

Dated

2ND JULY

2019

**PAULINE MARY CUTLER**

and

**CAROLYN FRANCES WILKINSON and ELIZABETH MACLEISH AS  
TRUSTEES OF THE WILL OF DAVID WESTROPP CUTLER DECEASED**

and

**GLADMAN DEVELOPMENTS LIMITED**

**Planning obligation by deed of undertaking under the Town and  
Country Planning Act 1990 section 106**

relating to

**Land at Station Road, Long Melford**



Gladman House  
Alexandria Way  
Congleton Business Park  
Congleton, Cheshire  
CW12 1LB  
Tel: 01260 288800

THIS UNILATERAL UNDERTAKING is given the 2ND day of JULY 2019

BY:

- 1) **PAULINE MARY CUTLER** of Melford Place, Little St Mary's, Sudbury, CO10 9LG and **CAROLYN FRANCES WILKINSON** of Melford Place, Little St Mary's, Sudbury, CO10 9LG and **ELIZABETH MACLEISH** of Melford Place Cottage, Liston Lane, Long Melford, Sudbury, Suffolk CO10 9LG as (Trustees of the David Westropp Cutler Will Trust) ('the Owner')

TO:

- 2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ('the Council')
- 3) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ('the County Council')

WITH THE CONSENT OF:

- 4) **GLADMAN DEVELOPMENTS LIMITED** (company registration number 3341567) whose registered office is at Gladman House, Alexandria Way, Congleton Business Park, Congleton, CW12 1LB ('the Promoter')

#### RECITALS

- 1) The Council is the local planning authority for the purposes of the 1990 Act for the area in which the Site is situated.
- 2) The County Council is the local highway authority and the education authority and is also a local planning authority for the area in which the Site is situated.
- 3) The Owner is the freehold owner of the Site as set out in Schedule 1.
- 4) The Owner and the Promoter have entered into the Promotional Agreement.
- 5) The Promoter submitted the Application to the Council on 8 February 2018.

- 6) The Council failed to determine the Application within the statutory time period and the Promoter has submitted the Appeal for determination by the Secretary of State.
- 7) The Owner is prepared to enter into this deed in order to secure the planning obligations it creates in the event that Planning Permission is granted pursuant to the Appeal.
- 8) The Owner has been informed that the Council requires the Development to reflect the needs of the ageing population in its administrative area and this has been reflected in the Affordable Housing Mix.

NOW THIS DEED WITNESSES as follows:

## **1. Definitions and interpretation**

### **1.1 Definitions**

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

- 1.1.1 'the 1990 Act' means the Town and Country Planning Act 1990 (as amended)
- 1.1.2 'Affordable Housing' means subsidised housing that will be available to persons who cannot afford to buy or rent housing generally on the open market in accordance with Annex 2 of the NPPF
- 1.1.3 'the Affordable Housing Land' means the land within the Site upon which the Affordable Housing Units are to be constructed
- 1.1.4 'the Affordable Housing Mix' means the numbers, type, tenure and size of the Affordable Housing Units to be provided as follows, unless otherwise agreed in writing by the Council as part of the Affordable Housing Scheme:  
Affordable Rented Housing:-
  - 4 x 1 bed 2 person flats @ 50 square metres
  - 4 x 1 bed 2 person houses @ 58 square metres
  - 4 x 2 bed 4 person bungalows @ 70 square metres
  - 4 x 2 bed 4 person flats @ 79 square metres
  - 16 x 2 bed 4-person houses @ 79 square meters
  - 5 x 3 bed 5 person houses @ 93 square metres
  - 1 x 3 bed 6 person house @ 102 square metres

Shared Ownership Housing:-

4 x 2 bed 4 person bungalows @ 70 square metres

8 x 2 bed 4 person houses @ 79 square metres

3 x 3 bed 5 person houses @ 93 square metres

- 1.1.5 'the Affordable Housing Scheme' means the scheme submitted in accordance with the Planning Permission which shall include details of: (i) the numbers, type, tenure and location on the Site of the Affordable Housing, and (ii) the timing of the construction of the Affordable Housing and its phasing in relation to the occupancy of the Market Housing Units, and (iii) in relation to the Affordable Rented Housing and any Shared Ownership Housing Units that are to be managed by a Registered Provider the arrangements for the transfer of the Affordable Housing to a Registered Provider, and (iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing, and (v) the occupancy criteria to be used for determining the identity of the occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced
- 1.1.6 'the Affordable Housing Units' means that part of the Development comprising 35% of the Dwellings which shall be constructed for Affordable Housing in accordance with the approved Affordable Housing Scheme, 75% of which shall be Affordable Rented Housing and 25% of which shall be Shared Ownership Housing and 'an Affordable Housing Unit' shall be construed accordingly
- 1.1.7 'Affordable Rented Housing' means 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 including any service charges applicable and as described in paragraph a) to the definition of 'Affordable Housing' in Annex 2: Glossary to the NPPF
- 1.1.8 'the Appeal' means the appeal to the Secretary of State following the non-determination of the Application by the Council given appeal reference APP/D3505/W/18/3214377
- 1.1.9 'the Application' means the application for outline planning permission for the Development dated 8 February 2018 submitted to the Council and allocated reference number DC/18/00606



- 1.1.10 'a Chargee' means any mortgagee or chargee of the Registered Provider, the successors in title to such a mortgagee or chargee, or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
- 1.1.11 'the Chargee's Duty' means the tasks and duties set out in Schedule 2 paragraph 4.7
- 1.1.12 'Charging Schedule' means a charging schedule as detailed in regulation 2(1) of the CIL Regulations
- 1.1.13 'CIL Regulations' means the Community Infrastructure Levy Regulations 2010 (as amended)
- 1.1.14 'the Commencement of Development' means the commencement of any material operation (as defined in the 1990 Act section 56(4)) forming part of the Development 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, the temporary display of site notices or advertisements and 'Commence Development' shall be construed accordingly
- 1.1.15 'the Date of Practical Completion' means the date of issue of a certificate of practical completion by the Owner's architect or such other competent person or, if the Development is constructed by a party other than the Owner, by that other party's architect or such other competent person
- 1.1.16 'Decision Letter' means the decision letter issued by the Planning Inspector or the Secretary of State confirming whether or not the Appeal is allowed
- 1.1.17 'the Development' means the development of the Site for the erection of up to 150 dwellings with public open space, landscaping, sustainable drainage system and vehicular access point pursuant to the Planning Permission
- 1.1.18 'a Dwelling' means a dwelling (including a house, flat, maisonette or bungalow and including Affordable Housing Units) to be constructed pursuant to the Planning Permission and 'Dwellings' shall be construed accordingly
- 1.1.19 'the Early Years Contribution' means the sum of £1,182.20 (one thousand one hundred and eighty two pounds twenty pence) per Dwelling payable to the County Council towards the provision of new facilities for the education and/or care of children between the ages of 0 to 4 (both inclusive) including those with special needs within Long Melford

