

DATED

5th June

2019

EAST SUFFOLK COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

CUBITT PROJECTS LIMITED (3)

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

Relating To

Old Station Works Westerfield Road Westerfield Suffolk

DATE

5th June

2019

PARTIES

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton IP12 1RT ("the Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council")
- (3) **CUBITT PROJECTS LIMITED** (Co. Regn. No. 4992297) of 260 The Quorum, Barnwell Road, Cambridge, CB5 8RE ("the Owner")

INTRODUCTION

- 1 The Council is the 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.
- 2 The County Council is the highways authority (except for trunk roads), the public transport authority and the education authority and is also a local planning authority for the area in which the Site is situated and by whom the obligations in this Deed are enforceable.
- 3 The Owner is the freehold owner of the Site registered at the Land Registry under title number SK261253 free from encumbrances.
- 4 The Council, the County Council and the Owner acknowledge that 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.
- 5 The Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 and Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. **DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings and there are additional definitions set out in the Second Schedule:

“Act”

the Town and Country Planning Act 1990

“Affordable Housing”

affordable housing in accordance with the definition contained within Annex 2 of the National Policy Planning Framework (NPPF) (as amended from time to time) provided to Eligible Persons whose needs are not met by the market

“Affordable Housing Mix Table”

the table attached to this agreement at Appendix B

“Affordable Housing Scheme”

a scheme for the provision of the Affordable Housing to reflect a thirty three per cent (33%) allocation of the total number of Dwellings to be built on the Site pursuant to the Planning Permission for onsite provision and generally in accordance with the Affordable Housing Mix Table unless otherwise agreed such Affordable Housing Scheme shall include details of the tenure of the dwellings; the dwelling type; the plot numbers allocated to the Affordable Housing Scheme; the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Housing Units;

- the identity of the Registered Provider or such details as the Council reasonably requires to satisfy itself that the Affordable Housing Units will be secured as Affordable Housing in perpetuity;

- the number, location, type and size of Affordable Housing Units to be constructed on the Site;

- full details of the Affordable Housing mix (such proposal to reflect the Council’s up to date strategic housing market assessment and specific local needs as determined and agreed by the Council) ;

- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme

“Affordable Housing Units”

thirty three per cent (33%) of the Dwellings to be provided as Affordable Housing on the Site pursuant to the Planning Permission comprising both Rental Dwellings and Shared Ownership Dwellings or such other tenures as shall be agreed in writing by the Council as part of the Affordable Housing Scheme

“Affordable Rent”

housing made available by a Registered Provider as low cost rental accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent inclusive of service charges or the local housing allowance rate or as otherwise agreed with the Council in writing

“Allocation Policy”

the policy and procedure that the Council has adopted to determine eligibility and priority for Rental Dwellings

“Application”

the application for outline planning permission received by the Council on the 17th September 2018 for the Development and allocated reference number DC/18/3850/OUT summarised in Part A of the Second Schedule or any subsequent variation granted by the Council pursuant to Section 73 of the Act

“Chargee”

any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 by such mortgagee or

chargee or any other person appointed by a mortgagee or chargee under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator

“Chargee’s Duty”

the tasks and duties set out in paragraph 1.9 of the Third Schedule

“Commencement”

the date on which any material operation (as defined in Section 56(4) of the Act) 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 work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, erection of hoardings, the temporary display of site notices or advertisements and “Commence” and “Commence” shall be construed accordingly;

“Consumer Prices Index”

the consumer price index published by the Central Government or any subsequent indices publishing the same

“Dwelling”

a dwelling (including a house, flat, bungalow or maisonette) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly;

“Early Years Contribution”

One hundred and fourteen thousand five hundred and sixty-one pounds (£114,561.00) Index Linked

“Eligible Persons”

a person or persons on the housing waiting list

maintained by the Council or who is otherwise approved by the Council as being in need of separate or alternative accommodation and unable to buy housing generally available on the open market

“Habitat Mitigation Contribution” the sum of THREE HUNDRED AND TWENTY ONE POUNDS AND TWENTY TWO PENCE (£321.22) per Dwelling Index Linked to be paid by the Owner to the Council as a contribution towards wardening and monitoring of the Deben Estuary Special Protection Area and Ramsar Site, the Stour and Orwell Estuaries Special Protection Area and Ramsar Site and the Sandlings Special Protection Area to provide for mitigation for the in-combination effect of increased visitor numbers from the Development on these

“Highways Contribution” Sixty thousand pounds (£60,000.00) Index Linked

“Homes England” Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of Section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers

“Housing Market Area” the relevant Housing Market Area for the Site as shown on Map 3 for Development Management Policy DM28 of the LDF

“Index” All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or such similar Index as might be published from time to time as a replacement.

