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**DATED** 11<sup>th</sup> November **2024**

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- (1) ROCHFORD DISTRICT COUNCIL
- and-
- (2) SUSAN ELIZABETH SHEAF

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**AGREEMENT**  
**UNDER SECTION 106 OF THE TOWN AND**  
**COUNTRY**  
**PLANNING ACT 1990**  
**relating to land north of Rectory Road Hockley,**  
**Essex**

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THIS AGREEMENT is made on

11 November

2024

**BETWEEN:-**

- (1) **ROCHFORD DISTRICT COUNCIL** of Council Offices, South Street, Rochford, Essex, SS4 1BW ("**the Council**"); and
- (2) **SUSAN ELIZABETH SHEAF** of 360 Rectory Road Hawkwell Hockley Essex SS54JU (the "**Owner**").

Known as '**the Parties**'

**INTRODUCTION:-**

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the authority who is entitled to enforce the obligations contained in this Agreement.
- (B) The Owner is the freehold owner of the Site which is registered at HM Land Registry under title numbers EX956751 and EX974895 and free from encumbrances that would prevent the Owner entering into this Agreement.
- (C) The Planning Application has been submitted to the Council.
- (D) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development in the manner hereinafter appearing and is satisfied that planning permission for the Development could be granted subject to conditions and to the execution of this Agreement.
- (E) The 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.
- (F) The Parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and its successors in title
- (G) The Site (as defined below) falls within the definition of Application Site as defined in the 2012 Planning Obligation and the Parties acknowledge that from the date of grant of the Planning Permission the 2012 Planning Obligation shall not apply to the Development.

**NOW THIS AGREEMENT WITNESSES** as follows:

**OPERATIVE PART**

**1. DEFINITIONS**

1.1 In this Agreement (including in the recitals) the following terms and expressions have the following meanings:

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990
<b>"2012 Planning Obligation"</b>	means an agreement dated 17 December 2012 under section 106 of the 1990 Act and made between W H Royer (Building Contractors) Limited and BDW Trading Limited and Essex County Council and the Council relating to land at Hawkwell Nursery
<b>"Commencement Date"</b>	means the date of Commencement of Development
<b>"Commencement of Development"</b>	subject to clause 3.2 means the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56 of the 1990 Act and " <b>Commence the Development</b> " and " <b>Commence Development</b> " shall be construed accordingly
<b>"Contributions"</b>	means the Sports Facility Contribution and the RAMS Contribution
<b>"Development"</b>	means the development permitted by the Planning Permission
<b>"Dwelling"</b>	means a house or self-contained flat or bungalow constructed as part of the Development and " <b>Dwellings</b> " shall be construed accordingly
<b>"Index"</b>	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 Council reasonably requires and agreed between the parties (acting reasonably)
<b>"Index Linked"</b>	means increased to reflect any increase in the Index (or in relation to Schedule 1 to the Affordable Housing Index) during the period from and including the date of this Agreement (unless otherwise specified elsewhere in this Agreement) to and including the date of actual payment
<b>"NPPF"</b>	means the National Planning Policy Framework dated September 2023 or any replacement statement, guidance note or circular which may amend supplement or supersede it

<b>"Occupation"</b>	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include occupation for the construction of the Development and shall not include daytime occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings 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 <b>"Occupy"</b> , <b>"Occupied"</b> and <b>"Occupancy"</b> shall (mutatis mutandis) be construed accordingly
<b>"Plan"</b>	means drawing number OC198-PL-106 attached to this Agreement at Annexe A
<b>"Planning Application"</b>	means the application for full planning permission for the erection of 4 detached dwellings with associated parking, garaging, servicing, open space, landscaping, drainage and utilities. Formation of a new vehicular access onto Rectory Road carrying reference 23/00949/FUL at the Site
<b>"Planning Permission"</b>	means the planning permission for development on the Site that will be granted pursuant to the Planning Application subject to conditions upon the completion of this Agreement
<b>"Site"</b>	means the freehold land north of Rectory Road Hawkwell Essex shown for identification purposes only edged red on the Plan
<b>"Working Days"</b>	means Monday to Friday inclusive but excluding days which are public holidays

1.2 In this Agreement:-

- 1.2.1 where a Schedule to this Agreement lists further definitions the defined terms shall have the meanings set out in that Schedule;
- 1.2.2 the clause headings do not affect its interpretation;
- 1.2.3 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;
- 1.2.4 references to any statute or statutory provision include references to:
  - (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute (or failing agreement as nominated by any such party in writing)) 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 8.3.