- 1.1.20 'the Early Years Facility' means a new facility to be constructed by the County Council on the Early Years Land for the provision of education and/or care of children between the ages of 0 to 4 (both inclusive) including those with special educational needs within Long Melford
- 1.1.21 'the Early Years Land' means 0.0563 hectares of land within the Site to be identified in the Reserved Matters Approval for the purposes of the Early Years Facility
- 1.1.22 'the Footpath Contribution' means the sum of £30,030.00 (thirty thousand and thirty pounds) payable towards the costs of the improvements to:
- footpath number 40 to provide a 2 metre wide hoggin surface along the length from Station Road to the junction with footpath number 2 at Walter Lane; and
  - footpath number 2 to provide a 1.5 metre hoggin surface on footpath 2 for 75 metres from where footpath number 2 leaves the Site on its north eastern boundary
- 1.1.23 the 'Full Travel Plan' means a fully developed travel plan based on the Interim Travel Plan and travel monitoring data of the end users providing a package of measures aimed at promoting more sustainable travel choices and reducing reliance on the private car in relation to the Development
- 1.1.24 the 'Full Travel Plan Monitoring Report' means the annual report that is submitted to the County Council by the Travel Plan Coordinator in a form acceptable to the County Council that provides a summary of the traffic counts and resident surveys to demonstrate that the Full Travel Plan objectives and targets are being achieved
- 1.1.25 'Homes England' means the successor body to the Homes and Communities Agency created pursuant to the Housing and Regeneration Act 2008 exercising functions in relation to the funding of affordable housing and being the regulator of social housing providers in England and includes any successor body exercising similar functions
- 1.1.26 'the Index' means the All Items Index of Retail Prices issued by the Office for National Statistics or any successor organisation
- 1.1.27 'Infrastructure' has the meaning ascribed in Section 216(2) of the Planning Act 2008
- 1.1.28 'Interest' means interest at 5% above the base lending rate of National Westminster Bank plc from time to time
- 1.1.29 'Interim Travel Plan' means a management plan in which the Owner outlines the interim targets, objectives, measures and remedial measures it will take to manage the travel needs of the Development, includes a commitment to carry out travel monitoring and to capture



the data of the travel monitoring to help inform the Full Travel Plan and gives a commitment to producing a Full Travel Plan to mitigate the potential highway impact of the Development

- 1.1.30 'Management Company' means a private limited company which is incorporated in and which has its registered office in the United Kingdom of Great Britain and Northern Ireland and whose primary objects require it to maintain and renew the Open Space and the SUDS
- 1.1.31 'Management Plan' means a scheme to be submitted to and approved in writing by the Council, which identifies:
- (i) the future management and maintenance requirements of the Open Space and the SUDS
  - (ii) the proposed ongoing maintenance operations for the Open Space and the SUDS, specifically identifying the management objective, task and the timing and frequency of the operation for all the features of the Open Space and the SUDS
  - (iii) the proposed means of funding the ongoing maintenance and management of the Open Space and the SUDS in accordance with the Management Plan by the Owner and where one is formed pursuant to the provisions of this deed the Management Company
  - (iv) a mechanism for the periodic review with the Council and where necessary amendment of the Management Plan
- 1.1.32 'the Market Housing Units' means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing
- 1.1.33 'the NPPF' means the National Planning Policy Framework issued by the Department for Housing, Communities and Local Government and dated February 2019
- 1.1.34 'to Occupy' means to occupy or permit or suffer to be occupied for the purposes permitted by the Planning Permission but does not include occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and 'Occupation' and 'Occupied' shall be construed accordingly

- 1.1.35 'the Open Space' means the informal open space and landscaping including the Play Area for use by the general public to be provided on the Site in accordance with the Planning Permission and the Open Space Works Specification
- 1.1.36 'the Open Space Works Specification' means a specification for the laying out of the Open Space to be agreed in writing between the Owner and the Council before the Commencement of Development
- 1.1.37 'Party' means any of the parties to the deed
- 1.1.38 'Planning Inspector' means the inspector appointed by the Secretary of State to preside over the public inquiry in relation to the Appeal
- 1.1.39 'the Play Area' means a local equipped area for play for use by the general public to be provided on the Site in accordance with the Planning Permission
- 1.1.40 'the Plan' means the plan attached to this deed
- 1.1.41 'the Planning Permission' means any planning permission issued by the Secretary of State or the Planning Inspector in determining the Appeal
- 1.1.42 'the Promotion Agreement' means a promotion agreement dated 12 April 2018 in respect of the Site made between the Owner and the Promoter
- 1.1.43 'a Protected Tenant' means any tenant who:
- 1.1.43.1 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 an Affordable Housing Unit, or
  - 1.1.43.2 has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit, or
  - 1.1.43.3 any person who has staircased the equity in their Shared Ownership Housing Unit to 100%
  - 1.1.43.4 any successor in title to sub-paragraph 1.1.43.1 – 1.1.43.3
- 1.1.44 'Reasonable Consideration' means offer prices from Registered Providers which give the Owner a reasonable consideration having regard to current market conditions in the disposal of Affordable Housing of a similar type and location by Registered Providers on a grant free basis
- 1.1.45 'the Registered Provider' means a registered provider of social housing within the meaning of Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) as registered with Homes England or any other body who






**GLADMAN**  
 Melrose House, Grandeur Way  
 Capenhurst, Cheshire  
 CW4 7 5A  
 Tel: +44 (0) 1829 20000  
 Fax: +44 (0) 1829 20011  
 www.gladman.co.uk

| Rev          | Date | By | Revision notes |
|--------------|------|----|----------------|
| *            | *    | *  | *              |
| <b>LEGAL</b> |      |    |                |

Project  
**LONG MELFORD, LAND OFF STATION ROAD**

Title  
**LEGAL PLAN**

|                                   |                                       |
|-----------------------------------|---------------------------------------|
| Drawn by<br>EJM                   | Issue date<br>02-05-18                |
| Site checked by<br>CHECKED BY     | Title checked date<br>CHECKED DATE    |
| Highways checked by<br>CHECKED BY | Highways checked date<br>CHECKED DATE |
| Topo checked by<br>CHECKED BY     | Topo checked date<br>CHECKED DATE     |
| Scale(s)<br>1 TO 5000 @ A3L       |                                       |
| Drawing No<br>2017-092 200 rev -  |                                       |

may lawfully provide or fund affordable housing from time to time whom unless on the Council's list of approved Registered Providers has been approved in writing by the Council

