AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990 as amended

BETWEEN

(1)

ESSEX COUNTY COUNCIL (2)

And

DISTRICT COUNCIL (3)

And

[ BANK ](4)

And

[ OWNER ](5)

Re: Contribution [of land for (an early years & childcare) (primary) and (secondary school) facilities] [monetary contributions for education purposes] [monetary contribution towards transportation measures and highway works in the vicinity of ( ) Essex]

Director for Essex Legal Services

Seax House

Victoria Road South

Chelmsford

Essex CM1 1QH

(Ref: )

DATE 20

PARTIES

(1) [of] [whose registered office is situated at] (the Developer)

(2) ESSEX COUNTY COUNCIL of County Hall Market Road Chelmsford Essex CM1 1QH (the County) and

(3) DISTRICT COUNCIL of (the Council)

[(4) whose registered office is situate at ] (the Bank) and]

[(5) whose registered office is situate at (the Owner)]

WHEREAS

(1) The Council and the County are local planning authorities for the purposes of the Town and Country Planning Act 1990 for the area within which the Site is situated

(2) The County is the local highway authority and the local authority for statutory age education and pre-school age education and childcare in the area within which the Site is situated

(3) The Developer is the owner of the Site which forms the land registered at HM Land Registry with Freehold Title Absolute under Title Number [subject only to the Charge] and has an interest in the Site within the meaning of Section 106 (9) (b) of the 1990 Act

OR WHERE THE DEVELOPER IS NOT THE OWNER

(3) The Owner is the owner of the Site which forms the land registered at HM Land Registry with Freehold Title Absolute under Title Number [subject only to the Charge] and has an interest in the Site within the meaning of Section 106 (9) (b) of the 1990 Act and the Developer has agreed with the Owner subject to the satisfaction of certain conditions to purchase the Site

(4) A Planning Application given the Reference Number has been made to the Council for planning permission for the Development on the Site

(5) The Council and the County consider it expedient that provision should be made for regulating or facilitating the development or use of the Site in the manner hereinafter appearing and the County consider that entering into this Agreement will be of benefit to the public

(6) 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 and or the County against the Developer [and the Owner] and its successors in title

(7) In order to satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 all of the parties are 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

[(8) The Bank consents to the giving by the Developer of the covenants in this Agreement and agrees that its interest in the Site shall be bound by them]

[(9) The Owner consents to the giving by the Developer of the covenants in this Agreement and agrees that its interest in the Site shall be bound by them]

[(10) For the avoidance of doubt in compliance with the 2010 Community Infrastructure Levy Regulations para 123 (c) the County confirms that at the date of this Agreement it has not already entered into five (5) or more planning obligations for the provision of the same infrastructure project as described in the Education Purposes]

1. OPERATIVE POWERS

1.1 THIS AGREEMENT is made pursuant to Section 106 of the 1990 Act as amended by the 1991 Act and 2004 Act and 2008 Act and 2011 Act to the intent that it shall bind the Developer [and the Owner] and its successors in title and assigns and the persons claiming under or through it subject to Clause 8.18 of this Agreement

1.2 The covenants restrictions and requirements imposed upon the Developer [and the Owner] under this Agreement create planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council and the County as local planning authorities against the Developer [and or the Owner]

1.3 This Agreement is conditional on the grant of the Planning Permission

1.4 Nothing in this Agreement is intended to confer any benefit on any party other than the parties executing this Agreement

1.5 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 1972 Act and Section 1 of the 2011 Act and all other enabling powers

2. DEFINITIONS

2.1 In this Agreement the following expressions shall have the following meanings:

**the 1972 Act** means the Local Government Act 1972

**the 1980 Act** means the Highways Act 1980

**the 1982 Act** means the Local Government (Miscellaneous Provisions) Act 1982

**the 1990 Act** means the Town and Country Planning Act 1990

**the 1991 Act** means the Planning and Compensation Act 1991

**the 2004 Act** means the Planning and Compulsory Purchase Act 2004

**the 2008 Act** means the Planning Act 2008

**the 2011 Act** means the Localism Act 2011

**Charge** means the legal charge dated between the Developer and the Bank

**Commencement** means the carrying out on the Site of a material operation described in Section 56 of the 1990 Act PROVIDED ALWAYS for the purposes of this Agreement Commencement shall exclude demolition site survey investigation preparation remediation the removal of services or the erection of fences or hoardings and Commence shall mutatis mutandis be construed accordingly

**Commencement Date** means the date on which the Development Commences (by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) (a-d) of the 1990 Act)

**Completion Notice** means the notice served by the Developer [and or the Owner] on the County pursuant to Clause 5.5.3

**Contribution** means any payment made pursuant to the obligations set out in this Agreement save for the Residential Travel Information Fee and the Travel Plan Monitoring Fee

**Development** means the development permitted by the Planning Permission to construct (*insert description*)

**Dwelling** means a house self-contained flat bungalow maisonette or other domestic property constructed as part of the Development or created by conversion of an existing building on the Site [and for the avoidance of doubt for the purposes only of the Education Land Schedule and the Education Contributions Schedule of this Agreement this definition shall exclude any dwelling that by condition set out in the Planning Permission cannot under any circumstance be Occupied by persons under the age of nineteen (19) years of age]

**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

**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 a sum due under the terms of this Agreement to add to or reduce the sum 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

**Notice of Commencement** means the written notice served pursuant to Clause 5.5.1

**Occupation** means occupation of a building constructed as part of the Development for the purposes permitted by the Planning Permission but excluding day time 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 the storage of plant and materials and **Occupied** and **Occupy** shall mutatis mutandis be constructed accordingly

**Payment Notice** means a written notice advising of a proposed payment served pursuant to Clause 5.5.2

**Planning Application** means the application for planning permission for the carrying out of the Development carrying the reference [LPA/YY/9999] and for the avoidance of doubt for the purposes of this Agreement the term Planning Application shall include any application(s) to vary a condition on the Planning Permission or any application(s) for reserved matters approval provided that such application(s) shall not change the Unit Mix if stated in the first Planning Application and shall relate substantially to the same development of the Site as is proposed under the aforementioned application reference number

**Planning Permission** means the planning permission granted for the Development subject to conditions pursuant to the Planning Application

**Purpose** meansthe relevant purpose or purposes defined in the Schedules to this Agreement for which each of the Contributions are to be utilised

**Relevant General Indexation** means the amounts that the Developer [and or the Owner] shall pay with and/or agree in addition to each part of the fee or sum set out under clause 6.7 and/or clause 7.2 of this agreement that shall in each case equal a sum calculated by taking the amount being paid and multiplying this amount by the percentage change shown in the General Index between the Index Point pertaining to April 2016 and the date payment is made to the County

**Seven Day LIBID Rate** shall mean an assessment of the rate of interest the County Council can expect to earn on investments through the money market, the rate used being the average interest rate at which banks are willing to borrow eurocurrency depositsor such other rate as the County Council considers appropriate

