council.

3. The Open Space once transferred to the Management Company or the City Council in accordance with paragraph 2.4.2 of this Schedule 5 shall be available to all members of the public at all times without cost, exclusion or hindrance.
4. The City Council hereby covenants with the Owner, as follows:
 - 4.1 To provide a written form of receipt for payment of the Football Pitch Delivery Contribution and the Football Pitch Maintenance Contribution and (if payable and paid) the Open Space Maintenance Contribution pursuant to this Schedule 5.
 - 4.2 To place the Football Pitch Delivery Contribution when received into an interest-bearing account with a clearing bank and to apply the Football Pitch Delivery Contribution exclusively towards the Football Pitch Delivery Contribution Purposes.
 - 4.3 That upon receipt of a request in writing to do so to be received by the City Council no sooner than the fifth (5th) anniversary of the date that the Football Pitch Delivery Contribution is paid to the City Council to return to the party who paid the Football Pitch Delivery Contribution any unexpended part of the Football Pitch Delivery Contribution together with interest accrued.
 - 4.4 Where at the fifth (5th) anniversary of the date of payment to the City Council a legally binding contract has been entered into by the City Council in respect of the Football Pitch Delivery Contribution Purposes the City Council shall be entitled to utilise the Football Pitch Delivery Contribution to make payment under such a contract.
 - 4.5 That upon receipt of a written request the City Council shall provide the Owner with a statement confirming whether the Football Pitch Delivery Contribution has been spent and if the Football Pitch Delivery Contribution has been spent in whole or in part then the statement shall provide details on how the money has been spent.
 - 4.6 To place the Football Pitch Maintenance Contribution when received into an interest-bearing account with a clearing bank and to apply the Football Pitch Maintenance Contribution exclusively towards the Football Pitch Maintenance Contribution Purposes.

- 4.7 To place the Open Space Maintenance Contribution (if payable and paid) into an interest-bearing account with a clearing bank and to apply the Open Space Maintenance Contribution exclusively towards the maintenance of the Open Space.
- 4.8 To accept the transfer of the freehold interest in the Football Pitch Land PROVIDED THAT for the avoidance of any doubt the City Council will only accept the transfer of the Football Pitch Land once the City Council considers (acting reasonably and without delay) that the Football Pitch Land is flat/level and free of any material (including any building and/or contaminated material) that would prevent or inhibit the use of the Football Pitch Land from being used as football pitches for use by members of the public.
- 4.9 Subject to paragraph 4.8 of this Schedule 5, the City Council will proceed diligently and without delay with completing the transfer of the freehold interest in the Football Pitch Land PROVIDED THAT for the avoidance of any doubt:
- (a) in the event that any dispute arises in relation to the terms of paragraph 4.8 and this paragraph 4.9 of this Schedule 5, including but not limited to where the Owner does not agree with the City Council's assessment of the condition of the Football Pitch Land, then, in accordance with clause 8.1 of this Agreement, either Party may give to the other written notice requiring the dispute to be determined under clause 8 of this Agreement and such dispute shall then be determined in accordance with the provisions of clause 8 of this Agreement.
- (b) the occupation trigger referred to in paragraph 2.3 of this Schedule 5 shall be deemed not to apply in circumstances where the City Council has not proceeded diligently and without delay in completing the transfer of the freehold interest in the Football Pitch Land.
- 4.10 In the event that the Owner and the City Council agree in writing that the Open Space should be transferred to the City Council instead of the Open Space Management Company pursuant to paragraph 2.4.2 of this Schedule 5 then the City Council agrees to proceed diligently and without delay with completing the transfer of the freehold interest and in the event that the City Council fails to do so such that the Open Space has not been transferred to the City Council by the date falling six months after the date at which both parties agreed to transfer the Open Space to the City Council then the Owner may transfer the Open Space to the Open Space Management Company.

The COMMON SEAL of)
COLCHESTER CITY COUNCIL)
was affixed in the presence of:)



A. Weare
Authorised Signatory

302/22

The COMMON SEAL of)
ESSEX COUNTY COUNCIL)
was affixed in the presence of:)



RIAN DAVAR
Authorised Signatory

EXECUTED AS A DEED)
by TAYLOR WIMPEY UK LIMITED)
Acting by its two authorised Attorneys)
In the presence of)