- 1.1.46 'Relevant Agreement' means an agreement to secure planning obligations under section 106 of the 1990 Act and which relates to planning permission granted for development where such agreement has been entered into on or after 6 April 2010 and 'Relevant Agreements' shall be construed accordingly
- 1.1.47 'Reserved Matter Application' means the submission of an application to the Council for Reserved Matter Approval
- 1.1.48 'Reserved Matter Approval' means the reserved matters approval or approvals in respect of the Planning Permission PROVIDED THAT where more than one reserved matter approval is obtained for the purpose of the obligations under this deed it shall mean the reserved matter approval which is implemented for the purpose of section 56(4) of the 1990 Act
- 1.1.49 'Resident Travel Pack' means a travel pack provided to each Dwelling that includes bus tickets or cycle vouchers of equivalent value to a maximum cost of £115.00 (index linked in accordance with clause 10.1 of this Deed) per Dwelling, current public transport information for bus and rail services, provision of maps of pedestrian and cycle routes, car sharing information, personalised travel plans and information to promote the benefits of sustainable travel in the local area to encourage sustainable travel;
- 1.1.50 'Revised Early Years Contribution' means the sum of £1,275.53 (one thousand two hundred and seventy five pounds fifty three pence) per Dwelling payable to the County Council towards new facilities for the provision of education and/or care of children between the ages of 0 to 4 (both inclusive) including those with special needs within Long Melford
- 1.1.51 'Secretary of State' means the Secretary of State for Housing, Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act
- 1.1.52 'Shared Ownership Housing' means Affordable Housing to be let on a Shared Ownership Lease for sale as described in paragraph d) to the definition of 'Affordable Housing' in Annex 2: Glossary to the NPPF
- 1.1.53 'Shared Ownership Housing Unit' means an Affordable Housing to be provided as Shared Ownership Housing in accordance with the Affordable Housing Scheme approved pursuant to paragraph 4.1 of Schedule 2 of this deed to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such



other household income for the time in force in accordance with the terms set out in Homes England's capital funding guide and as described in paragraph d) to the definition of Affordable Housing in Annex 2: Glossary to the NPPF

- 1.1.54 'Shared Ownership Lease' means a lease of Shared Ownership Housing in a form approved by Homes England or where there is no such lease in a form approved by the Council such lease to provide for the following:
- 1.1.54.1 not more than 70% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider
  - 1.1.54.2 power for to the purchaser to increase their ownership up to 100% if they so wish. In the event a leaseholder exercises their right to staircase up to full ownership any capital receipt received by the Registered Provider between 81% and 100% must be retained by the Registered Provider and reinvested in other affordable housing within Babergh District
  - 1.1.54.3 an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England
- 1.1.55 'the Site' means the land against which this deed may be enforced shown edged red on the Plan and described in Schedule 1
- 1.1.56 'the SUDS' means the sustainable urban drainage system for the Development as detailed in the approved SUDS Scheme
- 1.1.57 'the SUDS Scheme' means a sustainable urban drainage system scheme for the Development which is to be submitted to and approved in writing by the Council prior to the Commencement of the Development, and which includes details of all the works features and measures for the SUDS that are proposed to be carried out constructed and implemented on the Site during the Development, and the timescales for when the said works features and measures are to be carried out
- 1.1.58 'Travel Plans' means together the Interim Travel Plan and the Full Travel Plan



- 1.1.59 the 'Travel Plan Coordinator' means the person appointed by the Owner to fully implement and monitor the Travel Plans
- 1.1.60 'Travel Plan Remedial Measures Notice' means a notice in writing served on the Owner by the County Council specifying a failure by the Owner to implement or observe or perform any of the obligations or requirements of the Owner set out in the approved Interim Travel Plans and/or the approved Full Travel Plan specifying the steps required within 28 days to remedy such failure so as to implement the framework and full measures and monitoring requirements of the Travel Plans

## 1.2 Interpretation

- 1.2.1 Reference in this deed to any recital, clause, paragraph or schedule is, unless the context otherwise requires, a reference to the recital, clause, paragraph or schedule in this deed so numbered.
- 1.2.2 Words importing the singular meaning include the plural meaning and vice versa where the context so admits.
- 1.2.3 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 interchangeable in that manner.
- 1.2.4 Wherever an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually unless there is an express provision otherwise.
- 1.2.5 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.
- 1.2.6 References to any Party shall include the successors in title to that Party and any person deriving title through or under that Party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 1.2.7 Headings where they are included are for convenience only and are not intended to influence the interpretation of this deed.

- 1.2.8 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

## **2. Legal basis**

- 2.1 This deed is made pursuant to the 1990 Act section 106.
- 2.2 The terms of this deed create planning obligations binding on the Owner pursuant to section 106 of the 1990 Act and are enforceable as such by the Council and the County Council as local planning authorities.

## **3. Conditions, duration and enforcement**

### **3.1 Conditions precedent**

This deed is conditional upon:

- 3.1.1 the grant of the Planning Permission, and
- 3.1.2 the Commencement of Development

save for the provisions of clause 6, (Provisions of immediate effect) and save in respect of any obligations in this deed expressly requiring compliance prior to the Commencement of Development, which shall come into effect immediately upon completion of this deed.

### **3.2 CIL Regulations**

- 3.2.1 If in determining the Appeal the Secretary of State or the Planning Inspector expressly states in the Decision Letter that any planning obligation contained in this deed:
- 3.2.1.1 is not a material planning consideration; or
- 3.2.1.2 can be given no weight in determining the Appeal; or
- 3.2.1.3 does not constitute a reason for granting Planning Permission in accordance with regulation 122 of the CIL Regulations; or
- 3.2.1.4 requires funding or provision towards a project or towards a type of Infrastructure where the Council or the County Council have entered into five (5) or more Relevant Agreements which provide for the funding or provision towards the same project or towards that type of Infrastructure,

then subject to clause 9.2 of this deed such planning obligation shall not be enforceable pursuant to this deed and shall cease to have effect within this deed save as set out in the Decision Letter.

3.2.2 In the event that the Secretary of State or the Planning Inspector grants the Planning Permission for the Development then if at the date of the grant of the Planning Permission a Charging Schedule has been approved by the Council and has come into effect any contribution payable under the terms of this deed which is for an Infrastructure project or type of Infrastructure set out in the Charging Schedule shall cease to be payable.

### 3.3 Duration

3.3.1 This deed shall cease to have effect, in so far only as it has not already been complied with, if the Planning Permission is quashed, revoked or otherwise withdrawn or, without the consent of the Owner, it is modified by any statutory procedure or expires before the Commencement of Development.

3.3.2 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after parting with his entire interest in the Site or his interest in that part of the Site on which the breach occurs, but without prejudice to liability for any subsisting breach arising before parting with that interest.

### 3.4 Other development

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.