“Index Linked” means index linked from the date of this Deed until such time that payment of any sum specified in this

Deed is made such index linking to be equivalent to any increase in such sums in proportion to the increase in the BCIS All-In Tender Price Index or in the event this index is no longer published or the calculation method is substantially altered then an appropriate alternative index nominated by the Council or the County Council (as appropriate)

“Interest”

Interest at 4% per cent above the base lending rate of the Bank of England from time to time

“LEAP”

a local equipped area for play to be provided within the Open Space in accordance with the details approved by the Council

“Local Lettings Cascade”

the list of categories of eligible persons for Affordable Housing in priority order used by the Council to allocate Rental Dwellings set out in the Third Schedule

“Management Company”

a company or body who will take over responsibility for the future maintenance of the Open Space and which definition may include a Parish Council, a residents association established for this purpose or a private limited company

“Market Housing Units”

those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units

“Nominations Agreement”

an agreement in the form of the draft appended to this Deed entered into by the Council and the Registered Provider in respect of rights for the

	Council to nominate persons for the Affordable Housing Units from the Council's housing register
"Occupation" and "Occupied" and "Occupy"	occupation of a Dwelling for the purposes permitted by the Planning Permission 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;
"Open Space "	the area of open space (including the LEAP) not exceeding 0.4 ha which will be transferred to a Management Company upon completion as shown on the Open Space Plan.
"Open Space Plan"	a plan to be submitted to the Council showing the Open Space
"Open Space Scheme"	a written scheme for delivery of the Open Space including the specifications, plans and drawings showing but not limited to the layout and design of the Open Space and the LEAP, the phasing and timing of the delivery of the Open Space and LEAP including details of any proposed play areas and equipment landscaping, paths and access arrangements, street furniture and fencing together with details of the proposed future management regime for the Open Space to be agreed in writing by the Council in accordance with the Third Schedule Part 2
"Plan"	the plan attached to this Deed
"Planning Permission"	the planning permission for the Development subject to conditions to be granted by the Council pursuant to the Application

“Practical Completion”

the issue of a certificate of practical completion by the Owner’s architect or project manager or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect or project manager and “Practically Complete” shall be construed accordingly;

“Primary School Contribution”

Two hundred and seventy thousand four hundred and seventy-six pounds (£270,476.00) Index Linked

“Protected Person”

A person who in respect of any Affordable Housing Unit:

(a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

(b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

(c) has staircased the equity in their Affordable Housing Unit to 100%;

(d) any mortgagee or successor in title to paragraph (a) – (c) above.

“Registered Provider”

a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by the HCA under Chapter 3 of that Act

“Rental Dwelling”

an Affordable Housing Unit which is to be let at an Affordable Rent and is let on the Registered Provider’s standard form of letting in accordance

with the terms of this Deed by a Registered Provider

“Section 106 Officer”

the officer so designated by the Council or the County Council and any notice required to be served on the Section 106 Officer must be sent or delivered to the Council at the address aforesaid marked for the attention of the Section 106 Officer (unless otherwise agreed with the Council) or to the County Council at the address aforesaid marked for the attention of the Director of Growth, Highways & Infrastructure

“Shared Ownership Dwelling”

Dwellings purchased by Eligible Persons on a Shared Ownership Lease

“Shared Ownership Lease”

a lease or sub-lease using the Homes England standard lease for Shared Ownership Dwellings granted at a premium subject to an initial tranche sale of no less than 25% and no greater than 75% of the value of the property with rent payable to the Registered Provider on the remaining share of the equity not to exceed 2.75% per annum and which lease shall include arrangements enabling the tenant to acquire up to 100% (one hundred percent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates. Any capital receipt received from staircasing to 100% to be recycled for affordable housing investment within the area of District of East Suffolk Council

“100% Staircaser”

a lessee under a Shared Ownership Lease who has exercised his or her right under that Shared Ownership Lease to purchase 100% of the equity in his or her dwelling

“Transport Contribution”

Five thousand pounds (£5,000.00) Index Linked

“Working Days”

Monday to Friday (inclusive) except public holidays in England.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule 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 interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive 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 Directive or deriving validity from it.
- 2.6 Any references to any party to this Deed shall unless the context provides otherwise include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Any covenants by the Owner not to do an act or thing shall be deemed to include an obligation to use all 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.