- 8.3 Any dispute over the identity of the Specialist is to be referred at the request of any party to the dispute 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 (or failing agreement as nominated by any such party in writing)).
- 8.4 The Specialist is to act as an independent expert and:
- 8.4.1 each party to the dispute may make written representations within fifteen (15) Working Days of his appointment and will copy the written representations to the other parties;
  - 8.4.2 each party to the dispute 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 parties;
  - 8.4.3 the Specialist is to be at liberty to call for such written evidence from the parties to the dispute and to seek such legal or other expert assistance as he or she may reasonably require;
  - 8.4.4 the Specialist is not to take oral representations from the parties to the dispute without giving those parties the opportunity to be present and to give evidence and to cross-examine each other;
  - 8.4.5 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
  - 8.4.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 8.5 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 or failing such decision will be shared equally between the parties to the dispute.
- 8.6 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.

8.7 Subject to clause 8.6, if any dispute arises relating to or arising out of the terms of this Agreement and the Parties fail to resolve it, any 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.

8.8 Nothing in this Clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

**9. EXISTING PLANNING OBLIGATION**

9.1 The Parties hereby agree and declare that from the date of grant of the Planning Permission all development on the Site shall be in accordance with this Agreement and the Planning Permission or any subsequent planning permission and subsequent agreement under Section 106 of the 1990 Act that relate to the Site

9.2 The Parties agree and declare that from the Commencement of Development, the provisions of the 2012 Planning Obligation shall not apply to the Site

**10. JURISDICTION**

This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

**11. EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

## SCHEDULE 1

### OPEN SPACE

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

**"Chartered Landscape Architect"** means a chartered member of the Landscape Institute appointed by the Owner

**"Management Company"** means a private limited company established or appointed for inter alia the purpose of managing some or all of the Open Space

**"Open Space "** means areas of land within the Site shown for identification purposes only edged green on the Plan and which shall be laid out in accordance with the approved Open Space Specification

**"Open Space Certificate"** means a certificate or certificates in writing relating to the Open Space issued by a Chartered Landscape Architect that confirms that the Open Space has been laid out in accordance with the approved Open Space Specification

**"Open Space Plan"** means a plan showing the exact location of the Open Space

**"Open Space Management Plan"** means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Open Space including for the avoidance of doubt provisions for the rectification of any defects in any area of the Open Space until the completion of the relevant transfer of the Open Space to the Management Company

**"Open Space Specification"** A timetable for the laying out and provision of the Open Space by reference to occupation and completion of the Dwellings on the Site submitted to and approved in writing by the Council and such other information as the Council may reasonably require to enable approval of the Open Space Specification

**"Relevant Documents"** means the Open Space Plan, the Open Space Specification and the Open Space Management Plan

2. The Owner hereby covenants with the Council that not later than forty (40) Working Days prior to Commencement of Development it shall, in addition to complying with Condition 20 submit the Relevant Documents to the Council for approval together with full details of the formation or appointment and funding of the Management Company

3. The Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Relevant Documents within 8 weeks of the date of receipt in full

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4. The Owner covenants not to Commence Development unless and until the Relevant Documents have been approved by the Council in writing or deemed approved.
5. The Owner hereby covenants with the Council not to permit the Occupation of more than two of the Dwellings unless and until the Open Space has been provided in accordance with the approved Open Space Plan and the Open Space Specification and the Council has received the Open Space Certificate
6. The Owner further covenants with the Council to maintain the Open Space in accordance with the approved Open Space Management Plan until the date upon which the transfer described in paragraph 7 has been completed and until the relevant transfer has been completed if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary with a tree or shrub or other plant or turfing of same size and species
7. The Owner further covenants with the Council that following the issue of the Open Space Certificate it shall transfer the Open Space to the Management Company for the consideration of £1
8. The Owner further covenants with the Council to include in the transfer of the Open Space to the Management Company:
  - 8.1 a covenant by the Management Company only to permit the Open Space to be utilised by the public as open areas for in accordance with this Agreement ; and
  - 8.2 a covenant by the Management Company to maintain the Open Space in perpetuity in accordance with the Open Space Management Plan; and
  - 8.3 a covenant by the Management Company not to transfer the Open Space into the individual ownership of the owners of the Dwellings; and
  - 8.4 an obligation by the Management Company that should the Council so require for the Management Company to enter into a direct covenant with the Council to perform the obligations set out in paragraphs 8.1, 8.2 and 8.3 of this Schedule.

