

DATE 13th October 2020

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

**Planning Obligation by Deed under Section 106
of the Town and Country Planning Act 1990**

relating to

**Land at the former Stanton Community Primary
School Bury Lane Stanton Suffolk**

West Suffolk Council
West Suffolk House
Western Way
Bury St. Edmunds
Suffolk

DATE

13th October .

2020

THE PARTIES:

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")

INTRODUCTION

- A The Council is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- B The County Council is the local education authority the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated
- C The County Council is the freehold owner of the Site which is registered at HM Land Registry under title number SK318600 (hereinafter also referred to as the "**Owner**")
- D The Owner has submitted the Applications and the Council has resolved to grant planning permission for the Development pursuant to the Applications subject to the prior completion of this Deed intended to regulate the Development and to secure the planning obligations contained in this Deed
- E The Council and the County Council enter into this Deed to the intent that the requirements of the Council's and the County Council's policies are met and that any objections by the Council or the County Council to the grant of planning permission on the basis of those policies are overcome
- F The Council and the County Council consider that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

- G The Council in resolving to approve the Applications is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)
- H The Council will be the enforcing authority for the purposes of enforcing the Owner`s obligations to pay the Financial Contributions
- I Within this Deed references to the "County Council" are made where the function of the County Council acting as the local planning authority are concerned and references to the county council as the "Owner" of the Site are used where the owner of the Site has obligations to perform to either the Council or County Council

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

- "Act" the Town and Country Planning Act 1990 (as amended)
- "Applications" the outline application for planning permission to develop the Site in accordance with the application bearing the Council's reference number DC/17/1087/OUT and the full application for planning permission to develop the Site in accordance with the application bearing the Council's reference number DC/17/1093/FUL
- "BCIS Index" the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto

"BCIS Indexed"	the increase in any sum referred to in the Second Schedule and the Third Schedule by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 10 of this Deed
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance demolition works archaeological investigations investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions diversion and lay of services erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commenced" and "Commence Development" shall be construed accordingly
"Completion of Development"	the date that the last Dwelling is first Occupied on the Site
"Development"	the development of the Site in accordance with the 1st Planning Permission and the 2nd Planning Permission
"Dwelling"	a dwelling (including a house flat or bungalow) to be constructed pursuant to the Planning Permissions and "Dwelling" and "Dwellings" shall be construed accordingly
"Enforcing Authority"	Means the Council until such time the County Council ceases to have an interest in the Site after which time it means the County Council in respect of the other Financial Contributions
"Financial Contributions"	the Library Contribution and the Secondary School Contribution and the Sixth Form Contribution

"Late Payment Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
"Library Contribution"	one hundred and sixty pounds (£160.00) BCIS Indexed
"Occupation"	occupation for the purposes permitted by the Planning Permissions but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied and "Occupy" shall be construed accordingly
"Payee"	the original payee of any Financial Contributions required under this Deed
"Planning Permissions"	the outline planning permission (the 1st Permission) and the full planning permission (the 2nd Permission) subject to conditions as may be granted by the Council pursuant to the Applications or a subsequent planning permission for the Development granted pursuant to Section 73 or the Act
"Secondary School Contribution"	forty-five thousand four hundred and seventy-six pounds (£45,476.00) BCIS Indexed
"Sixth Form Contribution"	twenty-two thousand seven hundred and thirty-eight pounds (£22,738.00) BCIS Indexed
"Site"	the land described in the First Schedule against which this Deed may be enforced and as shown edged red for identification purposes only on the Site Plan
"Site Plan"	the plan marked "Site Plan" attached to this Deed
"Working Days"	Monday to Friday (inclusive) except Good Friday Christmas Day and public or bank holidays from time to time in England

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause sub-clause schedule paragraph sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause schedule paragraph sub-paragraph or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies' corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.4 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act 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 under that Act or deriving validity from it
- 2.5 References to any party to this Deed shall include the successors in title to that party the personal representatives of that party and any party deriving title through or under that party and in the case of the Council and or the County Council the successors to their respective statutory functions
- 2.6 The obligations in this Deed shall not be enforceable against:
- 2.6.1 any individual person who is the owner and/or an occupier for residential purposes of a Dwelling or any mortgagee of such a Dwelling
- 2.6.2 any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services
- 2.6.3 a tenant exercising any right to acquire under a purchase grant scheme or right to buy or similar right conferred by statute or any successor in title to such person
- 2.7 The headings are for reference only and shall not affect construction

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers
- 3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council as a local planning authority against the Owner and their successors in title
- 3.3 This Deed shall only be capable of being varied by a supplemental deed between the Parties hereto or their respective successors in title or assigns made under section 106A of the Act