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 relevant enabling powers.
- 3.2 The Owner warrants that it is the freehold owner of the Site and has full power and capacity to enter into this Deed and that no other party has a legal interest in the Site which would require them to be a party to this Deed in order to make this Deed being on the Site and all estates and interests therein.
- 3.3 In the event of the Planning Permission being quashed, revoked or withdrawn before the Commencement of Development or expiring without the Development having been Commenced or in the event of the revocation of the Planning Permission the obligations under this Deed shall cease absolutely BUT FOR THE

AVOIDANCE OF DOUBT where permission is issued pursuant to an application under Section 73 of the Act this Deed shall continue in full force and effect subject to and in accordance with the provisions contained herein AND PROVIDED THAT in the event that upon receipt of an application under Section 73 of the Act if the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council retains the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.

- 3.4 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 and the County Council as local planning authority and local highways, public transport and education authority (respectively) against the Owner in respect of its ownership of the Site and its successors in title to the Site.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

Save for the provisions of Clauses 3, 15 and 16 (Legal Costs, Jurisdiction and Delivery clauses)

5 THE OWNER'S COVENANTS

- 5.1 The Owner hereby covenants with the Council and the County Council as set out in the Third Schedule.

6 THE COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

- 6.1 The Council and the County Council covenant with the Owner as set out in the Fourth Schedule.

7 MISCELLANEOUS

- 7.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

- 7.2 This Deed shall be registrable as a local land charge by the Council.

- 7.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council and/or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services (or the officer of the Council fulfilling such functions) and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party SAVE FOR in respect of the County Council all notices shall be sent to Constantine House, 5 Constantine Road, Ipswich, Suffolk, IP1 2DH marked for the attention of the Director of Growth, Highways & Infrastructure.
- 7.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.5 Insofar as any clause or clauses of this Deed are 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.
- 7.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.7 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 interest in the Site or part thereof in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.8 This Deed shall be enforceable (in respect of any restriction on occupation and use only) against owner-occupiers or tenants of the Dwellings constructed pursuant to the Planning Permission and against those deriving title from them. Nothing in this Deed shall be binding on 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 or highways in connection with the Development or any person or body deriving title through or from any person or body mentioned in this paragraph or their respective successor in title
- 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 Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.10 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and/or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.11 The Owner covenants from the Commencement Date to allow the Council and the County Council and their respectively duly authorised officers or agents at all

reasonable times on prior written notice to enter into and upon their respective parts of the Site for the purposes of monitoring compliance with the provisions of this Deed subject to compliance with all reasonable health and safety requirements of the Owners.

8 WAIVER

No waiver (whether expressed or implied) by the Council, the County Council or the Owner 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 or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

The Owner covenants with the Council and the County Council to give written notice of any change in ownership of any of their interests in the Site within 21 days of the same occurring before all the obligations under this Deed have been discharged such notice quoting the Council's reference DC/18/3850/OUT 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 Dwelling purchased by reference to a plan and the title number or numbers thereof save that this clause does not apply to a disposal of any individual Dwellings.

10 INDEXATION

Any sum referred to in the Third Schedule shall be Index Linked

11 INTEREST

If any payment due under this Deed is paid late, 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 DISPUTE PROVISIONS

13.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to **Clause 14.1** or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 13.3 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty Working Days after the conclusion of any hearing that takes place or twenty Working Days after he has received any file or written representation.
- 13.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
- 13.5 The provisions of this clause shall not affect the ability of the parties to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief

14 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

15 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.

FIRST SCHEDULE

Details of the Owners Title, and description of the Site

Freehold land situated at Old Station Works Westerfield Suffolk which is shown edged red for identification purposes only on the Plan and which is registered under title number SK261253 in the Land Registry.