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9. The Owner shall furnish a copy of the completed transfer to the Council in relation to the Open Space and shall inform the Council in writing of the contact details of any Management Company.
10. The Owner shall include in each transfer or lease of a Dwelling an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Open Space.

## SCHEDULE 2

### SPORT FACILITY CONTRIBUTION

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

**"Sport Facility Contribution"** means the sum of one thousand eight hundred and thirty two pounds and eighty pence (£1832.80) Index Linked from the date of this Agreement to the date of payment to be paid to the Council

**"Sport Facility Contribution Purposes"** means the levelling of and improvements to the drainage of two football pitches at Clements Hall Playing Fields I

2. The Owner hereby covenants with the Council not to Occupy or allow the Occupation of more than three (3) of the Dwellings unless and until the Sport Facility Contribution has been paid to the Council in full.

3. The Council hereby covenants with the Owner:

- 3.1 to promptly provide a written form of receipt for payment of the Sport Facility Contribution on receipt of the Sport Facility Contribution pursuant to paragraph 2 above;

- 3.2 to place the Sport Facility Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the Sport Facility Contribution Purposes;

- 3.3 upon receipt of any request in writing to do so to be received by the Council no sooner than the fifth (5th) anniversary of the date of final Occupation, to promptly return to the party who deposited the Sport Facility Contribution the unexpended part of the Sport Facility Contribution Index Linked from the date of payment until the date the unexpended part is actually repaid on the unexpended part;

4. Where at the fifth (5th) anniversary of the date of final Occupation a legally binding unconditional contract has been entered into by the Council in respect of satisfying the Sport Facility Contribution Purposes the Council shall be entitled to utilise the Sport Facility Contribution to make payment under such a contract for a further period of 12 months but after that the provisions of paragraph 3.3 of this Schedule shall apply.

5. Upon receipt of a written request(s) from the Owner, the Council shall promptly provide the Owner with a statement confirming whether the Sport Facility Contribution has been spent and if the Sport Facility Contribution has been spent in whole or in part outlining in sufficient detail how the Sport Facility Contribution has in whole or in part been spent.

### SCHEDULE 3

#### ECOLOGICAL MITIGATION

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

**"RAMS"** means a The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) as adopted by Rochford District Council on the 20 October 2020.

**"RAMS Contribution"** means the sum of one hundred and sixty three pounds and eighty six pence (£163.86) per Dwelling Index Linked from the date of the Agreement towards the RAMS Contribution Purposes

**"RAMS Contribution Purposes"** means the funding of strategic 'off-site' measures identified by the RAMS to mitigate adverse impact from the Development on the European designated sites (as set out in the RAMS) by way of increased recreational disturbance

2. The Owner hereby covenants with the Council to pay to the Council the RAMS Contribution prior to Commencement of Development and the Owner shall not Commence Development nor permit the Commencement of Development until the RAMS Contribution has been paid to the Council in full.

3. The Council hereby covenants with the Owner:

3.1 to provide a written form of receipt for payment of the RAMS Contribution on receipt of the said contribution pursuant to paragraph 2 above; and

3.2 to place the RAMS Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the RAMS Contribution Purposes.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written.

**THE COMMON SEAL of**  
**ROCHFORD DISTRICT COUNCIL**  
was affixed in the presence of:

)  
)  
)

Authorised Signatory

**EXECUTED as a DEED by**  
**SUSAN ELIZABETH SHEAF**

)  
)



in the presence of:

Signature of witness .....



Name (in BLOCK CAPITALS) .....

**EMMA HAMILTON**

Address

.....