### 3.5 Non-enforcement

3.5.1 This deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission, nor against those deriving title from such owner-occupiers or tenants or their mortgagees, except in respect of:

3.5.1.1 Schedule 2 paragraph 4.6 which shall remain enforceable against owner-occupiers and/or tenants of Affordable Housing Units and those deriving title from them to the extent permitted by the terms of this deed; and



3.5.1.2 Schedule 2 paragraphs 2.10(ii) and 3.8(ii) which shall remain enforceable against the owner of a Dwelling in so far as there is a breach of that provision in relation to the Dwelling in which such person has an interest.

3.5.2 The obligations contained in this deed shall not be binding upon or enforceable against 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 services or public transport services.

#### **4. Owner's covenants**

4.1 The Owner covenants with the Council as set out in Schedule 2.

4.2 The Owner covenants with the County Council as set out in Schedule 3.

#### **5. the Promoter's consent**

5.1 The Promoter acknowledges and declares that:

5.1.1 this deed has been entered into by the Owner with its consent, and

5.1.2 the Site shall be bound by the obligations contained in this deed.

5.2 Any mortgagee shall be liable only for any breach of the provisions of this deed during such period as he is a mortgagee in possession of the Site.

#### **6. Provisions of immediate effect**

6.1 On completion of this deed the Promoter shall pay to the Council and the County Council the reasonable legal costs incurred in the negotiation, preparation and execution of this deed of no more than £2,000.00 and £1680.00 respectively.

6.2 Nothing in this deed shall create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

6.3 The Owner agrees with the Council and the County Council to give the Council and the County Council prompt written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this deed have been discharged such notice to contain 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 be applicable to the disposal of individual Dwellings to individual purchasers.

## **7. Notices**

- 7.1 Any notice or other written communication to be served upon a Party or given by one Party to any other under the terms of this deed shall be deemed to have been validly served or given if delivered by hand or sent 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.
- 7.2 The address for any notice or other written communication shall be within the United Kingdom.
- 7.3 A notice or communication shall be served or given:
- 7.3.1 on the Owner at the address set out above, or such other address as shall be notified in writing to the Council and the County Council from time to time, and
  - 7.3.2 on the Promoter at its registered office from time to time, or such other address as shall be notified in writing to the Council and the County Council from time to time, marked for the attention of the Legal Department, and
  - 7.3.3 on the Council at the address set out above or such other address as shall be notified in writing to the parties from time to time marked for the attention of Chief Planning Officer, Babergh DC, Endeavour House, Russell Road, Ipswich, IP1 2BX, and
  - 7.3.4 on the County Council at the address set out above or such other address as shall be notified in writing to the parties from time to time marked for the attention of the Director of Growth Highways and Infrastructure (or a duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX.

## **8. Local land charge**

This deed shall be registerable as a local land charge.

## **9. Jurisdiction and legal effect**

- 9.1 This deed shall be governed by and interpreted in accordance with the law of England and Wales.
- 9.2 In so far as any clause or clauses of this deed are found (for whatever reason) to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this deed.
- 9.3 No waiver (whether expressed or implied) by the Council (or 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 (or the County Council)

from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

9.4 The provisions of this deed (other than this clause 9.4 which shall be effective in any event) shall be of no effect until this deed has been dated.

#### **10. Indexation, interest and VAT**

10.1 The maximum value of the Resident Travel Pack as stated in the definitions of this deed together with any sums to be paid to the Council under Schedule 2 or the County Council under Schedule 3 shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is paid.

10.2 If any payment due under this deed is paid late, Interest shall be payable from the date payment is due to the date of payment.

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

#### **11. Indemnity**

The Promoter (to the extent that the Owner has not been released from the planning obligations set out in this deed pursuant to clause 3.3.2 of this deed) hereby indemnifies and shall keep indemnified the Owner against all or any actions, judgements, penalties, damages, losses, costs, claims, expenses, liabilities and demands arising from the obligations of the Owner during the term of the Promotion Agreement under this deed and any breach or non-performance of those obligations PROVIDED THAT this clause shall not be for the benefit of any successor in title to the Owner pursuant to a Disposal as defined in the Promotion Agreement.

IN WITNESS of which the Owner and the Promoter have executed this deed as a deed and delivered it the day and year first before written.



SIGNED AS A DEED by **CAROLYN FRANCES WILKINSON**

as attorney for **PAULINE MARY CUTLER**

under a power of attorney dated 11 June 2013

In the presence of:

Witness name:

Witness address:

Occupation:

SIGNED AS A DEED by

**CAROLYN FRANCES WILKINSON**

as a Trustee of the will of David Westropp Cutler (Deceased)

under a deed of appointment dated 13 July 2015

In the presence of:

Witness name:

Witness address:

Occupation:

SIGNED AS A DEED by

**ELIZABETH McCLEISH**



as a Trustee of the will of David Westrop Cutler (Deceased)

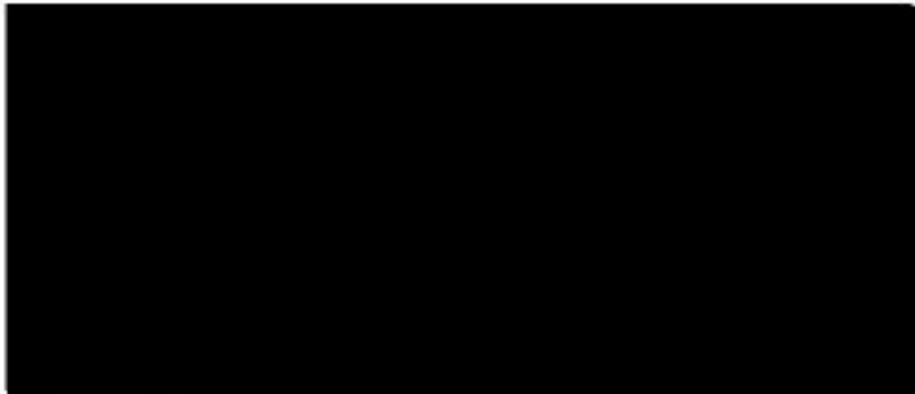
Under a deed of appointment dated 22 March 2019

In the presence of:

Witness name:

Witness address:

Occupation:



EXECUTED as a deed by  
**GLADMAN DEVELOPMENTS LIMITED**  
Acting by a director



Director

in the presence of:

Witness name: .....

Witness address: .....