SECOND SCHEDULE

Application Details and Draft Planning Permission

Part A

Brief details of Application

Application Number	DC/18/3850/OUT
Application Type	Outline Planning Permission
Date Received	17 September 2017
Location	Old Station Works Westerfield Suffolk
Proposal	Outline planning permission with all matters reserved, except for means of vehicular access to/from the site, for the redevelopment of the site for a mixed use scheme comprising up to 75 dwellings (C3 Use Class), of which 25 will be affordable, approximately 1,285sqm of commercial floorspace (16 units of Use Class B1, of which one will be flexible B1/D1 Use and 1 unit of Use Class A1), parking, publicly accessible open space and associated works
Applicant	Cubitt Projects Limited

Part B

Draft Planning Permission

THIRD SCHEDULE
THE OWNER'S COVENANTS

1. AFFORDABLE HOUSING - COVENANTS WITH THE COUNCIL

- 1.1 With the submission of reserved matters pursuant to the Planning Permission and prior to Commencement of Development the Owner shall provide to the Council for its written approval the Affordable Housing Scheme.
- 1.2 In carrying out the Development to ensure the Affordable Housing Units shall be provided in accordance with the approved Affordable Housing Scheme.
- 1.3 Not to Commence Development without having obtained the written approval of the Council to the Affordable Housing Scheme.
- 1.4 Prior to the first Occupation of the first (1st) Market Housing Unit to be Occupied the Owner shall notify the Council in writing of the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred for the Council's approval such approval not to be unreasonably withheld or delayed but if no agreement has been reached at the expiration of the period of three (3) months following the first Occupation of the first (1st) Market Housing Unit the Council shall be entitled to nominate a Registered Provider or other appropriate body for the purpose.
- 1.5 To procure that the Registered Provider enters into a Nominations Agreement with the Council at least one (1) month prior to the date of transfer in paragraph 1.6 below of this Schedule 3
 - 1.5.1. The Council is to allocate each of the Affordable Housing Units to a person nominated by the Council in accordance with the Allocation Policy and Local Lettings Cascade set out in this paragraph 1.5.1 who is considered by them to be in need of such accommodation and unable to compete in the normal open market for property. Before nominating an Eligible Person the Council will be satisfied that the Eligible Person:
 - i. has continuously lived in the Housing Market Area for the preceding 3 years; or
 - ii. has continuously had a place of work in the Housing Market Area for the preceding 3 years; or
 - iii. has parents or close family (i.e mother, father, son or daughter) who are over 18 and who have lived in the Housing Market Area for preceding 5 years; or
 - iv. can demonstrate some other local connection to the satisfaction of the Council; or

- v. due to a lack of suitable accommodation was forced within the preceding 3 years to move away from the Housing Market Area

1.5.2 If there are no persons who qualify under paragraph i-v above the Council is to allocate each of the Affordable Housing Units to a person who is considered by them to be in need of such accommodation and who is unable to compete in the normal open market for property in the District of East Suffolk and who:

- i. has continuously lived in one of the District of East Suffolk for the preceding period of 3 years; or
- ii. has parents or close family (i.e. mother, father, son or daughter) who are over 18 and have been living in District of East Suffolk for the preceding 5 years; or
- iii. has continuously had a place of work in District of East Suffolk for the preceding 3 years; or
- iv. due a lack of suitable accommodation was forced within the preceding 3 years to move from District of East Suffolk

1.5.3 If there are no persons who qualify under the foregoing provisions the Council shall select an Eligible Person who is seeking accommodation in the District of East Suffolk.