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## **ANNEXE A**

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Plan

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Milenna Homes

Project:-  
**Land North of  
Rectory Road  
Hawwell  
Essex**



Description:-  
**Section 106 Plan**

Scale:-  
1-1250 @ A3  
Date:-  
AUG 2023  
Drg no:-  
OC198-PL-106  
Revision:-  
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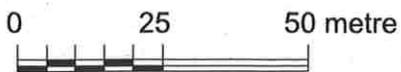
Milenna Homes

Project:-  
**Land North of  
 Rectory Road  
 Hawkwell  
 Essex**



Description:-  
**Section 106 Plan**

Scale:-  
 1-1250 @ A3  
 Date:-  
 AUG 2023  
 Drg no:-  
 OC198-PL-106  
 Revision:-  
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DATED

11<sup>th</sup> November

2024

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(1) ROCHFORD DISTRICT COUNCIL

-and-

(2) SUSAN ELIZABETH SHEAF

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**AGREEMENT**

**UNDER SECTION 106 OF THE TOWN AND  
COUNTRY**

**PLANNING ACT 1990**

**relating to land north of Rectory Road Hockley,  
Essex**

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THIS AGREEMENT is made on

11th November

2024

BETWEEN:-

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(1) **ROCHFORD DISTRICT COUNCIL** of Council Offices, South Street, Rochford, Essex, SS4 1BW ("**the Council**"); and

(2) **SUSAN ELIZABETH SHEAF** of 360 Rectory Road Hawkwell Hockley Essex SS54JU (the "**Owner**").

Known as '**the Parties**'

**INTRODUCTION:-**

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the authority who is entitled to enforce the obligations contained in this Agreement.
- (B) The Owner is the freehold owner of the Site which is registered at HM Land Registry under title numbers EX956751 and EX974895 and free from encumbrances that would prevent the Owner entering into this Agreement.
- (C) The Planning Application has been submitted to the Council.
- (D) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development in the manner hereinafter appearing and is satisfied that planning permission for the Development could be granted subject to conditions and to the execution of this Agreement.
- (E) The 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.
- (F) The Parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council against the Owner and its successors in title
- (G) The Site (as defined below) falls within the definition of Application Site as defined in the 2012 Planning Obligation and the Parties acknowledge that from the date of grant of the Planning Permission the 2012 Planning Obligation shall not apply to the Development.

**NOW THIS AGREEMENT WITNESSES** as follows:

**OPERATIVE PART**

**1. DEFINITIONS**

1.1 In this Agreement (including in the recitals) the following terms and expressions have the following meanings:

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990
<b>"2012 Planning Obligation"</b>	means an agreement dated 17 December 2012 under section 106 of the 1990 Act and made between W H Royer (Building Contractors) Limited and BDW Trading Limited and Essex County Council and the Council relating to land at Hawkwell Nursery
<b>"Commencement Date"</b>	means the date of Commencement of Development
<b>"Commencement of Development"</b>	subject to clause 3.2 means the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56 of the 1990 Act and <b>"Commence the Development"</b> and <b>"Commence Development"</b> shall be construed accordingly
<b>"Contributions"</b>	means the Sports Facility Contribution and the RAMS Contribution
<b>"Development"</b>	means the development permitted by the Planning Permission
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<b>"Index Linked"</b>	means increased to reflect any increase in the Index (or in relation to Schedule 1 to the Affordable Housing Index) during the period from and including the date of this Agreement (unless otherwise specified elsewhere in this Agreement) to and including the date of actual payment
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<b>"Occupation"</b>	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include occupation for the construction of the Development and shall not include daytime occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings 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 <b>"Occupy"</b> , <b>"Occupied"</b> and <b>"Occupancy"</b> shall (mutatis mutandis) be construed accordingly
<b>"Plan"</b>	means drawing number OC198-PL-106 attached to this Agreement at Annexe A
<b>"Planning Application"</b>	means the application for full planning permission for the erection of 4 detached dwellings with associated parking, garaging, servicing, open space, landscaping, drainage and utilities. Formation of a new vehicular access onto Rectory Road carrying reference 23/00949/FUL at the Site
<b>"Planning Permission"</b>	means the planning permission for development on the Site that will be granted pursuant to the Planning Application subject to conditions upon the completion of this Agreement
<b>"Site"</b>	means the freehold land north of Rectory Road Hawkwell Essex shown for identification purposes only edged red on the Plan
<b>"Working Days"</b>	means Monday to Friday inclusive but excluding days which are public holidays