Occupation: .....



|                              |                  |
|------------------------------|------------------|
| Name                         | LYNETTE ANDERSON |
| Gladman Legal Department     |                  |
| Gladman House Alexandria Way |                  |
| Congleton Cheshire CW12 1LB  |                  |

SOLICITOR

SCHEDULE 1

The Owner's Title and Site Description

| <b>Title Number</b> | <b>Description of Site</b>    | <b>Owner</b>   |
|---------------------|-------------------------------|--|
| SK386008            | Land at Long Melford, Sudbury | Pauline Mary Cutler and<br>Carolyn Frances Wilkinson<br>and Elizabeth MacLeish (as<br>Trustees of the Will of David<br>Westropp Cutler Deceased) |



## SCHEDULE 2

### The Owner's Covenants to the Council

#### **1. Progress of development**

The Owner shall notify the Council:

- 1.1 upon the Commencement of Development, and
- 1.2 upon first Occupation of any part of the Development, and
- 1.3 upon first Occupation of 35% of the Dwellings, and
- 1.4 upon first Occupation of 50% of the Market Housing Units, and
- 1.5 upon first Occupation of 75% of the Dwellings, and
- 1.6 upon first Occupation of 80% of the Market Housing Units, and
- 1.7 upon first Occupation of the final Dwelling.

#### **2. Open space transfer and works**

- 2.1 Prior to Commencement of Development to submit to the Council for approval the Open Space Works Specification and the Management Plan.
- 2.2 Not to permit or allow the Commencement of Development until the Council has approved the Open Space Works Specification and the Management Plan in writing.
- 2.3 Prior to Commencement of Development to submit to the Council for approval evidence of the formation of a Management Company for the purpose of managing and maintaining the Open Space and the SUDS.
- 2.4 Not to permit or allow the Commencement of Development until the Council has approved the Management Company in writing.

- 2.5 Not to permit or allow the Occupation of more than 50% of the Dwellings until any Open Space to be located has been provided and/or constructed (as appropriate) in complete accordance with the approved Open Space Works Specification.
- 2.6 Upon completion of the laying out of the Open Space in accordance with the approved Open Space Works Specification to notify the Council of completion and to request that the Council inspects the Open Space within thirty (30) working days of such notification.
- 2.7 If upon inspection of the Open Space the Council identifies any works which are necessary to bring the Open Space up to the standard required by the approved Open Space Works Specification to complete such works as soon as reasonably practicable.
- 2.8 To maintain the Open Space at the Owner's expense in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 2.9 below has been completed.
- 2.9 Not to permit the Occupation of more than 75% of the Dwellings that form part of the Development until the Open Space has been transferred to the Management Company in accordance with the details approved by the Council under the approved Management Plan and on the terms set out in Schedule 4.
- 2.10 To procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the approved Management Company:
- (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the Open Space in accordance with the approved Management Plan; and
  - (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 2.10 (i) and 2.10 (ii) of Schedule 2.
- 2.11 Not to amend the approved Management Plan without the Council's written consent.

- 2.12 Not to wind up the approved Management Company or alter its constitution without the prior written consent of the Council unless the whole of the Development shall have been demolished or unless the Council have otherwise first agreed in writing.
- 3. The SUDS**
- 3.1 Prior to the Commencement of Development to submit to the Council for approval the SUDS Scheme.
- 3.2 Not to permit or allow the Commencement of Development until the Council has approved the SUDS Scheme in writing.
- 3.3 To implement the approved SUDS Scheme in accordance with the timescales set out therein.
- 3.4 Upon the completion of the laying out of the SUDS in accordance with the approved SUDS Scheme to notify the Council of completion and to request that the Council inspects the SUDS within thirty (30) working days of such request.
- 3.5 If upon inspection of the SUDS the Council identifies any works which are necessary to bring the SUDS up to the standard required by the approved SUDS Scheme to complete such works as soon as reasonably practicable.
- 3.6 To maintain the SUDS in accordance with the approved Management Plan until the date upon which the transfer described in paragraph 3.7 below has been completed.
- 3.7 Not to permit the Occupation of more than 95% of the Dwellings that form part of the Development until the SUDS have been transferred to the approved Management Company in accordance with the details approved by the Council under the approved Management Plan and on the terms set out in Schedule 4.
- 3.8 To procure that the buyer of each Dwelling comprised in the Development enters into the following covenants direct with the approved Management Company:



- (i) to pay to the Management Company a fair and reasonable proportion of the costs and expenses incurred by the Management Company in respect of its administration and of insuring and maintaining repairing and as necessary renewing the SUDS in accordance with the approved Management Plan; and
- (ii) that upon any subsequent sale of such Dwelling he will procure that the incoming buyer shall enter into direct covenants with the Management Company in the form of paragraphs 3.8 (i) and 3.8 (ii) of Schedule 2.

#### **4. Affordable housing**

- 4.1 Concurrent with the submission of the Reserved Matter Application to submit to the Council for approval the Affordable Housing Scheme.
- 4.2 Not to permit or allow the Commencement of Development until the Affordable Housing Scheme has been agreed in writing by the Council.
- 4.3 No more than 50% of the Market Housing Units shall be Occupied until written notice has been given to the Council that 50% of the Affordable Housing Units have:
  - 4.3.1 been constructed in accordance with the Planning Permission;
  - 4.3.2 been made ready for residential occupation;
  - 4.3.3 been transferred to the Registered Provider.
- 4.4 No more than 80% of the Market Housing Units shall be Occupied until written notice has been given to the Council that all of the Affordable Housing Units have:
  - 4.4.1 been constructed in accordance with the Planning Permission;
  - 4.4.2 been made ready for residential occupation;
  - 4.4.3 been transferred to the Registered Provider.
- 4.5 The transfer of the Affordable Housing Units referred to at paragraphs 4.3.3 and 4.4.3 above shall include the following:
  - 4.5.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Land;

- 4.5.2 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 Land, all such services to be connected to the mains; and
- 4.5.3 a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development.
- 4.6 From the Date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing in accordance with the this deed and the approved Affordable Housing Scheme, save that this obligation shall not be binding on:
- 4.6.1 any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant, or any successor in title to a Protected Tenant and their respective mortgagees and chargees, or
- 4.6.2 any Chargee provided that he has first complied with the Chargee's Duty, or
- 4.6.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 4.7 The Chargee shall, before seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge, give not less than three months' prior notice to the Council of its intention to dispose, and the following provisions shall apply, provided that the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage :
- 4.7.1 if the Council responds within two months from receipt of the Chargee's notice and indicates that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing, the Chargee shall co-operate with those arrangements and use its reasonable endeavours to secure the transfer 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 and costs
- 4.7.2 If the Council or any other person cannot within three months of the date of service of its response under paragraph 4.7.1 secure the transfer then, provided that the Chargee has complied with its obligations under paragraph 4.7.1, the Chargee shall be entitled to

dispose of the Affordable Housing Units free of the restrictions set out in this paragraph 4 which shall then cease to apply to those units.

4.7.3 If the Council does not serve its response to the Chargee's notice within two months, the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this paragraph 4 which shall then cease to apply to those units.

4.8 Following Commencement of Development to construct the Affordable Housing Units in accordance with the Planning Permission and the Department for Communities and Local Government Housing Standards Technical Guidance (March 2015).