1.6 Not to Occupy or permit Occupation of more than forty per cent (40%) of the Market Housing Units until 13 of the Affordable Housing Units have been constructed and not to Occupy or permit Occupation of more than seventy per cent (70%) of the Market Housing Units until all of the Affordable Housing Units have been constructed in accordance with the Planning Permission and the associated reserved matters and have been made ready for residential Occupation and all the Affordable Housing Units have been transferred to a Registered Provider under a transfer deed on terms that accord with the relevant Homes England's funding requirements current at the date of construction of the Affordable Housing Units and which contains the following provisions:

- 1.6.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Units,
- 1.6.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to and abutting the boundary to the Affordable Housing Units all such services to be connected to the mains and written notification of such has been received by the Council,

- 1.6.3 a covenant by the Registered Provider to the Owner and the Council that the Registered Provider will not dispose of or grant a lease of any Affordable Housing Unit other than in accordance with the provisions of the Nominations Agreement
- 1.7 To construct the Affordable Housing Units in the positions indicated by the Affordable Housing Scheme and in no other positions without the Council's prior written approval
- 1.8 From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing as set out herein save that this obligation shall not be binding on:
- 1.8.1 any Protected Person or any mortgagee or chargee of the Protected Person exercising the mortgage protection provision within a Shared Ownership Lease or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargees; or
- 1.8.2 any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or
- 1.8.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor
- 1.9 Not to use the Affordable Housing Units for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme PROVIDED THAT the obligations contained in this Schedule shall not be binding upon:
- 1.9.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire or a voluntary right to buy scheme under the Housing and Planning Act 2016;
- 1.9.2 Eligible Persons who have staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest;
- 1.9.3 a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a "Receiver") of the whole or any part of the Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT it is has first complied with the following:
- a) such mortgagee or chargee or Receiver shall first give notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; and

- b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Dwellings

all persons or bodies deriving title under or through any persons or bodies referred to in this paragraph 1.6 (including their successors in title)

2. OPEN SPACE PROVISION AND MAINTENANCE - COVENANTS WITH THE COUNCIL

- 2.1 The Owner covenants to submit to the Council for approval the Open Space Scheme and details of the Management Scheme with the reserved matters application and prior to the Commencement of the Development.
- 2.2 The Owner covenants not to Occupy or permit the Occupation of the first Dwelling unless and until the Council has approved the Open Space Scheme and the Management Company.
- 2.3 The Owner covenants to lay-out and complete the Open Space in accordance with the Open Space Scheme as approved by the Council but in any event prior to the Occupation of the 25th Market Housing Unit or before the adjacent Dwellings are occupied, whichever is the soonest.
- 2.4 The Owner shall notify the Council of completion of the works comprised in the Open Space Scheme ('the Open Space Works') and invite the Council to inspect the Open Space
- 2.5 The Council shall inspect the Open Space within 10 Working Days of receipt of the notice under paragraph 2.4 above PROVIDED THAT in the event that the Council fails to inspect the Open Space within the said period the Open Space shall be deemed to have been; laid out fully in accordance with the provisions of paragraph 2.3 of this Schedule. The Owner shall thereafter carry out any remedial works that are reasonably notified to it by the Council within 20 Working Days of the said inspection to the Council's reasonable satisfaction.
- 2.6 On completion of the Open Space Works and any remedial works required pursuant to paragraph 2.5 above to the reasonable satisfaction of the Council, the Owner shall prior to transfer of the Open Space to the Management Company:
- (a) procure that there is full and unfettered public access to the Open Space; and
 - (b) be responsible for the management and maintenance of the Open Space free of defects.
- 2.7 The Owner covenants to transfer the Open Space including a LEAP to the Management Company within 12 months of laying out the Open Space

2.8 Upon completion of the Transfer of the Open Space to the Management Body the Management Body shall:

(i) not use the Open Space for any purpose other than for the provision of public open space for the benefit of members of the public;

(ii) maintain and manage the Open Space in a clean and tidy condition and free of defects and in accordance with the Open Space Management Scheme;

(iii) not build or allow to be built any building on the Open Space; and

(iv) allow full and unrestricted public access to the Open Space, subject to any reasonable restrictions imposed in the interest of public safety.

3. HIGHWAYS AND PUBLIC TRANSPORT CONTRIBUTION

THE OWNER COVENANTS WITH THE COUNTY COUNCIL

HIGHWAY OBLIGATIONS

3.1 To pay to the County Council the Highways Contribution prior to first Occupation of the first Dwelling

3.2 Not to Occupy or permit Occupation of any Dwellings until the Highways Contribution has been paid to the County Council

3.3 To pay to the County Council the Transport Contribution prior to first Occupation of the first Dwelling

3.4 Not to Occupy or permit Occupation of any Dwellings until the Transport Contribution has been paid to the County Council