1.2 In this Agreement:-

- 1.2.1 where a Schedule to this Agreement lists further definitions the defined terms shall have the meanings set out in that Schedule;
- 1.2.2 the clause headings do not affect its interpretation;
- 1.2.3 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;
- 1.2.4 references to any statute or statutory provision include references to:
  - (a) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and

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

1.2.5 references to the Site include any part of it;

1.2.6 references to any party in this Agreement include the successors in title of that party. In addition, references to the Council include any successor local planning authority exercising planning powers under the 1990 Act;

1.2.7 **"including"** means **"including, without limitation"**;

1.2.8 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing; and

1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

1.3 The Parties to this Agreement do not intend that any of its terms 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 entered into in respect of the Site with the intent that it shall bind the Owner's interest in the Site and is made pursuant to section 106 of the 1990 Act.

2.2 The Owner confirms that she is the owner of the Site with full power to enter into this Deed and that there is no person or body whose consent is necessary to make this Deed binding on all interests in the Site

2.3 To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council.

2.4 To the extent that any of the obligations 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.

2.5 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.

2.6 The obligations in this Agreement will not be enforceable against a statutory undertaker or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage, telecommunications services or public transport services after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated or is to be situated) by the Owner to that statutory undertaker.

2.7 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.

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2.8 A mortgagee or chargee of the Site will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site in which case it will be liable as if it were a successor in title to the Owner (subject to the exceptions and limitations set out in this Agreement).

2.9 The obligations in this Agreement will not be enforceable against the individual owners or occupiers or mortgagees of any Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.

### 3. COMMENCEMENT DATE AND CONDITIONALITY

3.1 Save in respect of clauses 7, 9 and 10, which will become operative on the date of this Agreement, and in respect of obligations in this Agreement expressly requiring compliance prior to the Commencement Date and which will also become operative on the date of this Agreement, this Agreement will come into effect on the Commencement Date.

3.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:

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3.2.1 site investigations or surveys;

3.2.2 archaeological investigations and digs;

3.2.3 ecological surveys, investigations or assessments (including, for the avoidance of doubt, investigations or assessments relating to bats);

3.2.4 site decontamination and remediation works;

3.2.5 the clearance and preparation of the Site including demolition;

3.2.6 the provision of infrastructure boreholes permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 or any amendment or replacement thereof;

3.2.7 works connected with infilling;

3.2.8 works for the provision of drainage or mains services to prepare the Site for development;

3.2.9 construction of temporary accesses;

3.2.10 interim landscaping works erection of fencing or boarding;

3.2.11 erection of boards advertising the Development;

3.2.12 the construction of a temporary site compound or a 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; or

3.2.13 works and operations to enable any of the foregoing to take place.

#### 4. OBLIGATIONS OF THE PARTIES

4.1 The Owner covenants with the Council to comply with the obligations set out in the Schedules to this Agreement.

4.2 The Owner covenants with the Council to provide:

4.2.1 not less than twenty (20) Working Days' notice in writing to the Council of the anticipated Commencement Date;

4.2.2 notice to the Council confirming the Commencement Date no later than five (5) Working Days after Commencement Date to the Commencement Date;

4.2.3 not less than ten (10) Working Days' notice in writing of intended first Occupation of a Dwelling;

4.2.4 notice in writing every three (3) months until first Occupation of the last Dwelling indicating the number and type of Dwellings Occupied on the Site.

4.2.5 If the Owner disposes of her interest in all or part of the Site he will notify the Council within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site PROVIDED THAT the Owners shall not be required to give such notice when disposing of individual Dwellings constructed pursuant to the Permission

4.3 The Council covenants with the Owner to comply with its obligations set out in the Schedules to this Agreement.

4.4 The Council covenants with the Owner to act reasonably, properly and diligently in exercising its discretion and discharging its functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or similar affirmation and covenants to use reasonable endeavours to acknowledge receipt and provide a response within 20 Working Days.

4.5 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 but they will remain liable for any breaches of the terms of this Agreement occurring before that date. Neither the reservation of any rights nor 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.