4.9 To procure a covenant in the transfer(s) of the Affordable Housing Units that the Registered Provider will enter into a deed of nomination rights with the Council substantially in the form contained in Schedule 6 (such deed of nomination to be completed by the Council and the Registered Provider within one (1) month of the date of the transfer of the Affordable Housing Units) and covenants from the Registered Provider substantially in the form set out in the remainder of this Schedule. The deed of nomination rights shall be subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of this deed are met.

4.10 If a Registered Provider cannot be found for the transfer of any of the Affordable Housing Units within six (6) months from the date of Practical Completion of the Affordable Housing Units despite the Owner's reasonable endeavours to do so the Owner may provide notification to the Council that demand from the Registered Provider has not been forthcoming for a Reasonable Consideration.

4.11 If the Council is satisfied following the service of the notice pursuant to paragraph 4.10 above that a Registered Provider cannot be found for the transfer of any of the Affordable Housing Units despite the Owner's reasonable endeavours to do so for a Reasonable Consideration the Owner shall upon written confirmation from the Council be permitted to sell the Affordable Housing Units on the open market and the Owner shall pay an Affordable Housing commuted sum to the Council within two (2) months of receipt of written confirmation (such sum to be calculated in accordance with the Council's policies as are applicable at the time of calculation) ("the Affordable



Housing Commuted Sum") In lieu of the provision of Affordable Housing on the Site and shall be permitted to sell the Affordable Housing Units on the open market.

- 4.12 Upon the payment of the Affordable Housing Commuted Sum the provisions of paragraph 4 of Schedule 2 shall no longer be applicable in respect of those Dwellings that were the Affordable Housing Units and the Owner shall be free to dispose of the Affordable Housing Units as Market Housing Units free from the provisions of paragraph 4 of Schedule 2.

## SCHEDULE 3

### The Owner's Covenants to the County Council

#### **1. Progress of development**

The Owner shall notify the County Council:

- 1.1 upon the Commencement of Development, and
- 1.2 prior to first Occupation of any part of the Development, and
- 1.3 prior to first Occupation of 50% of the Dwellings in the Development, and
- 1.4 prior to the first Occupation of 80% of the Dwellings in the Development.

#### **2. Footpath Contribution**

- 2.1 The Owner shall pay the Footpath Contribution to the County Council prior to the first Occupation of any Dwelling.
  
- 2.2 The Owner shall not Occupy nor permit the first Occupation of any Dwelling until the Footpath Contribution has been paid to the County Council.

#### **3. Travel Plan**

- 3.1 The Owner shall submit the Interim Travel Plan to the County Council for written approval by the County Council prior to the Commencement of Development.
- 3.2 The Owner shall not Commence Development or permit the Commencement of Development until the Interim Travel Plan has been submitted to and approved in writing by the County Council.
- 3.3 The Owner shall implement the Interim Travel Plan as approved by the County Council in full in accordance with the timescale set out therein.
- 3.4 The Owner shall submit a draft Resident Travel Pack to the County Council for written approval by the County Council no less than three months prior to the Occupation of the first (1st) Dwelling.
- 3.5 The Owner shall not Occupy or permit the Occupation of any Dwelling until the draft Resident Travel Pack has been submitted to and approved in writing by the County Council.

- 3.6 The Owner shall provide a Resident Travel Pack as approved by the County Council to each Dwelling forming part of the Development within three (3) months of the first Occupation of each Dwelling.
- 3.7 The Owner shall submit the Full Travel Plan to the County Council for written approval by the County Council prior to the first Occupation of the one hundredth (100th) Dwelling.
- 3.8 The Owner shall not Occupy or permit the Occupation of more than ninety-nine (99) Dwellings until the Full Travel Plan has been submitted to and approved in writing by the County Council.
- 3.9 The Owner shall implement the Full Travel Plan as approved by the County Council in accordance with the timescale set out therein.
- 3.10 The Owner shall submit to the County Council the Full Travel Plan Monitoring Report on an annual basis for a minimum of 5 (five) years following the date of the first implementation of the Full Travel Plan or until one year after the first occupation of the final Dwelling (whichever is longer).
- 3.11 The Owner shall appoint the Travel Plan Coordinator no less than three (3) months prior to the Occupation of the first (1st) Dwelling.
- 3.12 The Owner shall carry out the measures and/or actions specified in the Travel Plan Remedial Measures Notice served by the County Council on the Owner within 28 days of the date of service of the Travel Plan Remedial Measures Notice.

#### **4. Early Years Land**

- 4.1 The Owner shall notify the County Council in writing not less than six (6) months prior to the proposed submission of the Reserved Matters Application.
- 4.2 If the County Council notifies the Owner within three months of the date of the notice pursuant to paragraph 4.1 above that the County Council requires the Early Years Land to be transferred to the County Council for the Early Years Facility the Owner shall transfer the Early Years Land to the County Council or a body nominated by the County Council within six (6) months of the Commencement of Development.
- 4.3 If the County Council does not notify the Owner within three months of the date of the notice pursuant to paragraph 4.1 that it requires the Early Years Land to be transferred to the County Council for the purposes of the Early Years Facility the obligation to transfer the Early Years Land to



the County Council pursuant to paragraph 4.2 shall cease to exist and the Early Years Land may form part of the Reserved Matter Application for the Development.

- 4.4 Any transfer of the Early Years Land to the County Council or a body nominated by the County Council pursuant to paragraph 4.2 shall be subject to the terms set out in Schedule 5 hereto.

## **5. Early Years Contribution**

- 5.1 In the event that the County Council serves notice pursuant to paragraph 4.2 above that it requires the Early Years Land to be transferred to the County Council or a body nominated by the County Council the Owner shall pay the Early Years Contribution to the County Council in the following instalments and the obligation to pay the Revised Early Years Contribution pursuant to paragraph 5.5 shall cease to apply:

- 5.1.1 35% prior to the first Occupation of the Dwellings, and
- 5.1.2 35% prior to the first Occupation of 50% of the Dwellings, and
- 5.1.3 the balance of 30% prior to the first Occupation of 80% of the Dwellings.

- 5.2 In the event that paragraph 5.1 applies the Owner shall not Occupy nor permit the first Occupation of the Dwellings until the payment referred to at paragraph 5.1.1 above has been made.

- 5.3 In the event that paragraph 5.1 applies the Owner shall not Occupy nor permit the first Occupation of 50% of the Dwellings until the payment referred to at paragraph 5.1.2 above has been made.

- 5.4 In the event that paragraph 5.1 applies the Owner shall not Occupy nor permit the first Occupation of 80% of the Dwellings until the payment referred to at paragraph 5.1.3 above has been made.