**Site** means the area edged red on drawing attached hereto comprising of [ (XX)] hectares of land

**Triggers** means when (Contributions or part thereof are due to be paid to the County] [when the Highway Works are to commence] [and when the Education Site Option Period shall start]

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

2. FORMAT

2.2 Where in this Agreement reference is made to a Clause Paragraph Schedule Plan or Recital such reference (unless the context otherwise requires) is a reference to a Clause Paragraph Schedule Plan or Recital of or in the case of a Plan attached to this Agreement

2.3 Where in any Schedule or Part of a Schedule reference is made to a Paragraph such reference shall (unless the context otherwise requires) be to a Paragraph of that Schedule or (if relevant) Part of a Schedule

2.4 References in this Agreement to the Developer [and the Owner] or any one or more of them shall include reference to their respective successors in title and to persons claiming through or under them

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

2.6 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

2.7 Any reference to a statute a provision thereof a statutory instrument or such Specification Code of Practice or General Direction as is issued under statutory authority or by a Secretary of State shall include any modification extension consolidation or re-enactment thereof for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom

2.8 Clause headings and Paragraph headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the parts of this Agreement to which they relate

2.9 The word including shall mean including without limitation or prejudice to the generality of any description defining term or phrase preceding that word and the word include and its derivatives shall be construed accordingly

3. OBLIGATIONS OF THE PARTIES

3.1 The Developer [and the Owner] so as to bind the Site covenants with the Council and the County to comply with the obligations set out in this Agreement and the Schedules to this Agreement

3.2 The County covenants with the Developer [and the Owner] to comply with the obligations set out in this Agreement and the Schedules to this Agreement

3.3 Representatives of the Council and the County may enter upon the Site at any reasonable time (and in the case of an emergency immediately) 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 requirements notified by the Developer

4. TRANSFER OF INTERESTS

4.1 Upon passing an interest in the Site to a successor in title to the Site the Developer [and the Owner] shall be released from all obligations rights and duties (save for liability in respect of any antecedent breach) pertaining to the relevant interest under the terms of this Agreement Provided That For The Avoidance of Doubt if the Developer [and the Owner] shall retain an interest in any part of the Site the Developer [and the Owner] shall remain liable insofar as such liability relates to such retained interest

4.2 Otherwise than in relation to individual purchasers of dwelling houses the Developer [and the Owner] shall give to the County within one month of the Developer [and the Owner] disposing of any part of the land comprised in the Site written notice of the name and address of the person to whom the land has been transferred

4.3 The provisions of Clause 4.1 and 4.2 shall apply in relation to any successor in title of the Developer [and the Owner] as the owner of the Site or any part thereof mutatis mutandis

5. NOTICES

5.1 The address for any notice or other written communication is as specified above in the case of each party hereto or (at the option of the recipient) such address as may be specified for service from time to time provided that the same is within the United Kingdom or (at the option of the party giving notice or other communication) the last-known place of abode or business in the United Kingdom of the recipient

5.2 Any notice or other written communication to be served or given by one party upon or to any other under the terms of this Agreement shall be deemed to have been validly served or given if received by electronic mail AND delivered by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is sent to the email address stated and marked as follows for each recipient:

5.2.1 for the Developer to (*insert email address*) and marked for the attention of (*insert description of person*)

5.2.2 for the County to [*development.enquiries@essex.gov.uk*](mailto:development.enquiries@essex.gov.uk) and marked for the attention of the s106 Officer Strategic Development (EGD) County Hall Chelmsford CM1 1QH

5.2.3 for the Council to (*insert email address*) and marked for the attention of (*insert description of person*)

[5.2.4 for the Bank to (*insert email address*) and marked for the attention of (*insert description of person*)]

[5.2.5 for the Owner to (*insert email address*) and marked for the attention of (*insert description of person*)]

5.3 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

5.3.1 In the case of electronic mail in the absence of evidence of a delay at the time the message was sent

5.3.2 in the case of recorded delivery at the time delivery was signed for

5.4 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

5.5 The Developer [and the Owner] shall serve on the County

5.5.1 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 the Schedules to this Agreement

5.5.2 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 under this Agreement stating the date that such payment becomes due and any further information stipulated in the Schedules to this Agreement

5.5.3 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 the Schedules 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 mechanisms set out in Clause10 of this Agreement

6. CONTRIBUTIONS

6.1 The County hereby covenants to place each Contribution and part thereof when received from the Developer [Owner] in to an interest bearing account and utilise the appropriate amount for the appropriate Purpose

6.2 In the event that a Contribution is overpaid by the Developer [Owner] then the County shall be under no obligation to return any such overpaid sum in whole or in part if in good faith the County have spent the Contribution or have entered into a legally binding contract or obligation to spend the Contribution

6.3. If requested in writing by the Developer [and or the Owner] no sooner than the tenth (10th) anniversary of the date that the last Payment Notice due to be served under this Agreement was validly served but no later than one (1) year thereafter the County shall return to the party that made the payment of the relevant Contribution any part of the relevant Contribution that remains unexpended when such notice is received (together with interest accrued that relates to that unexpended part) PROVIDED ALWAYS THAT [if the County retains land passed to it under this Agreement or the option to acquire such land and no legally binding contract has been entered into to deliver building works on such land any Contribution or part thereof that may be used under the terms of this Agreement to build on the land shall not be deemed repayable unless and until the afore mentioned option to acquire land has expired without a land transfer taking place or the land transferred has been returned unused to the original owner AND FURTHER PROVIDED ALWAYS THAT ]if the County is legally obliged to make a payment in respect of any Purpose the unexpended part of the Contribution shall not be repaid until such payment is made and the unexpended part of the Contribution to be repaid shall not include such payment

6.4. Upon receipt of a written request from the Developer [and or the Owner] prior to the eleventh (11th) anniversary of the date the last Payment Notice due under this Agreement was due to be served the County shall provide the Developers [and or the Owner] with a statement confirming whether the Contributions have been spent and if the Contributions have been spent in whole or in part outlining how the Contributions have in whole or in part been spent

6.5. Any dispute in relation to how a Contribution has been spent must be raised in writing by the Developer [or the Owner] and received by the County within twenty (20) Working Days of receipt by the Developer [or the Owner] of the Council’s statement referred to in Clause 6.4 and shall clearly state the grounds on which the expenditure is disputed

6.6. In the event that no written request is received by the County from the Developer [or the Owner] pursuant to Clause 6.3 or no valid dispute is raised by the Developer [or the Owner] pursuant to Clause 6.5 the Developer [and the Owner] shall accept that the Contributions have been spent in full on their appropriate Purposes

6.7 The County may utilise up to two percent (2%) of the total amount of the Contribution due under this Agreement to a maximum of two thousand pounds sterling (£2,000) plus Relevant General Indexation for the purposes of monitoring and managing the administration of the Contribution and for the avoidance of doubt such purposes are agreed by the Owner to form part of the definition of use of the Contributions