- 4.6 Unless specified otherwise in this Agreement all works and activities to be executed 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 Council.
- 4.7 Representatives of the Council may enter upon the Site at any reasonable time and on reasonable written notice (where safe to do so) 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/or security requirements required by the Owner or by any developer carrying out the Development and promptly making good all damage caused at its own expense.
- 4.8 Any obligation, covenant or agreement contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any obligation, covenant or agreement 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.
- 4.9 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 either party may seek the consent of the other 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.
- 4.10 Subject to clause 4.15, no variation to this Agreement shall be effective unless made by deed but for the avoidance of doubt the consent, seal, signature, execution or approval of the purchaser, tenant or residential occupier of any Dwelling or their mortgagees shall not be required to vary any part of this Agreement nor shall it be required of any other party who has no liability under this Agreement (or relevant provision within it) or any interest in the Site.
- 4.11 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.
- 4.12 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 has not previously been charged in respect of that supply the person making the supply shall issue a valid and appropriate VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.13 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the Council as such and the Council covenants with the Owner that it will promptly note on the local land charges register when compliance with all of the said obligations has occurred.

- 4.14 In the event that the Owner fails to serve on the Council any of the notices that it is required by the provisions of this Agreement to serve then the Council shall be entitled to payment of the various Contributions (or part thereof) contained in this Agreement at any time following it becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of the relevant Contribution (or part thereof) and the time period for the return of the relevant Contribution (or part thereof) shall be extended accordingly.
- 4.15 The Council may agree following an application under section 73 of the 1990 Act to vary or release any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act that the covenants or provisions of this Agreement shall bind the new permission and to apply in equal terms to the new planning permission, provided always that the Council shall be at liberty to require a separate deed under section 106 of the 1990 Act to secure relevant planning obligations relating to the new planning permission.
- 4.16 Nothing in this Agreement shall prejudice or affect the rights, powers, duties and obligations of the Council in the exercise of its functions in any capacity and the rights, powers, duties and obligations of the Council under private, public or subordinate legislation may be effectively exercised as if it were not a party to this Agreement.

## 5. TERMINATION OF THIS AGREEMENT

- 5.1 This Agreement will (save for clause 5.2) come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner or the Planning Permission expires.
- 5.2 Where this Agreement comes to an end under clause 5.1 the Council covenants on the written request of the Owner to vacate or cancel any 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 and the Council shall promptly repay any financial contributions paid to them pursuant to this Agreement save for:
- 5.2.1 the monies mentioned at clause 7.1;
- 5.2.2 where a legally binding contract or obligation has been entered into by the Council to make a payment in respect of any purpose under this Agreement the contribution shall not be repaid until such payment is made and any unexpended part of the contribution to be repaid shall not include such payment.

## 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 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 at their above address or in the case of an Owner that is a company to its registered address or such other address as shall be notified in writing to the Council from time to time;

6.1.2 for the Council it shall be marked for the attention of the Head of Planning with Ref: 23/00949/FUL.

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 at 9am on the next Working Day.

6.4 If a notice, demand or any other communication is served before 9am on a Working Day, it is to be treated as having been served at 9am on that Working Day.

6.5 For the avoidance of doubt both the parties hereto are unable to accept service solely by electronic mail.

## 7. COSTS OF THIS AGREEMENT

7.1 Upon completion of this Agreement the Owner covenants to pay to the Council its reasonable and proper legal costs in a sum £1250.00 (One Thousand Two Hundred and Fifty pounds) (no VAT) in connection with the preparation, negotiation and completion of this Agreement.

7.2 The Owner covenants to pay to the Council on or before the Commencement Date a contribution of Four Hundred and Fourty Five Pounds (£445.00) (no VAT) Index Linked to be used towards the 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.

## 8. DETERMINATION OF DISPUTES

8.1 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 (10) years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

8.2 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of any party to the dispute 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 (or failing agreement as nominated by any such party in writing)) 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 8.3.

- 8.3 Any dispute over the identity of the Specialist is to be referred at the request of any party to the dispute 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 (or failing agreement as nominated by any such party in writing)).
- 8.4 The Specialist is to act as an independent expert and:
- 8.4.1 each party to the dispute may make written representations within fifteen (15) Working Days of his appointment and will copy the written representations to the other parties;
  - 8.4.2 each party to the dispute 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 parties;
  - 8.4.3 the Specialist is to be at liberty to call for such written evidence from the parties to the dispute and to seek such legal or other expert assistance as he or she may reasonably require;
  - 8.4.4 the Specialist is not to take oral representations from the parties to the dispute without giving those parties the opportunity to be present and to give evidence and to cross-examine each other;
  - 8.4.5 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
  - 8.4.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.
- 8.5 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 or failing such decision will be shared equally between the parties to the dispute.
- 8.6 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.