- 5.5 In the event that the County Council notifies the Owner pursuant to paragraph 4.2 above that it does not require the transfer of the Early Years Land to the County Council or a body nominated by the County Council or fails to respond to the notice served by the Owner pursuant to

paragraph 4.1 above within three months of the service of the notice the Owner shall pay to the County Council the Revised Early Years Contribution in the following instalments and the obligation to pay the Early Years Contribution pursuant to paragraph 5.1 shall cease to apply:

5.5.1 35% prior to the first Occupation of the Development; and

5.5.2 35% prior to the first Occupation of 50% of the Dwellings; and

5.5.3 the balance of 30% prior to the first Occupation of 80% of the Dwellings

- 5.6 In the event that paragraph 5.5 applies the Owner shall not occupy nor permit the first Occupation of the Development until the payment referred to at paragraph 5.5.1 above has been made.
- 5.7 In the event that paragraph 5.5 applies the Owner shall not Occupy nor permit the first Occupation of 50% of the Dwellings until the payment referred to at paragraph 5.5.2 above has been made.
- 5.8 In the event that paragraph 5.5 applies the Owner shall not Occupy nor permit the first Occupation of 80% of the Dwellings until the payment referred to at paragraph 5.5.3 above has been made.

## SCHEDULE 4

### Provisions relating to the transfer of the Open Space and the SUDS

The transfer of the Open Space and the SUDS to the Management Company shall:

- i. be a transfer of the entire freehold interest of the Open Space and the SUDS
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. be free from any lease, licence or any other third party interests
- v. be subject to a covenant which prohibits the use of the Open Space for any purpose other than for public recreation and amenity
- vi. include all usual and necessary rights of way with or without vehicles for the benefit of the Open Space and the SUDS
- vii. reserve in favour of the Owner any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the Open Space and the SUDS
- viii. reserve in favour of the Owner the right to lay and use new services subject to the prior written agreement of the Council together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- ix. declare that boundary structures shall belong to and be maintained by the owners of the Dwellings which adjoin the Open Space or the SUDS
- x. not require consideration in excess of one pound (£1)
- xi. contain a covenant for the benefit of the Council to manage and maintain the Open Space and the SUDS in accordance with the approved Management Plan



## SCHEDULE 5

### Provisions relating to the transfer of the Early Years Land

The transfer of the Early Years Land to the County Council or their nominee shall:

- i. be a transfer of the entire freehold interest of the Early Years Land
- ii. be free from any pre-emption or option agreement
- iii. be free from any mortgage, charge, lien or other such incumbrance
- iv. be free from any lease, licence or any other third party interests
- v. be subject to a covenant which prohibits the use of the Early Years Land for any purpose other than the provision of facilities for the education and/or care of children between the ages of 0 to 4 (both inclusive) and associated ancillary uses
- vi. include all usual and necessary rights of way with or without vehicles for the benefit of the Early Years Land
- vii. include all necessary rights to use and connect into any service media located within any of the Owners adjoining land at the time of the transfer or installed in the future for the benefit of the Early Years Land
- viii. reserve in favour of the Owner any usual and necessary rights and easements to enable the proper construction, maintenance and use of the Development and to use existing services in so far as they are necessary based upon the final approved layout of the Development and location of the Early Years Land
- ix. reserve in favour of the Owner the right to lay and use new services subject to the prior written agreement of the Council together with any rights of entry to inspect, repair, renew, cleanse and maintain the same
- x. declare that boundary structures shall belong to and be maintained by the owners of the Dwellings which adjoin the Early Years Land
- xi. not require consideration in excess of one pound (£ 1)

SCHEDULE 6

DRAFT AFFORDABLE HOUSING NOMINATION AGREEMENT FOR RENTED AND SHARED OWNERSHIP DWELLINGS

THIS DEED OF NOMINATION RIGHTS is made the \_\_\_\_\_ day of \_\_\_\_\_ 2019

**BETWEEN:**

(1) **Insert name of Registered Provider** (Registered Society Number: xxxxx) whose registered address is at (xxxxxxxxxxxxxxxx) ('the Registered Provider') and

(2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ('the District Council')

**1. Definitions**

In this Deed:

1.1 'Affordable Housing' means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market,

1.2 'Affordable Housing Units' means the fifty-three (53) Dwellings all of which shall be Affordable Housing to be provided on the Property of which fifteen (15) dwellings shall be Shared Ownership (unless otherwise agreed in writing with the Council) and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and thirty-eight (38) Dwellings shall be Rented Dwellings to be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or otherwise nominated by the

District Council pursuant to this deed of nomination rights as varied from time to time and Affordable Housing Units shall be construed accordingly

1.3 'Affordable Rent' means housing made available by a Registered Provider as low-cost rent 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 any service charges applicable

1.4 'Chargee' means any mortgagee or chargee of the Registered Provider (or any receiver (including any administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator)

1.5 'Chargee's Duties' means the tasks and duties set out in Clause 12.4 of this deed.

1.6 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings system

1.7 "the Service Level Agreement" means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the Registered Provider and Others (1) and the District Council and Others (2)

1.8 'Help to Buy' means the system operated by the regional Help to Buy Agent responsible for advertising and finding purchasers for Shared Ownership Dwellings

1.9 'Help to Buy Agent' means Bedfordshire Pilgrims Housing Association (BPHA) or such other agent that may be appointed by the Homes England from time to time

1.10 "Initial Sale" means the first sale of the newly constructed and previously unoccupied Affordable Housing Unit by the Registered Provider by way of a Shared Ownership Lease

1.11 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit

1.12 'Local Connection Criteria' means an individual who immediately before taking up occupation of an Affordable Housing Unit



1.12.1 had his only or principal home in the district of Babergh for a continuous period of not less than 2 years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.12.2 to 1.12.4 inclusive

1.12.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than 2 years in the district of Babergh and wishes to be near that relative or

1.12.3 is employed in the district of Babergh on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for 2 years

1.12.4 who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called the "Availability Date") can provide satisfactory written evidence to the District Council of his or her former residency in the district of Babergh for either (i) six months out of the preceding twelve months or (ii) three years out of the preceding five years and in either case such period of former residency shall end with the Availability Date

1.14 'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Service Level Agreement

1.15 'Nominee' means a person named on the Nomination List who satisfies the Local Connection Criteria and is verified by the District Council as best meeting the criteria for the category of Affordable Housing Unit in respect of which the Registered Provider is to select a person from the Nomination List and offer a Tenancy Agreement

1.16 'Practical Completion' means issue of a certificate of practical completion by the Registered Provider's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the Registered Provider the issue of a certificate of practical completion by that other party's surveyor

1.17 'Property' means the land and dwellings on land East of Station Road, Long Melford, Suffolk shown edged red on the plan annexed

1.18 'Protected Tenant' means any Nominee who 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

1.19 'Rented Dwelling' means 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

1.20 'Shared Ownership Dwelling' means an Affordable Dwelling to be let on a Shared Ownership Lease in accordance with the terms as set out in Homes England's capital funding guide or any other such guidance as shall replace it

1.21 'Shared Ownership Lease' means a lease or sub-lease of an Affordable Dwelling granted at a premium whereby up to 70% of the Open Market Value on first purchase of the legal and equitable interest in the Affordable Dwelling is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% of the legal and equitable interest in the Affordable Dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the

equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease or such other figure permitted by Homes England from time to time.