4. CONDITIONALITY

- 4.1 This Deed is conditional upon:
 - 4.1.1 the grant of the Planning Permissions and
 - 4.1.2 the Commencement of Development
 - 4.1.2 seven (7) Dwellings having been approved by the Council under the reserved matters submitted by the Owner pursuant to the outline planning application referenced DC/17/1087/OUT

FOR THE AVOIDANCE OF DOUBT if less than seven (7) Dwellings are approved by the Council under the reserved matters submitted by the Owner pursuant to the outline planning application referenced DC/17/1087/OUT then the Financial Contributions will cease to be required

SAVE FOR the provisions of this clause and clauses 7.1 7.2 7.3 7.6 9 12 13 14 17 and 18 (related to legal costs change in ownership right of entry dispute resolution jurisdiction and delivery) and any other relevant provisions which shall come into effect immediately upon completion of this Deed

- 4.2 Where the Planning Permissions are the subject of any judicial review proceedings or other legal challenge:
 - 4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permissions and the Commencement of Development PROVIDED THAT the Owner shall not undertake any further works to implement

the Planning Permissions following the issue of such proceedings

4.2.2 if following the conclusion of such proceedings or challenge the Planning Permissions are quashed and is not superseded by a subsequent planning permission accepted by the Owner this Deed will cease to have any further effect and

4.2.3 if following the conclusion of such proceedings or challenge the Planning Permissions remain valid and fully enforceable all of the terms and provisions of this Deed will apply in full

4.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used) the following provisions will apply:

4.3.1 proceedings by way of judicial review are concluded:

4.3.1.1 when permission to apply for judicial review has been refused and no further application can be made

4.3.1.2 when the court has given judgement in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused or

4.3.1.3 when any appeal(s) is or are finally determined

4.3.2 proceedings under Section 288 of the Act are concluded:

4.3.2.1 when the court has given judgement in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused or

4.3.2.2 when any appeal(s) is or are finally determined

5. THE OWNER`S COVENANTS

The Owner covenants with the County Council as set out in the Second Schedule

6. THE COUNTY COUNCIL`S COVENANTS

6.1 The County Council covenants with the Owner as set out in the Third Schedule

- 6.2 The County Council as the Owner covenants with the Enforcing Authority so as to bind itself and its successors in title to observe and perform the obligations and stipulations contained in the Deed
- 6.3 The Enforcing Authority covenants with the Owner to comply with its obligations contained in this Deed
- 6.4 Upon the County Council having disposed of its interest in the Site it shall then become the Enforcing Authority for the purpose of this agreement and immediately releasing the Council of its covenants under this deed in respect of any obligations or enforcement of the Financial Contributions

7. MISCELLANEOUS

- 7.1 The Owner agrees declares and covenants on completion of this Deed to pay to the Council the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.2 The Owner agrees declares and covenants on completion of this Deed to pay to the County Council the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed and to pay five hundred pounds (£500.00) to the County Council the reasonable costs of reporting and monitoring the obligations contained in this Deed
- 7.3 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.4 This Deed shall be registered as a local land charge by the Council
- 7.5 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith affect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 7.6 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permissions shall be quashed revoked or otherwise withdrawn or expires by effluxion of time for the Commencement of the Development or is modified SAVE FOR modification in a permission granted pursuant to Section

73 of the Act and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed

- 7.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants restrictions or reservations in respect of it
- 7.9 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permissions) granted (whether or not on appeal) after the date of this Deed
- 7.10 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 7.11 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to either the Council or the County Council
- 7.12 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority

8. WAIVER

No waiver (whether expressed or implied) by the Council the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

9. CHANGE IN OWNERSHIP

The Owner agrees to give the Council and the County Council written notice of any transfer in ownership of any of any freehold interests in the Site occurring before all the positive obligations under this Deed

have been discharged such notice to be served within twenty one (21) days of such transfer and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like

10. INDEXATION

All the Financial Contributions referred to in the Second Schedule shall be increased by an amount equivalent to the increase in the BCIS Index (unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

- 10.1 A is the sum payable under this Deed
- 10.2 B is the original sum calculated as the sum payable
- 10.3 C is the BCIS Index for the month two (2) months before the date on which the sum is payable
- 10.4 D is the BCIS Index for the month two (2) months before the date of this Deed and
- 10.5 C/D is greater than 1

11. INTEREST

If any payment due under this Deed is not paid on time Late Payment Interest will be payable from the date payment is due to the date of payment

12. VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable

13. NOTICES

- 13.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or

sent by first class recorded delivery post to the address of the party concerned as nominated in clause 13.2