8.7 Subject to clause 8.6, if any dispute arises relating to or arising out of the terms of this Agreement and the Parties fail to resolve it, any 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.

8.8 Nothing in this Clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

**9. EXISTING PLANNING OBLIGATION**

9.1 The Parties hereby agree and declare that from the date of grant of the Planning Permission all development on the Site shall be in accordance with this Agreement and the Planning Permission or any subsequent planning permission and subsequent agreement under Section 106 of the 1990 Act that relate to the Site

9.2 The Parties agree and declare that from the Commencement of Development, the provisions of the 2012 Planning Obligation shall not apply to the Site

**10. JURISDICTION**

This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

**11. EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

## SCHEDULE 1

### OPEN SPACE

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

<b>"Chartered Landscape Architect"</b>	means a chartered member of the Landscape Institute appointed by the Owner
<b>"Management Company"</b>	means a private limited company established or appointed for inter alia the purpose of managing some or all of the Open Space
<b>"Open Space "</b>	means areas of land within the Site shown for identification purposes only edged green on the Plan and which shall be laid out in accordance with the approved Open Space Specification
<b>"Open Space Certificate"</b>	means a certificate or certificates in writing relating to the Open Space issued by a Chartered Landscape Architect that confirms that the Open Space has been laid out in accordance with the approved Open Space Specification
<b>"Open Space Plan"</b>	means a plan showing the exact location of the Open Space
<b>"Open Space Management Plan"</b>	means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Open Space including for the avoidance of doubt provisions for the rectification of any defects in any area of the Open Space until the completion of the relevant transfer of the Open Space to the Management Company
<b>"Open Space Specification"</b>	A timetable for the laying out and provision of the Open Space by reference to occupation and completion of the Dwellings on the Site submitted to and approved in writing by the Council and such other information as the Council may reasonably require to enable approval of the Open Space Specification
<b>"Relevant Documents"</b>	means the Open Space Plan, the Open Space Specification and the Open Space Management Plan
  
2. The Owner hereby covenants with the Council that not later than forty (40) Working Days prior to Commencement of Development it shall, in addition to complying with Condition 20 submit the Relevant Documents to the Council for approval together with full details of the formation or appointment and funding of the Management Company

3. The Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Relevant Documents within 8 weeks of the date of receipt in full

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4. The Owner covenants not to Commence Development unless and until the Relevant Documents have been approved by the Council in writing or deemed approved.
5. The Owner hereby covenants with the Council not to permit the Occupation of more than two of the Dwellings unless and until the Open Space has been provided in accordance with the approved Open Space Plan and the Open Space Specification and the Council has received the Open Space Certificate
6. The Owner further covenants with the Council to maintain the Open Space in accordance with the approved Open Space Management Plan until the date upon which the transfer described in paragraph 7 has been completed and until the relevant transfer has been completed if any tree or shrub or other planting seeding or turfing dies or becomes diseased or for any reason fails to become established during that period to reinstate or replace it as necessary with a tree or shrub or other plant or turfing of same size and species
7. The Owner further covenants with the Council that following the issue of the Open Space Certificate it shall transfer the Open Space to the Management Company for the consideration of £1
8. The Owner further covenants with the Council to include in the transfer of the Open Space to the Management Company:
  - 8.1 a covenant by the Management Company only to permit the Open Space to be utilised by the public as open areas for in accordance with this Agreement ; and
  - 8.2 a covenant by the Management Company to maintain the Open Space in perpetuity in accordance with the Open Space Management Plan; and
  - 8.3 a covenant by the Management Company not to transfer the Open Space into the individual ownership of the owners of the Dwellings; and
  - 8.4 an obligation by the Management Company that should the Council so require for the Management Company to enter into a direct covenant with the Council to perform the obligations set out in paragraphs 8.1, 8.2 and 8.3 of this Schedule.

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9. The Owner shall furnish a copy of the completed transfer to the Council in relation to the Open Space and shall inform the Council in writing of the contact details of any Management Company.
10. The Owner shall include in each transfer or lease of a Dwelling an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Open Space.