7. INTEREST AND LATE PAYMENT

7.1 In the event that a Contribution or part thereof is paid later than the date payment is due then the amount of the Contribution or part thereof payable by the Developer [and or the Owner] shall in addition include an amount equal to any percentage increase in costs shown by the relevant Index between the Index Point prevailing at the date payment is due and the date payment is received by the County multiplied by the Contribution or part thereof due or if greater an amount pertaining to interest on the Contribution or part thereof due calculated at the Seven Day LIBID Rate or such other rate as the County deems appropriate from the date payment is due until the date payment of the amount due is received by the County

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

8. GENERAL

8.1 Unless otherwise specified where any agreement certificate consent permission expression of satisfaction or other approval is to be given by any party or any person on behalf of any party hereto under this Agreement the same shall not be unreasonably withheld or delayed or imposed (as the case may be) but may only be given in writing and may be validly obtained only prior to the act or event to which it applies and the party giving such agreement certificate consent permission expression of satisfaction or other approval shall at all times act reasonably and where any payment of costs or other payments are to be made by the Developer [and or the Owner] to the County and or the Council such costs and other payments shall be deemed to be reasonable and proper

8.2 Any covenant by the Developer [and 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

8.3 No compensation shall be payable by the Council or the County to any party to this Agreement or their successors in title arising from the terms of this Agreement and 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 Developer [and the Owner] and at no cost to the Council or the County

8.4 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax (VAT) properly payable PROVIDED ALWAYS THAT if at any time 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

8.5 Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the County and the Council in the exercise of their functions in any capacity and the rights powers duties and obligations of the County and the Council under private public or subordinate legislation may be effectively exercised as if neither were a party to this Agreement and in particular neither shall be precluded from entering into any agreement under the 1980 Act and/or the 1990 Act with any other party and shall not be deemed to be in breach of this Agreement by so doing

8.6 Any agreement obligation covenant or undertaking contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement obligation covenant or undertaking 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 [and where the Developer and the Owner are different persons agreements obligations covenants and undertakings given by either shall be deemed to be given jointly and severally by both]

8.7 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 the parties 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 the parties

8.8 No variation to this Agreement shall be effective unless made by Deed or pursuant to the determination of an application made under Section 106A of the 1990 Act or an appeal under section 106B of the 1990 Act

8.9 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

8.10 The Developer [and the Owner] hereby agrees to pay prior to the date of this Agreement both the Council's and the County's reasonable legal costs and disbursements incidental to the preparation negotiation and entering into of this Agreement

8.11 The Developer [and the Owner] hereby agrees to pay prior to the date of this Agreement the County's costs in connection with the negotiation entering to and completion of this Agreement

8.12 This Agreement shall be enforceable as a local land charge and shall be registered as such immediately by the Council and the Council covenants with the Developer [and the Owner] that it will note the local land charges register and the planning register following the occurrence of the compliance performance and satisfaction of all of the said obligations

8.13 This Agreement is governed by the laws of England and Wales and is subject to the exclusive jurisdiction of the English and Welsh Courts

8.14 It is hereby agreed and declared that a person who is not a party to this Agreement shall not be entitled in his own right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999

8.15 This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts and each of those counterparts when executed and delivered shall constitute an original but all the counterparts together shall constitute one and the same instrument

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

8.17. This Agreement will come to an end if

8.17.1 the Planning Permission is quashed revoked or otherwise withdrawn or otherwise materially modified without the consent of the Developer [and or the Owner] before Commencement so as to render this Agreement irrelevant impractical or unviable or

8.17.2 the Planning Permission expires

8.18 Where the Agreement comes to an end under Clause 8.17.1 the Council is on the written request of the Developer [and or the Owner] to 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

8.19 This Agreement shall not be enforceable against

8.19.1 Owner-occupiers of individual dwellings or other buildings constructed

8.19.2 Any 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 education services community facilities transport or public services

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

8.21 This Agreement shall not be construed as limiting any right to develop any part of the Site in accordance with any planning permission granted by the Council or the County Council or by the First Secretary of State on appeal or reference to him after the date of this Agreement

9. COMMENCEMENT

9.1 Save in respect of those Clauses and Paragraphs which will become operative on the date of this Agreement and in respect of obligations expressly in this Agreement requiring compliance prior to Commencement and which will become operative on the issue of the Planning Permission this Agreement will come into effect on the Commencement Date

10. DETERMINATION OF DISPUTES

10.1 Subject to Clause 10.7 if any dispute arises relating to or arising out of the terms of this Agreement either party may give to the other written notice requiring the dispute to be determined under this Clause 10 and the notice shall propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute

10.2 For the purposes of this Clause 10 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 the matters in dispute

10.3 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 10.4

10.4 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 and 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)

10.5 The Specialist is to act as an independent expert and

10.5.1 each party may make written representations within twenty (20) Working Days of his appointment and will copy the written representations to the other party

10.5.2 each party is to have a further fifteen (15) Working Days to make written comments on the others representations and will copy the written comments to the other party

10.5.3 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

10.5.4 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

10.5.5 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

10.5.6 the Specialist is to use all reasonable endeavours to publish his decision within twenty (20) Working Days from the last submission of evidence

10.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause10 including costs connected with the appointment of the Specialist and the Specialists own costs but not the legal and other professional costs of any party in relation to a dispute will be decided by the Specialist

10.7 This Clause 10 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

[11. BANK'S CONSENT

11.1 The Bank consents to the giving by the Developer [and or the Owner] of the covenants in this Agreement and agrees that its interest in the Site shall be bound by them in the event the Bank as mortgagee takes possession of the Site or enforces its rights under the Charge by foreclosure or exercise a power of sale in respect of the Site]

[12. OWNER’S CONSENT

12.1. The Owner consents to the giving by the Developer of the covenants in this Agreement and agrees that its interest in the Site shall be bound by them]

**EDUCATION LAND SCHEDULE**

DEFINITIONS

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

**County’s Nominee** means any person(s) company (ies) body (ies) or organisation(s) that the County shall employ fund or work in partnership with in connection with the design construction commissioning running or maintenance of the Education Facility and for the avoidance of doubt the County’s Nominee may include any providers of free state education or childcare of any type

**Education Facility** means indoor and outdoor facilities for education childcare sports and ancillary uses (paid or otherwise) commensurate to the capacity of the Education Site

**Education Site** means the [ (xx)] hectares (ha) of usable land identified edged [red] on the ‘Education Site’ drawing (*insert* *number*) appended to this Schedule

**Education Site Access Plan** means a plan setting out the location design and specification of routes on the Site that are or shall prior to the opening of the Education Facility be adopted as public highways and which shall provide to the boundary of the Education Site without ransom-strip unrestricted separate:

(a) pedestrian and emergency vehicle access via a paved pedestrianised public area of at least one hundred (100) metres square abutting the [xxx] boundary of the Education Site and