- 13.2 The address for any notice or other written communication in the case of each the Parties to this Deed shall be as follows

The Council	The Assistant Director of Growth West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU
The County Council	The Executive Director of Growth Highways and Infrastructure (or a duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX

- 13.3 Any notice or other written communication to be given by either the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County Council by a duly authorised officer of the Council or the County Council as appropriate

- 13.4 The Owner covenants to inform the County Council by way of written notice within seven (7) days following:

13.4.1 Commencement of Development

13.4.2 Occupation of the seventh (7th) Dwelling

13.4.3 Completion of Development

14. DISPUTE RESOLUTION

- 14.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) which cannot be resolved by prior agreement between the parties to the dispute ("the Dispute Parties") shall be referred to arbitration before a single Expert (the "Expert")
- 14.2 The Dispute Parties shall jointly appoint the Expert not later than twenty-eight (28) days after service of a request in writing by either Party to do so
- 14.3 If the Dispute Parties are unable to agree within twenty-eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the Dispute Parties as follows:

- 14.3.1 if the difference or question relates to the rights and liabilities of any Dispute Party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society
- 14.3.2 if the difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers
- 14.3.3 if the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Dispute Parties but in default of agreement appointed at the request of any Dispute Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors or
- 14.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Dispute Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute
- 14.4 In the event of a reference to arbitration the Dispute Parties agree to:
 - 14.4.1 prosecute any such reference expeditiously and
 - 14.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim final or otherwise) as soon as reasonably practicable
- 14.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 14.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing
- 14.7 The award shall be final and binding both on the Dispute Parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be

14.8 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause but without prejudice to the rights and obligations of the Parties in relation to the termination of the Deed

14.9 The provisions of this clause shall not affect the ability of the Council or County Council to apply for and be granted any of the following: declaratory relief injunction specific performance payment of any sum damages and any other means of enforcing this Deed and consequential and interim orders and relief

15. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

Where any of the provisions of this Deed have been satisfied the Parties shall be entitled to apply to the Council or the County Council for confirmation to that effect and upon the Council or County Council being satisfied that the relevant Deed obligation and covenant as the case may be has been satisfied the Council or the County Council shall forthwith issue confirmation to such effect

16. COMMUNITY INFRASTRUCTURE LEVY

The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 the obligations imposed in this Deed are (a) necessary to make the Development permitted pursuant to the Application acceptable in planning terms (b) directly relate to the Development permitted pursuant to the Application and (c) fairly and reasonably relate in scale and kind to the Development permitted pursuant to the Application

17. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales

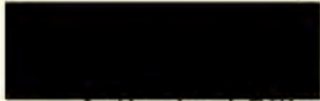
18. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

In witness whereof the Parties hereto have executed this deed on the day and year first before written

**THE COMMON SEAL OF
WEST SUFFOLK COUNCIL**

was affixed in the presence of:

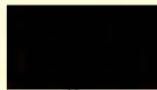


Authorised Officer

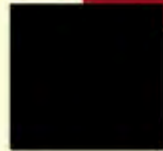


**THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:



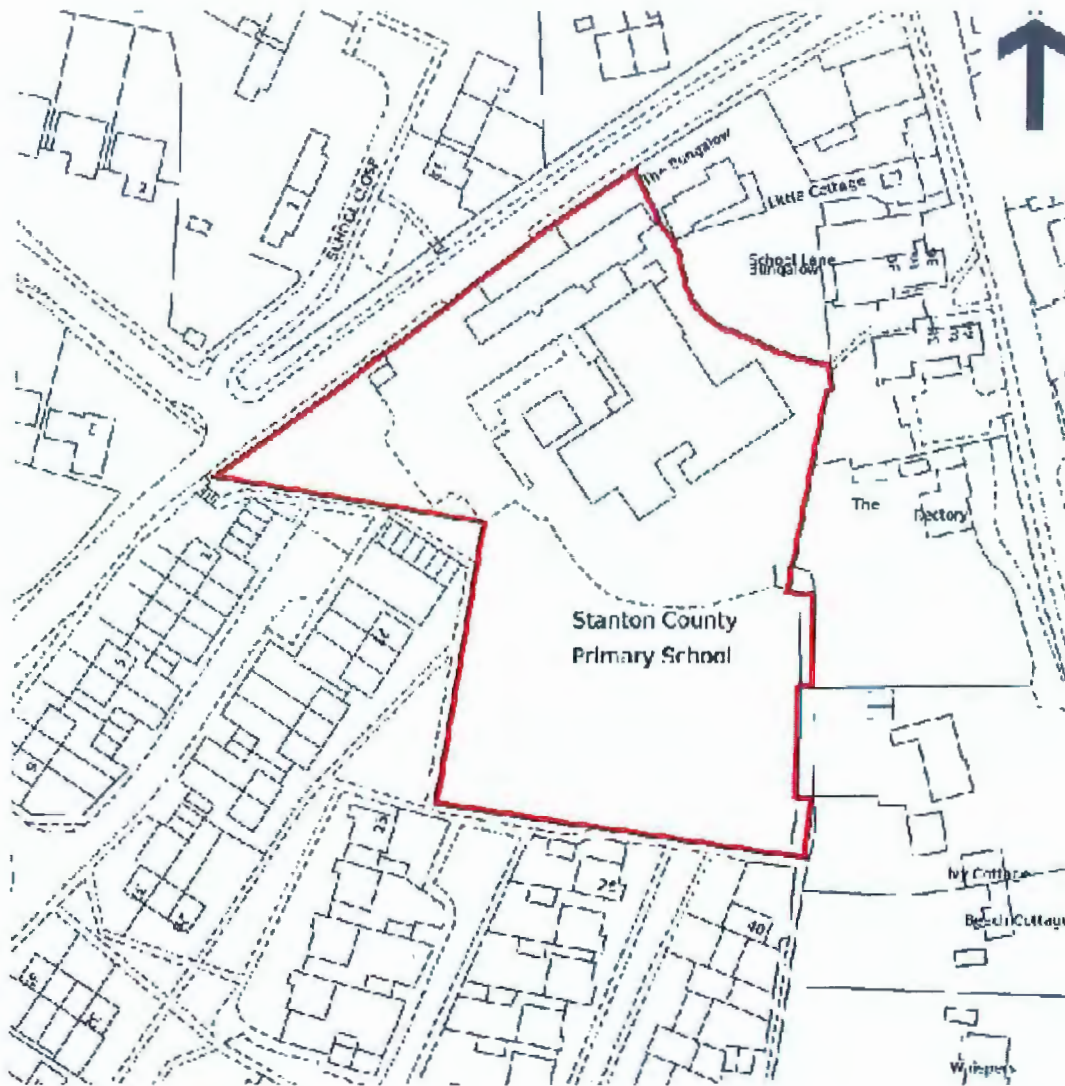
Authorised Officer



FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Owner's land forming part of land registered with the Land Registry under title number SK318600

SITE PLAN



SECOND SCHEDULE

THE OWNER COVENANTS WITH THE COUNTY COUNCIL:

1 LIBRARY CONTRIBUTION

- 1.1 To pay to the County Council the Library Contribution prior to the first Occupation of eight (8) Dwellings
- 1.2 Not to Occupy or permit Occupation of more than seven (7) Dwellings unless and until the Library Contribution has been paid to the County Council

2 SECONDARY SCHOOL CONTRIBUTION

- 2.1 To pay to the County Council the Secondary School Contribution prior to Occupation of eight (8) Dwellings
- 2.2 Not to Occupy or permit Occupation of more than seven (7) Dwellings unless and until the Secondary School Contribution has been paid to the County Council

3 SIXTH FORM CONTRIBUTION

- 3.1 To pay to the County Council the Sixth Form Contribution prior to Occupation of eight (8) Dwellings
- 3.2 Not to Occupy or permit Occupation of more than seven (7) Dwellings unless and until the Sixth Form Contribution has been paid to the County Council

THIRD SCHEDULE

THE COUNTY COUNCIL COVENANTS WITH THE OWNER:

1 LIBRARY CONTRIBUTION

- 1.1 To use the Library Contribution towards the improvement of the existing library service serving the Development
- 1.2 If requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year to pay to any person such amount of the Library Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 1.3 When the Library Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

2 SECONDARY SCHOOL CONTRIBUTION

- 2.1 To use the Secondary School Contribution for the improvement and enhancement (including increasing the pupil admission number) of secondary school provision at the catchment secondary schools
- 2.2 If requested to do so in writing after the expiry of ten (10) years of the date that the Secondary School Contribution was paid within a further period of one (1) year to pay to any person such amount of the Secondary School Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 2.3 When the Secondary School Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the payment of that sum within a further period of

one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

3 SIXTH FORM CONTRIBUTION

- 3.1 To use the Sixth Form Contribution for the improvement and enhancement (including increasing the pupil admission number) of sixth form school provision at the catchment secondary schools
- 3.2 If requested to do so in writing after the expiry of ten (10) years of the date that the Sixth Form Contribution was paid within a further period of one (1) year to pay to any person such amount of the Sixth Form Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 3.3 When the Sixth Form Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the payment of that sum within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