## SCHEDULE 2

### SPORT FACILITY CONTRIBUTION

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

**"Sport Facility Contribution"** means the sum of one thousand eight hundred and thirty two pounds and eighty pence (£1832.80) Index Linked from the date of this Agreement to the date of payment to be paid to the Council

**"Sport Facility Contribution Purposes"** means the levelling of and improvements to the drainage of two football pitches at Clements Hall Playing Fields I

2. The Owner hereby covenants with the Council not to Occupy or allow the Occupation of more than three (3) of the Dwellings unless and until the Sport Facility Contribution has been paid to the Council in full.

3. The Council hereby covenants with the Owner:

- 3.1 to promptly provide a written form of receipt for payment of the Sport Facility Contribution on receipt of the Sport Facility Contribution pursuant to paragraph 2 above;

- 3.2 to place the Sport Facility Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the Sport Facility Contribution Purposes;

- 3.3 upon receipt of any request in writing to do so to be received by the Council no sooner than the fifth (5th) anniversary of the date of final Occupation, to promptly return to the party who deposited the Sport Facility Contribution the unexpended part of the Sport Facility Contribution Index Linked from the date of payment until the date the unexpended part is actually repaid on the unexpended part;

4. Where at the fifth (5th) anniversary of the date of final Occupation a legally binding unconditional contract has been entered into by the Council in respect of satisfying the Sport Facility Contribution Purposes the Council shall be entitled to utilise the Sport Facility Contribution to make payment under such a contract for a further period of 12 months but after that the provisions of paragraph 3.3 of this Schedule shall apply.

5. Upon receipt of a written request(s) from the Owner, the Council shall promptly provide the Owner with a statement confirming whether the Sport Facility Contribution has been spent and if the Sport Facility Contribution has been spent in whole or in part outlining in sufficient detail how the Sport Facility Contribution has in whole or in part been spent.

### SCHEDULE 3

#### ECOLOGICAL MITIGATION

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

<b>"RAMS"</b>	means a The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) as adopted by Rochford District Council on the 20 October 2020.
<b>"RAMS Contribution"</b>	means the sum of one hundred and sixty three pounds and eighty six pence (£163.86) per Dwelling Index Linked from the date of the Agreement towards the RAMS Contribution Purposes
<b>"RAMS Contribution Purposes"</b>	means the funding of strategic 'off-site' measures identified by the RAMS to mitigate adverse impact from the Development on the European designated sites (as set out in the RAMS) by way of increased recreational disturbance

2. The Owner hereby covenants with the Council to pay to the Council the RAMS Contribution prior to Commencement of Development and the Owner shall not Commence Development nor permit the Commencement of Development until the RAMS Contribution has been paid to the Council in full.

3. The Council hereby covenants with the Owner:

- 3.1 to provide a written form of receipt for payment of the RAMS Contribution on receipt of the said contribution pursuant to paragraph 2 above; and
- 3.2 to place the RAMS Contribution when received into an interest-bearing account with a clearing bank and to utilise the same for the RAMS Contribution Purposes.

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written.

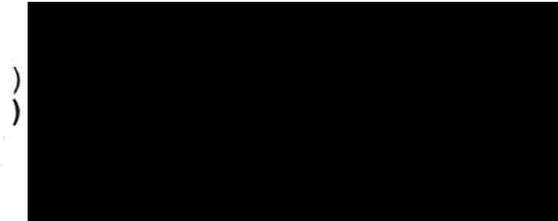
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THE COMMON SEAL of  
ROCHFORD DISTRICT COUNCIL  
was affixed in the presence of:

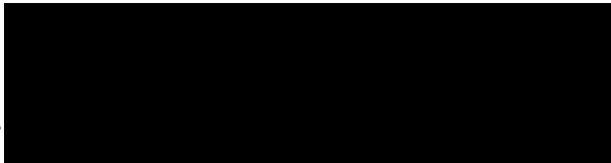


Authorised Signatory

EXECUTED as a DEED by  
SUSAN ELIZABETH SHEAF



in the presence of:



Signature of witness .....

Name (in BLOCK CAPITALS) .....

EMMA HAMILTON

Address .....

.....  
.....