(b) vehicular access to the [xxx] boundary of the Education Site for construction grounds maintenance and emergency vehicles and

(c) vehicular access to the [xxx] boundary of the Education Site for parking delivery and emergency access and

(d) any additional such access infrastructure that the County may reasonably require to adequately and properly serve and service the Education Site

**Education Site Notice** means the notice that the County may serve on the Developer [and or the Owner] pursuant to Paragraph 3 of this Schedule

**Education Site Option Period** means a period of time starting on the date that [twenty (20)] Dwellings are Occupied for the first time and ending ten (10) years after the date the Completion Notice is validly served

**Education Site Specification** means the criteria set out in the ‘Education Site Specification’ appended to this Schedule with which the Education Site must comply

**Education Site Transfer Terms** means all terms and conditions in this Agreement to be met by the Developer [and or the Owners] to facilitate the transfer of the Education Site to the County or to the County’s Nominee

**Education Site Utility Plan** means a plan setting out the design specification and layout of Utilities infrastructure that shall meet the County’s requirements to properly and sufficiently serve the Education Facility and shall be provided by the Developer [and or the Owner] to the boundary of the Education Facility at points specified by the County and that shall where specified provide the capacities set out in the ‘Minimum Education Site Utility Capacities’ appended to this Schedule as a minimum

**Education Site Works** means all reasonable works required to render the Education Site congruent to the Education Site Specification and fit for use for an Education Facility in all respects to the satisfaction of the County

**Utilities** means gas water electricity telephone broadband foul drainage and surface water drainage (including such legal rights as the County considers necessary for the discharge of surface water over adjoining land) and any and all other media services and or utilities as may in the County’s reasonable view be appropriate with appropriate rights to use all relevant delivery infrastructure

2. From the date of this Agreement the Developer [and the Owner] hereby covenant

2.1 not to use or allow or permit any works or activities to be carried out on the Education Site that may render the Education Site unsuitable for use as an Education Facility in any way or add to the cost or time taken to construct an Education Facility including for the avoidance of doubt storage and or car parking

2.2 to share with and provide at no cost to the County and or the County’s Nominee as appropriate any relevant data studies surveys drawings reports mapping and or other evidence held that may be of assistance in the design and or construction and or commissioning of an Education Facility on the Education Site that shall for the avoidance of doubt include such information pertaining to topography ecology archaeology contamination arboriculture noise and Utilities including depths invert levels and manhole locations

3. At any time during the Education Site Option Period the County may at the County’s total discretion serve the Education Site Notice on the Developer [and or the Owner]

4. On service of the Education Site Notice the Developer [and the Owner] hereby covenant with immediate effect

4.1 to grant to the County and the County’s Nominee the right to the free and uninterrupted use passage and running of all Utilities and the like over through and along all Utilities infrastructure (permanent and or temporary) and the like which shall at the time exist or which shall within eighty (80) years of the Commencement Date exist on the Site and if required by the County (acting reasonably) grant such legal rights as the County considers necessary for the discharge of surface water through land adjacent to and in the vicinity of the Education Site

4.2 to grant to the County and the County’s Nominee rights of way with or without vehicles and for all purposes over any roads or routes (temporary or permanent) on the Site constructed or to be constructed within a period of eighty (80) years from the Commencement Date which are intended for public or construction use

5. The Developer [and the Owner] hereby covenant to within six (6) months of the date on which the Education Site Notice is served:

5.1 with all due diligence to complete in full the Education Site Works to the County’s satisfaction

5.2 to allow the County and or the County’s Nominees access to the Education Site with or without vehicles plant and machinery for the purposes of investigation or verification that the Education Site Works have been satisfactorily completed and or for the purposes of carrying out works for the laying out of playing fields or any other works which the County may reasonably require in pursuit of the establishment of an Education Facility

5.3 to provide in favour of the County and if appropriate the County’s Nominee surety in the form of a collateral warranty backed by appropriate insurance as agreed by the County guaranteeing that the Developer [and the Owner] have met the duties set out in Paragraph 5.1 of this Schedule and in the event that the Education Site is later found by the County not to meet the Education Site Specification in full then the County or the County’s Nominee shall be entitled to carry out any such works required to render the Education Site congruent to the Education Site Specification and recover all costs reasonably incurred by the County or the County’s Nominee from the Developer [and the Owner] and or the Developer’s [and the Owner’s] surety pertaining to the cost of these works and also any incidental expenses in connection with such works such payment to be made by the Developer [and the Owner] within twenty eight (28) days of any such works being completed

5.4 to agree in writing with the County the Education Site Utility Plan and the Education Site Access Plan ensuring always that there are no ransom strips that prevent full access to the Education Site or use of Utilities

PROVIDED ALWAYS that the Developer [and/or the Owner] shall not submit any reserved matters application for the Development that will impact upon or limit options to access service or supply the Education Site until the Developer [and/or the Owner] has agreed with the County all appropriate aspects of the Education Site Access Plan and / or Education Site Utility Plan

5.5 to provide to the boundary of the Education Site at points agreed by the County with rights to use adequate infrastructure sufficient to bring suitable and adequate electricity and water and drainage (foul and surface water) to the Education Site for uninterrupted construction and commissioning of the Education Facility until such time as connection to all permanent Utilities is provided pursuant of Paragraph 6.1 of this Schedule and until such permanent Utilities have been commissioned rendering the temporary supplies unnecessary ensuring always that there is no break in supply from such Utilities to the Education Site during any required changeover

5.6 to provide and grant to the County and the County’s Nominee access over a temporary route and surface suitable for the free and uninterrupted passage ingress and egress of plant machinery vehicles and pedestrians over the Site from the existing maintainable highway to the boundary of Education Site such route being agreed between the Developer [and the Owners] and the County which shall remain in existence and be maintained at the Developer’s [and the Owner’s] expense until such time as a permanent maintainable highway has been provided over such route and which is open to the public to the boundary of the Education Site pursuant to Paragraph 6.2 of this Schedule

5.7. to complete the transfer free of encumbrances of the Education Site to the County or if so directed by the County to the County’s Nominee on the Education Site Transfer Terms in exchange for consideration not exceeding in total the sum of one pound sterling (£1)

6. The Developer (and the Owner) hereby covenant to within fifteen (15) months of the date on which the Education Site Notice is served

6.1 provide the Utilities as set out and agreed by the County in the Education Site Utility Plan

6.2 provide the access as set out and agreed by the County in the Education Site Access Plan

6.3 agree with the County and then provide and install including any necessary traffic regulation orders appropriate road signage pertaining to the Education Facility allat the Developer’s [and the Owner’s] expense

6.4 provide footways three (3) metres in width to all highways (excluding non-thru-routes) within one hundred (100) metres of the Education Site

7. The County hereby covenants:

7.1 to use the Education Site for the sole purpose of an Education Facility including any ancillary uses paid or otherwise that shall not detract from the primary function of the Education Facility