1.23 "Shared Ownership lessee" means the lessee for the time being of a Shared Ownership Lease

1.24 'Tenancy Agreement' means an assured tenancy agreement in a form prepared by the Registered Provider and containing terms which accord with the form of tenancy agreement being used by the Registered Provider from time to time for its general lettings

1.25 'Vacancy Notice' means a written notice (in a form to be agreed between the Registered Provider and given by the Registered Provider to the District Council within five (5) weeks from the date of this Deed) the function of such notice being the notification to the District Council by the Registered Provider of the expected date on which the construction and fitting out of the Affordable Housing Units will be complete

1.26 'Void' means an Affordable Housing Unit which is vacant otherwise than as a result of the tenant having:

1.26.1 moved to other accommodation either by transfer or decant provided by the Registered Provider

1.26.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider

1.26.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere

1.27 'Void Notice' means a written notice given by the Registered Provider to the District Council (in a form to be agreed between the Registered Provider and the District Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the District Council of a Void



## **2 Enabling Provisions**

This Deed is made pursuant to the Local Government Act 1972 Section 111 and all other enabling powers

## **3 Procedure**

The parties agree that the Service Level Agreement procedure to which they are signatories and the Local Connection Criteria shall apply to the nomination of persons in respect of the Rented and Shared Ownership Dwellings

### **3.1 Initial Lets**

The Association hereby grants the Council Nomination rights for 100% of the Initial Lets and thereafter 75% for Voids in relation to the Rented Dwellings. In relation to the Initial Lets of the Rented Dwellings the following provisions shall apply

3.1.1 The Registered Provider shall give the District Council not less than four (4) months' written notice of the date when a Rented Dwelling will be ready for occupation

3.1.2 The Registered Provider shall serve a Vacancy Notice upon the District Council in respect of a Rented Dwelling not earlier than ten (10) weeks prior to a Rented Dwelling becoming available for occupation

### **3.2 Voids**

Should any Affordable Housing Unit become a Void after the Initial Let or the Registered Provider has reasonable cause to believe it will become a Void then and in each case the Gateway to Homechoice SLA procedure shall apply.

#### **4. Supplemental provisions relating to allocating Initial Lets and Voids**

4.1 Where there are two or more applicants applying to occupy one of the Rented Dwellings the Local Connection Criteria set out in clause of this Schedule 1.12.2 to 1.12.4 and subject to clause 4.2 of this Schedule preference must be given to the applicant/s who have the highest housing need according to Babergh District Council's current allocations policy

4.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities then any such Dwelling may be first offered to a person or persons with disabilities who require such accommodation even where such person(s) have a lesser Local Connection under clauses 1.12.1 to 1.12.4 of this Schedule than someone who does not have disabilities

#### **5 Initial Sale**

5.1 In relation to the Initial Sales of the Shared Ownership Dwellings the following provisions shall apply: -

5.1.1 The Registered Provider shall give the Council no less than four (4) months' written notice of the date when all the Affordable Housing Units will be ready for occupation

5.1.2 The Registered Provider shall serve a notice upon the Council in respect of an Affordable Housing Unit not earlier than four (4) months prior to a Shared Ownership Dwelling becoming available for occupation

5.1.3 The Registered Provider will upload onto the Help to Buy Agent's website details of the Shared Ownership Dwelling and advertise that the Shared Ownership Dwelling is for sale on the basis of a Shared Ownership Lease.

## **6. Re-Sales**

Should any Shared Ownership Dwellings become available for re-sale after the Initial Sale the Registered Provider agrees that when the Shared Ownership Lessee approaches the Registered Provider for a request to nominate a purchaser pursuant to the Shared Ownership Lease then the Registered Provider will follow the re-sale procedure as set out by Homes England and the Help to Buy agent or any subsequent regulatory body

## **7. Registered Provider covenants**

The Registered Provider covenants with the District Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies

7.1 To ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units

7.2 To ensure that the Rented Units are let on the basis of a Tenancy Agreement at an Affordable Rent and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider and

7.3 in accordance with current Homes England requirements

## **8. Alteration of lists**

The District Council and the Registered Provider agree that the nomination rights contained in this Deed may be varied from time to time by agreement in writing by the parties

## **9. Notices**

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any



notice shall be deemed to have been served two (2) working days after posting or in the case of electronic mailing the day such notice was transmitted by the party serving the notice

#### **10 Transfer to other Registered Provider**

The Registered Provider shall use reasonable endeavours to ensure that any Registered Provider to which the Property and Affordable Housing Units erected thereon are transferred otherwise than by direction of the Homes England under its statutory powers shall enter into a similar Deed mutatis mutandis with the District Council (and Gateway to Homechoice in respect of Rented Dwellings) simultaneously on completing the transfer of the Property

#### **11 Disputes**

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party

#### **12 Agreements and declarations**

The parties agree:

12.1 Nothing in this Deed fetters or restricts the exercise by the District Council of any of its powers

12.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33

12.3 From the date of Practical Completion the Affordable Housing Units shall be let in accordance with the terms of this deed save that the obligations and restrictions contained in this deed shall not be binding on:

12.3.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or

12.3.2 any Chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or

12.3.3 any mortgagee and any purchaser from a mortgagee of an individual Shared Ownership Unit pursuant to any default by the individual mortgagor and any successor in title to either of them

12.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge or other powers give not less than three (3) months' prior notice to the District Council of its intention to dispose and:

12.4.1 in the event that the District Council responds within two (2) months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee being an amount sufficient to repay the amount outstanding under the mortgage plus all interest and reasonable costs

12.4.2 if the District Council does not serve its response to the notice within the said period of two (2) months contained in clause 12.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this deed.

12.4.3 if the District Council or any other person cannot within three (3) months of the date of service of its response under clause 12.4.1 secure such

transfer then provided that the Chargee shall have complied with its obligations under clause 12.4 the Chargee shall be entitled to dispose free of the restrictions set out in this deed PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

AS WITNESS whereof the parties have executed this Instrument as a Deed hereto the day and year first above written



THE COMMON SEAL OF )  
BABERGH DISTRICT COUNCIL )  
was affixed in the presence of: )

Authorised Officer

EXECUTED AS A DEED by  
affixing the Common Seal of  
REGISTERED PROVIDER XXXXX  
in the presence of: -

.....  
**Authorised Signatory**

.....  
**Authorised Signatory**