John David Clark
Attorney

Anita Elizabeth Bushell

Witness Signature

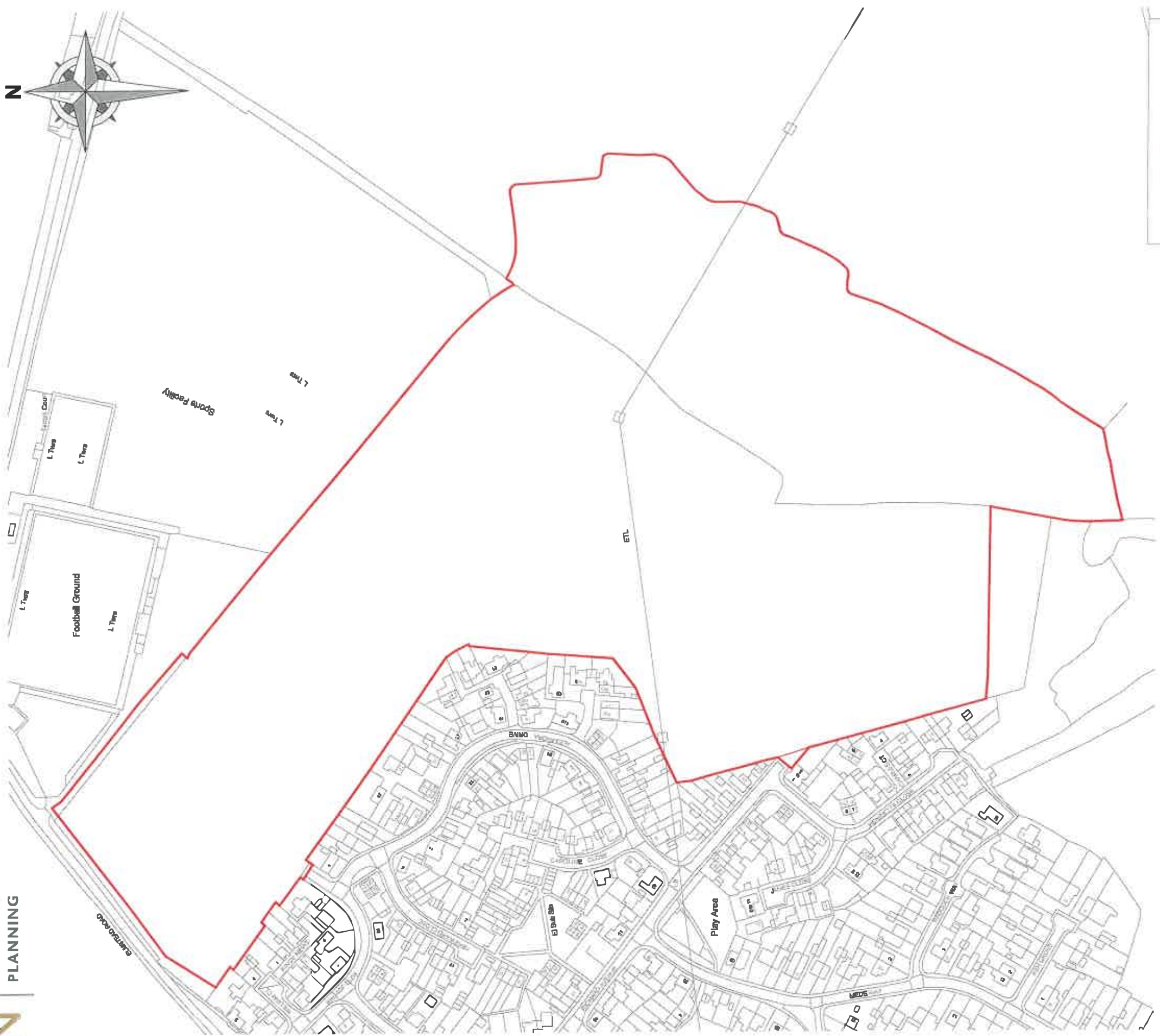
Witness Name

Harriet Gibson
Legal Support
Taylor Wimpey UK Limited
Castle House
Kempson Way
Suffolk Business Park
Bury St Edmunds
IP32 7AR

Witness Address

Appendix

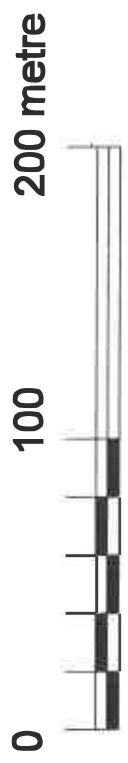
Site Plan



Key:  Site Boundary



A. Weary



Project:-
Wivenhoe, Land South of Elmstead Road, off Richard Avenue
Description:-
Location Plan

Scale:-
1-2500 @ A3
Date:-
Mar 2021
Dwg no:-
TW027-PL01-01
Revision:-
00