7.2 that in the event that the whole or a substantial part of the Education Site is not being used as an Education Facility on the tenth (10th) anniversary of the Education Site being transferred to the County or the County’s Nominee and it is not demonstrated that there will be a need for such future use then in the absence of a legally binding contract or obligation requiring the construction or provision of facilities pertaining to an Education Facility the Developer [and or the Owner] may serve on the County or the County’s Nominee as appropriate a notice requiring that the part or the parts of the Education Site that are not being used as an Education Facility shall be transferred to the Developer with vacant possession in consideration of the sum of one pound sterling (£1)

8. The Developer [and or the Owner] hereby covenant that:

8.1 in the event that the responses provided by the Developer [and or the Owner] in Appendix [Site Suitability Checklist] or the supporting information provided thereto are found to be incorrect and add additional cost to the Education Facility on the Education Site then the County shall be entitled to require payment from the Developer [and or the Owner] of appropriate and proportionate sums to cover such additional cost and the Developer [and or the Owner] shall pay within thirty (30) Working Days of receiving a written request from the County for such payment

**Appendix: Education Site Drawing**

*Bespoke – to be inserted by developer/owner*

**Appendix: Site Suitability Checklist**

*Provided as appendix C to the Developers’ Guide and to be completed by the development for insertion here.*

**Appendix: Education Site Specification**

*Subject to the express written agreement of the County:*

The Education Site shall be...

• suitable for the construction of high quality education buildings and outside spaces

• broadly flat and level (up to 1 in 70 drop may be agreed in some areas)

• level with surrounding areas including all proposed points of access and suitable public realm for congregation ingress and egress at the start and end of the school day

• contamination free and covered with at least 30cm of clean free draining stone free topsoil\*

• accessible from suitable public Highways

• served by safe direct walking & cycling routes

• protected from flooding and incorporated into a suitable SUDS system

• protected from noise exceeding 55db LAeq (30min) by appropriate bunds or acoustic fencing (lying outside of the Education Site)

• outside the cordon sanitaire of any sewage plant

• suitably fenced including gates at all proposed access points\*\*

The Education Site shall be free of/from...

• encumbrances

• items or structures of archaeological interest

• protected species or habitats of special interest

• soil and water table contamination

• radiation or potential sources thereof

• invasive plants such as Japanese Knotweed

• buildings and other surface structures

• pipes, conduits, chambers and or cables (including any high pressure pipes or high voltage cables within ten meters of the Education Site)

• ponds, ditches or water courses

• foundations, fuel tanks and other buried structures

• spoil and fly tipping

• void spaces including wells, sumps and pits

• any material that could negatively impact on the buildings and or their occupants

The Education Site shall not be crossed or affected by

• public rights of way or access wayleaves

• power-lines

• gas mains

• water or sewage pipes

• ground gasses and or vapours

• light pollution

\*Soil Quality Requirement

The levels of any compound in the soil, to a depth of at least three metres below the final soil level, shall not exceed figures set for residential end use as defined by the Soil Guideline Values (SGV) derived using the Contaminated Land Exposure Assessment (CLEA) model and published by the Environment Agency and also the Generic Assessment Criteria values published by Land Quality Management and the Chartered Institute of Environmental Health at the time of the assessment. Any contaminants leaching from the site must not exceed the levels published in the United Kingdom Environmental Quality Standards (statutory and proposed).

\*\* Fence Requirements

Prior to transfer to Essex County Council all school sites must be fenced by a 1.8 metre high welded mesh polyester powder coated (conforming to BS1722-16:1992) fence with vertical wire diameter of at least 5mm and horizontal wire diameter of at least 7mm conforming to BS 1722 Part 14:2001 ‘specification for open mesh steel panel fences Category 1 (general purpose fences up to 2.4m high)’ and gated at both highway access points.

Where congruent to vegetation or soft landscaping the fence must be supplemented by rabbit-proof fencing that shall be a minimum of 0.9m in height. The rabbit-proof fencing must be constructed with wire netting, to be 18-gauge (1.2mm diameter) with 31mm hexagonal mesh conforming to the appropriate British Standard and European DIN Standard. The base of the fence must be turned outwards from the school site by a minimum of 150mm and buried with clean topsoil. The specification for the rabbit fencing, including all posts, struts and stakes must also be in accordance with CIRIA report C645 ‘A Guide to Rabbit Management’.

Where appropriate, fencing should be supplemented by landscaping. New tree and shrub planting should also be protected with individual rabbit guards. Species should be considered carefully to ensure that plants will not prove a burden to the school either in terms of maintenance, safety and or security.

## Appendix: Minimum Education Site Utility Capacities

*This Appendix will be based on figures provided in paragraph 5.2.8 of the Developers’ Guide.*

**Education contributions SCHEDULE**

1. In this Schedule the following expressions shall have the following meanings

**Education Contribution** means the sum of the [Early Years and Childcare Contribution] and [the Primary Education Contribution] and [the Secondary Education Contribution] and the [Employment Contribution] and the [School Transport Contribution] to which sums the Relevant Education Indexation shall be added

**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 nominated by the County

**Education Purposes** means [Early Years and Childcare Purposes] and [Primary Education Purposes] and [Secondary Education Purposes] and [School Transport 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

**House** means a Dwelling that does not meet the definition of a Flat

**Qualifying Flats** means the total number of Dwellings that meet the definition of a Flat and that shall have two or more rooms that may by design be used as bedrooms

**Qualifying Houses** means the total number of Dwellings that meet the definition of a House and that shall have two or more rooms that may by design be used as bedrooms

**Relevant Education Indexation** means the amount that the Developer [and or 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 Index Point pertaining to April [20XX] and the Index Point pertaining to the date the payment is due to be made to the County

**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 Houses or Qualifying Flats the sum of which shall for the avoidance of doubt equal the total number of Dwellings to be constructed on the Site or created by conversion of an existing building on the Site

**School Contribution Definitions**

**Primary Education Contribution** means the Primary Pupil Product multiplied by the cost generator of (*insert amount*) pounds sterling (£XX)

**Primary Education Purposes** means the design (including feasibility work) and or delivery and or provision of [the Education Facility] [facilities] or successor education facility for the education and/or care of children between the ages of 4 to 11 (both inclusive) including those with special educational needs [on the Education Site] [at (*insert school and description of works*)] including the reimbursement of capital funding for such provision made by the County in anticipation of the Primary Education Contribution

**Primary Pupil Product** means the sum of the Qualifying Flats multiplied by 0.15 plus the Qualifying Houses multiplied by 0.3

**Secondary Education Contribution** means the Secondary Pupil Product multiplied by the cost generator of (*insert amount*) pounds sterling (£XX)

**Secondary Education Purposes** means the design (including feasibility work) and or delivery and or provision of [the Education Facility] [facilities] or successor education facility for the education and/or care of children between the ages of 11 to 19 (both inclusive) including those with special educational needs [on the Education Site] [at (*insert school and description of works*)] including the reimbursement of capital funding for such provision made by the County in anticipation of the Secondary Education Contribution