EDUCATION

3.5 To pay to the County Council fifty percent (50%) of the Primary Contribution prior to the first Occupation of the first Dwelling

3.6 Not to Occupy or permit Occupation of any Dwellings until fifty percent (50%) of the Primary Contribution has been paid to the County Council

3.7 To pay to the County Council the remaining fifty percent (50%) of the Primary Contribution prior to the first Occupation of the first fifty percent (50%) of the Dwellings

3.8 Not to Occupy or permit Occupation of more than forty-nine percent (49%) of the Dwellings until the Primary Contribution has been paid to the County Council

3.9 To pay to the County Council fifty percent (50%) of the Early Years Contribution prior to the first Occupation of the first Dwelling

- 3.10 Not to Occupy or permit Occupation of the any Dwellings until fifty percent (50%) of the Early Years Contribution has been paid to the County Council.
- 3.11 To pay to the County Council the remaining fifty percent (50%) of the Early Years Contribution prior to the first Occupation of fifty percent (50%) of the Dwellings
- 3.12 Not to Occupy or permit Occupation of more than forty-nine percent (49%) of the Dwellings until the Early Years Contribution has been paid to the County Council

FOURTH SCHEDULE

COUNCIL'S AND COUNTY COUNCIL'S COVENANTS WITH THE OWNER

1 The Council covenants with the Owner

Discharge of obligations

1. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. To issue the Planning Permission as soon as reasonably practicable after the date of this Deed.
3. The Council covenants with the Owner that it will apply the Habitat Mitigation Contribution towards the purpose specified in the definition and for no other purpose whatsoever.
4. In the event that the Habitat Mitigation Contribution is not applied for its specified purpose within 10 years of the receipt of the contribution the Council covenants with the Developer that it will refund to the Owner such unexpended contribution along with Interest from the date of any payment to the date of repayment.
5. The parties hereto agree that for the purposes of paragraph 4 of this Fourth Schedule all references to 'the Owner' shall mean Cubitt Projects Ltd and not any successor in title to the Site or any part thereof.

The County Council covenants with the Owner

1. To use the Highways Contribution towards improving pedestrian and cycling connectivity from the Development to Westerfield Railway Station, local bus stops serving the Development and other pedestrian and cycling measures in the vicinity of the Development including officer time and associated costs incurred in those improvements
2. To use the Transport Contribution towards improving bus stop infrastructure in the vicinity of the Development including officer time
3. To use the Primary Contribution towards new primary school provisions in the Ipswich Garden Suburb

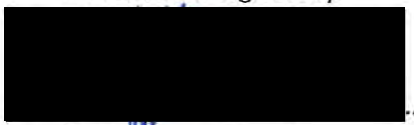
4. To use the Early Years Contribution towards new early-years setting provisions in the Ipswich Garden Suburb
5. If requested to do so in writing after the expiry of ten (10) years from the first Occupation of the final Dwelling within a further period of one (1) year to pay to the Owner such amount of the Highways Contribution which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued.
6. If requested to do so in writing after the expiry of ten (10) years from the first Occupation of the final Dwelling within a further period of 1 (one) year to pay to the Owner such amount of the Transport Contribution which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued
7. If requested to do so in writing after the expiry of ten (10) years from the first Occupation of the final Dwelling within a further period of one (1) year to pay to the Owner such amount of the Primary Contribution which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued
8. If requested to do so in writing after the expiry of ten (10) years from the first Occupation of the final Dwelling within a further period of one (1) year to pay to the Owner such amount of the Early Years Contribution which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued
9. The parties hereto agree that for the purposes of paragraphs 5 – 8 of this Fourth Schedule all references to 'the Owner' shall mean Cubitt Projects Ltd and not any successor in title to the Site or any part thereof.

THE COMMON SEAL OF
SUFFOLK COASTAL
COUNCIL
 was hereunto affixed
 in the presence of

)
)
)
)
)



Authorized Signatory



Authorized Signatory

THE COMMON SEAL OF)
SUFFOLK COUNTY COUNCIL)
was hereunto affixed in the)
presence of)



[Redacted signature]

Authorised Signatory

[Redacted signature]

EXECUTED AS A DEED by
CUBITT PROJECTS LIMITED

[Redacted signature]

Director

[Redacted signature]

Director/Secretary