**Secondary Pupil Product** means the sum of the Qualifying Flats multiplied by 0.1 plus the Qualifying Houses multiplied by 0.2

**Early Years and Childcare [Employment] Contribution Definitions**

**Early Years and Childcare Contribution** means the Early Years and Childcare Pupil Product multiplied by the cost generator of (*insert amount*) pounds sterling (£XX)

**Early Years and Childcare Pupil Product** means the sum of the Qualifying Flats multiplied by 0.045 plus the Qualifying Houses multiplied by 0.09

**Early Years and Childcare Purposes** means the design (including feasibility work) and or delivery and or provision of [the Education Facility] [facilities] or successor education facility for the education and/or care of children between the ages of 0 to 5 (both inclusive) including those with special educational needs [on the Education Site] [at *(insert provision and description of works*)] including the reimbursement of capital funding for such provision made by the County in anticipation of the Early Years and Childcare Contribution

[**Employees** means the estimated number of full time equivalent persons that are employed by businesses or organisations housed within buildings on the Site and working from these buildings on an average Working Day when 100% of the Employment Floorspace is Occupied as set out in the Commencement Notice

**Employment Contribution** means an amount equal to the Employment Demand multiplied by (*insert amount*) pounds sterling (£XX)

**Employment Demand** means the number of Employees multiplied by a factor of 0.04 places per employee

**Employment Floorspace** means the floor area of non-residential uses within the Site]

**School Transport Definitions**

**Primary School Transport Contribution** means the Primary Pupil Product multiplied by the cost generator of (*insert pounds*) pounds sterling and (*insert pence*) pence (£X.XX) multiplied by one hundred and ninety-five (195) (being the average days in an academic year) multiplied by seven (7)(being the number of years a pupil is in primary school)

**School Transport Contribution** means the Primary School Transport Contribution and the Secondary School Transport Contribution

**Secondary School Transport Contribution** means the Secondary Pupil Product multiplied by the cost generator of (*insert pounds*) pounds sterling and (*insert pence*) pence (£X.XX) 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)

**School Transport Purposes** means the transportation of children generated by the Development to a local schoolwith capacity

Alternative:

[For the transportation of secondary school pupils (between the ages of 11 and 16 inclusive) that live on the Site to and from the nearest appropriate secondary school that has capacity to admit pupils living on the Site and for which the County is liable to fund free secondary school transport]

1. The Developer [the Owner] hereby covenants to pay:

1.1 [fifty (50)] percent of the Education Contribution to the County prior to Commencement and shall not Commence until the County has received payment of [fifty (50)] percent of the Education Contribution

1.2 [the remaining fifty (50)] percent of the Education Contribution to the County prior to the first Occupation of a Dwelling and shall not cause or allow a Dwelling to be Occupied until the County has received payment of [the remaining fifty (50)] percent of the Education Contribution and 100% of the Education Contribution has thereby been paid

2. The Notice of Commencement shall in addition to that information stipulated in Clause 5.5.1 to this Agreement

2.1 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 then the Developer [and or the Owner] shall serve on the County 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 Developer [and or the Owner] fails to serve any notice set out in this Paragraph 2.1 the County may estimate and determine the Unit Mix as it sees fit acting reasonably

[2.2 provide clear evidence of the number of Employees and in the event that the number of Employees or the Employment Floorspace constructed or to be constructed should at any time differ from the number of Employees or the Employment Floorspace used to estimate the number of Employees the Developer [and the Owner] shall serve on the County a further notice stating the revised number of Employees within ten (10) Working Days of the revised number of Employees being known and in the further event that the Developer [and the Owner] fails to serve any notice set out in this Paragraph 2.2 the County may estimate and determine the number of Employees as it sees fit acting reasonably]

3. The Payment Notice shall state the Unit Mix [and the number of Employees] on which the payment is to be based

4 The Completion Notice shall state the final Unit Mix [the final Employment Floorspace and the actual number of Employees]

5. In the event that the Unit Mix to be constructed on the Site [and or the number of Employees] does not match the Unit Mix [and or the number of Employees] on which the Education Contribution or part thereof paid was based the Developers [and the Owner] hereby covenant to pay to the County as soon as the revised Unit Mix [and or number of Employees] 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 or number of Employees] and any such additional amount shall from the date payment is received by the County form part of the Education Contribution

**HIGHWAYS SCHEDULE**

1. In this Schedule the following expressions shall have the following meaning

**Highway Contribution** means the sum of (*insert amount*) thousand pounds sterling (£XX) to which sum the Relevant Highway Indexation shall be added

**Highway Contribution Works** mean (*insert description*) as the County considers necessary in the vicinity of the Site and shall include any design and feasibility work (even if abortive) in relation to such works

**Highway Contribution Purpose** means the carrying out of the Highway Contribution Works

**Highway Works** mean [*insert description of works*] [as identified and set out in principle on the drawings provided as the Highway Works Drawings appended to this Schedule] and including any necessary alterations to and reinstatements of existing highways and statutory undertakers equipment to the provision of or alteration to street lighting road signs drainage structures traffic signals related accommodation and any other works normally associated with the construction of a highway or required as a result of the County’s inspections

**Highway Works Agreement** means an agreement entered into pursuant to all powers enabling the parties to regulate the carrying out of the Highway Works (in particular Sections 38 and 72 and 278 of the 1980 Act and Section 33 of the 1982 Act) and shall include but not be limited to the following matters

(a) securing of a bond to ensure that third party funds are available to complete the Highway Works to the satisfaction of the County

(b) payment of the County’s works inspection fees maintenance fees special orders fees supervision fees and any other such fees as the County shall require

(c) payment of the County’s legal administrative and other fees and disbursements associated with the drafting negotiating and completion of the Highway Works Agreement

(d) preparation and advance approval of works drawings and traffic management measures

(e) certification and maintenance of the Highway Works

(f) regulating of the issue of the Works Licence to enable the Highway Works to be carried out

(g) the securing of a bond relating to both Land Compensation Act 1973 matters and Noise Insulation Regulations 1975 as amended by the Noise Insulation (Amendment) Regulations 1988 (SI 1988/2000) and any other indemnity and bonds for liability issues as the County shall require

(h) the dedication of land as public highway

(i) the standards and procedures for carrying out the Highway Works

(j) traffic regulation orders and statutory processes

**Highway Index** mean the Department for Business Innovation and Skills Price Adjustment Formulae Indices (Civil Engineering) Series 2 (BIS) or in the event that the BIS is no longer published or the calculation method used is substantially altered then an appropriate alternative index nominated by the County

**Relevant Highway Indexation** means the amount that the Developer [and or the Owner] shall pay with and in addition to each part of the Highway Contribution paid that shall in each case equal a sum calculated by taking the amount of the Highway Contribution being paid and multiplying this amount by the percentage change shown in the Highway Index between the Index Point pertaining to (*insert date that request for the Highway Contribution was based on*) and the date of the most recent Index Point published in relation to the date the payment is due to be made to the County

1. The Developer [and the Owner] hereby covenants

1.1 to pay the Highway Contribution to the County prior to the first Occupation of a Dwelling and shall not cause or allow the first Occupation of a Dwelling until the County has received payment of the Highway Contribution

1.2. to enter a Highways Works Agreement in relation to the Highway Works prior to [Commencement] [Occupation]

## 

## Appendix: Highway Works Drawings

*Bespoke –to be inserted by developer/owner* **SUSTAINABLE TRAVEL SCHEDULE**

1. In this Schedule the following expressions shall have the following meanings

**Relevant Sustainable Travel Indexation** means the amount that the Developer [and or the Owner] shall pay with and in addition to each part of the Residential Travel Information Fee [and the Travel Plan Monitoring Fee] paid that shall in each case equal a sum calculated by taking the amount of the Residential Travel Information Fee [and the 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 20XX and the date payment is made to the County

[**Residential Travel Information Statement** means a leaflet as agreed by the County containing information to promote the benefits of sustainable travel and secure a model shift from the private car and increase the number of people using sustainable methods of travel and shall include but not be limited to such matters as stated in the ‘Residential Travel Information’ appended to this Schedule]

[**Residential Travel Information Brochure** means a brochure containing information as agreed by the County to promote the benefits of sustainable travel and secure a model shift from the private car and increase the number of people using sustainable methods of travel and shall be in the format as stated in the ‘Residential Travel Information’ appended to this Schedule]

**Residential Travel Information Fee** means a non-refundable sum of (*insert amount*) pounds sterling (£X) plus Relevant Sustainable Travel Indexation payable towards the County’s costs in approving the Residential Travel Information [Statement] [Brochure]

**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

**Travel Plan** means a working plan to include all measures to ensure sustainable means of travel are available to [residents] [and] [employees] of the Development in accordance with the requirements of the National Planning Policy Framework and shall include but not be limited to such [Residential] [Workplace] Travel Plan Measures as stated in the ‘Travel Plan’ appended to this Schedule

**Travel Plan Co-ordinator** means a member of staff appointed by the Developer [and or the Owner] for (*insert number*) (XX) hours per week based (*insert where*) with appropriate skills and budgetary provision and resources to fulfil the role of the [Residential Travel Plan Co-ordinator] [and] [Workplace Travel Plan Co-ordinator] as described in the job description[s] stated in the ‘Travel Plan Co-ordinator Job Description’ appended to this Schedule

**Travel Plan Monitoring Fee** means the non-refundable sum of (*insert amount*) pounds sterling (£X) plus Relevant Sustainable Travel Indexation payable towards the County’s costs in approving and or monitoring and or reviewing the Travel Plan

**Travel Vouchers** means tickets passes credits or other means of accessing transport or journey planning information as agreed with the County including the following as a minimum [either six carnet or scratchcard bus tickets per household (*insert for how long*) that can be used by each eligible member of the household OR a season ticket voucher] and or [incentives for rail travel with the local rail operator] and or [MyPTP credits to access an online tool to generate personalised travel plans using a home and destination postcode to provide details of different travel modes/options travel routes/maps and timetable information]

2. The Developer [and or the Owner] hereby covenants with the County

[Residential Travel Information Statement / Brochure

2.1 To submit a draft Residential Travel Information [Statement] [Brochure] to the County for written approval prior to first Occupation of a Dwelling and not to cause or allow first Occupation of a Dwelling prior to the Residential Travel Information [Statement] [Brochure] being submitted to and approved in writing by the County

2.2 To provide the prospective occupier of each Dwelling with an approved Residential Travel Information [Statement] [Brochure] and Travel Vouchers prior to Occupation of that Dwelling and not to cause or permit Occupation of each Dwelling unless and until the Developer has provided the prospective occupiers with an approved Residential Travel Information [Statement] [Brochure] and Travel Vouchers

2.3 To pay the Residential Travel Information Fee to the County prior to Commencement and not to Commence until the County has received the Residential Travel Information Fee]

[Travel Plan

2.4 To formulate and submit to the County for approval a Travel Plan prior to first Occupation and not to cause or allow first Occupation prior to the Travel Plan being submitted to and approved in writing by the County

2.5 To appoint a Travel Plan Co-ordinator prior to first Occupation and not to cause or allow any Occupation prior to the appointment of a Travel Plan Co-ordinator and to notify the County of the identity and contact details of the Travel Plan Co-ordinator as soon as an appointment is confirmed

2.6 To continue to employ a Travel Plan Co-ordinator for a period of (XX) years [or if later until one year after the Occupation of the final Dwelling on the Site] and in the event of a vacancy occurring in the post to re-appoint within two (2) months of the vacancy occurring and to notify the County of the appointment as soon as the appointment is confirmed

2.7 To ensure that the Travel Plan Co-ordinator discharges his or her duties in accordance with the duties specified in the job description[s] of the [Residential Travel Plan Co-ordinator] [and] [Workplace Travel Plan Co-ordinator] stated in the ‘Travel Plan Co-ordinator Job Descriptions’ appended to this Schedule

2.8 Not to change the responsibilities or role of the Travel Plan Co-Ordinator without prior written approval of the County

2.9 To implement the Travel Plan in a timely manner and at its own expense and to comply in all respects with the requirements of the Travel Plan

2.10 To pay the Travel Plan Monitoring Fee to the County prior to Commencement and not to Commence until the County has received the Travel Plan Monitoring Fee]

## 

## Appendix: Residential Travel Information

*Residential Travel Information is detailed in para.5.7.3 of this Guide.*

## 

## Appendix: Travel Plan

*Travel Plans are defined in para. 5.7.1 of this Guide.*

## 

## Appendix: Travel Plan Co-ordinator Job Description

*Please see paragraphs 2.5 to 2.8 above.*

**PUBLIC RIGHTS OF WAY SCHEDULE**

*(Relevant clause set dependent upon Circumstances)*

In this Schedule the following expressions shall have the following meanings

**PROW Improvement Scheme** means a scheme for the provision of public rights of way as shown on the ‘PROW Drawing’ numbered appended to this Schedule which may be subject to revision as agreed in writing between the Developer [and the Owner] and the County following the date of this Agreement

The Developer [and the Owner] hereby covenants to

* + - * 1. provide the PROW Improvement Scheme within the Site so as to enhance the existing public rights of way network

1.1 the PROW Improvement Scheme shall be provided in accordance with a timetable and construction standard to be agreed with the County (*insert when*) and shall upon completion be maintained by the County as highways maintainable at the public expense

1.2 the timescale for construction diversion and dedication of the PROW Improvement Scheme shall be agreed with the County in writing prior to Commencement and

1.3 the PROW Improvement Scheme shall be made available for the public to use as a public right of way no later than (*insert time /event trigger here*)

* + - * 1. enter such agreements under the 1980 Act and 1990 Act as shall be considered appropriate by the County to facilitate the provision of the PROW Improvement Scheme within the Site including the diversion of such public rights of way and shall seek to obtain the appropriate diversion orders under the 1990 Act

**OR**

In this Schedule the following expressions shall have the following meaning

**Bridleway** means a new bridleway link three (3) metres wide from (*insert location*) *to (insert location*)within the Site so as to enhance the existing public rights of way network and to be constructed in accordance with the route as shown on the ‘Bridleway Plan’ (insert *plan number*) appended to this Schedule

**Bridleway Creation Works** mean such works required by the County to bring the Bridleway to the standard required to be capable of use by the public such works to be at the Developer’s [and the Owner’s] expense

**Section 25 Agreement** means an agreement or agreements entered into by the Developer [and the Owner] with the County under Section 25 of the 1980 Act in the form of the County’s standard ‘Section 25 Agreement’ appended to this Schedule

**Section 25 Agreement Application** means an application submitted to the County by the Developer [and the Owner] for the purpose of entering into the Section 25 Agreement on the Section 25 Application Form appended to this Schedule

1 The Developer [and the Owner] hereby covenants

1.1 prior to public access to the (*e.g. Public Open Space*) being permitted

1.1.1 to submit to the County a Section 25 Agreement Application and

1.1.2 to enter into the Section 25 Agreement with the County

1.1.3 to carry out the Bridleway Creation Works to the satisfaction of the County in accordance with a timetable and reasonable construction standard to be approved in writing by the County prior to its construction

1.1.4 to dedicate the Bridleway as a public bridleway and such dedication shall take effect in accordance with the terms and conditions and drawings contained in the Section 25 Agreement

1.2 The dedication of the Bridleway shall take effect in accordance with the terms and conditions and drawings contained in the Section 25 Agreement upon the issue of a certificate of completion by the County following the satisfactory completion of the Bridleway Creation Works for the use by the public

2 The County hereby covenants

2.1 To enter into a Section 25 Agreement with the Developer [and the Owner] prior to the occupation of the [Public Open space appropriate trigger]

**OR**

**Permissive Bridleway`** means a new permissive way (over which the right of way is intended to be on foot and by pedal cyclists and on horseback or leading a horse) to be carried out in accordance with the details stated in the ‘Permissive Bridleway Specification’ appended to this Schedule to link to the existing public footpath numbers (*insert details*) and the proposed Site access at the boundary of the Development as shown by a (*insert colour*) line indicatively on the ‘Permissive Bridleway Plan’ (*insert number*) appended to this Schedule the final alignment of which shall be subject to the approval of the Council and the County

**Permissive Bridleway Works** means the works to provide the Permissive Bridleway to the standard required by the County to be capable of use by the public the cost of such works to be borne entirely by the Developer [and the Owner]

**Warning and Advisory Signs** means signs to be placed at appropriate points on the Permissive Bridleway in the positions marked on the Permissive Bridleway Plan (*insert number*) appended to this Schedule warning motorists of the possible presence of walkers cyclists and horse riders and a notice at both ends of the Permissive Bridleway pursuant to Section 31(3) of the 1980 Act so as to negate the intention of the Developer [and the Owner] to dedicate the Permissive Bridleway as a highway maintainable at the public expense

1. The Developer [and the Owner] hereby agrees and covenants to

1.1 prior to the first Occupation of a Dwelling to carry out the Permissive Bridleway Works as a permissive way to the satisfaction of the County in accordance with a scheme to be approved in writing by the County prior to Commencement including the requirement that the width of the Permissive Bridleway shall be no less than three (3) metres along its entire length

1.2 prior to the first Occupation of a Dwelling to provide and erect the Warning and Advisory Signs at the Developer’s [and the Owner’s] expense in accordance with the requirements of the County

1.3 maintain the Permissive Bridleway to the standard reached upon completion of the Permissive Bridleway Works from the date of issue of the certificate of completion in perpetuity being a period of no less than eighty (80) years

1.4. place a restriction on the Developer’s [the Owner’s] title at HM Land Registry requiring that no transfer of any part of the land containing the Permissive Bridleway shall take place unless the transferee first enters into a covenant with the transferor to maintain the Permissive Bridleway in perpetuity being a period of no less than eighty (80) years in accordance with the requirements of this Agreement

2. The County hereby agrees and covenants with the Developer [and or the Owner] to

2.1. to liaise with the Developer [and or the Owner] in relation to the erection of the Warning and Advisory Signs and notices to negate the intention to dedicate the Permissive Bridleway as a highway maintainable at the public expense

2.2 to issue an appropriate certificate of completion following the satisfactory completion of the Permissive Bridleway Works for the use by the public

**Appendix: PROW Drawing**

*Bespoke – to be inserted by developer/owner*

## 

## Appendix: Bridleway Plan

*Bespoke – to be inserted by developer/owner*

## 

## Appendix: Section 25 Agreement

*Please see paragraph under this heading above*

## 

## Appendix: Section 25 Application Form

*Please see paragraph under this heading above*

## 

## Appendix: Permissive Bridleway Specification

See para 1.1 above

## 

## Appendix: Permissive Bridleway Plan

Bespoke – to be inserted by developer/owner

**PASSENGER TRANSPORT SCHEDULE**

1. In this schedule the following expressions shall have the following meanings

**Bus Service** means a bus service to serve the Development on the following basis or as otherwise agreed in writing between the County and the Developer [and the Owner] so as to be operative at the following times and frequency: [insert details]

**Bus Service Subsidy** means the sum of XXX pounds sterling (£ ) less the revenue achieved from running the Bus Service

The Developer [and the Owner] hereby covenants to

2 procure the Bus Service prior to occupation of the XXth Dwelling and not to cause or allow occupation of the XXth Dwelling until the Bus Service has been procured

3. deliver and retain the Bus Service from the Occupation of the XX Dwelling until the first to occur of either

3.1 the lapse of a period of no less than five years from the Occupation of the XXth Dwelling or

3.2 the full amount of the Bus Service Subsidy has been expended by the Developer [and or the Owner] in delivering the Bus Service and the Developer [and or the Owner] have first provided full documentary written evidence of such expenditure that has been accepted as a true record by the County

THE COMMON SEAL of [ )

] was hereunto )

affixed in the presence of: - )

Executed as a Deed by affixing )

the common seal of )

ESSEX COUNTY COUNCIL )

in the presence of: )

Attesting Officer

THE COMMON SEAL of DISTRICT )

COUNCIL was hereunto affixed in the )

presence of: - )

Mayor

Town Clerk

THE COMMON SEAL of )

BANK )

was hereunto affixed in the )

presence of: - )

Director

Secretary

THE COMMON SEAL of )

OWNER )

was hereunto affixed in the )

presence of: - )

Director

Secretary