

DATE 25 July 2019

**(1) WEST SUFFOLK COUNCIL**

**(2) SUFFOLK COUNTY COUNCIL**

**(3) BARLEY HOMES (GROUP) LIMITED**

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

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relating to

**Land at Manor Road Haverhill Suffolk**

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

DATE

25 July

2019

**PARTIES:**

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **BARLEY HOMES (GROUP) LIMITED** (company registration number 07378884) whose registered office is at West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Owner**")

**INTRODUCTION**

- A The Council is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- B The County Council is the local highway authority (except for trunk roads) the local education authority the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- C The Owner is the freehold owner of the Site which is registered at HM Land Registry under title numbers SK10369 SK271860 and SK23991
- D The Owner has submitted the Application and the Council has resolved to grant planning permission for the Development pursuant to the Application subject to the prior completion of this Deed intended to regulate the Development and to secure the planning obligations contained in this Deed
- E The Council and the County Council enter into this Deed to the intent that the requirements of the Council's and the County Council's policies are met and that any objections by the Council or the County Council to the grant of planning permission on the basis of those policies are overcome

- F The Council and the County Council consider and the Owner acknowledges that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed
- G The Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)
- H The Council and County Council (as appropriate) confirm that in relation to any 'relevant infrastructure' (as defined by Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended)) which is provided for or funded by this Deed since 6 April 2010 no more than four obligations pursuant to Section 106 of the Act have been entered into which provide for any such infrastructure project or type of infrastructure

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

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

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market
"Affordable Housing Contribution"	eleven thousand eight hundred and fifty pounds (£11,850.00) BCIS Indexed
"Affordable Housing Units"	eight (8) Dwellings to be Affordable Rent and three (3) Dwellings to be Intermediate Housing unless otherwise agreed with the Council
"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 and also at a level that does not exceed local

housing allowance rate

"Application"

the full application for planning permission to develop the Site in accordance with the application bearing the Council's reference number DC/18/2299/FUL

"BCIS Index"

the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto

"BCIS Indexed"

the increase in any sum referred to in the Second Schedule and the Third Schedule by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 10 of this Deed

"Chargee"

any mortgagee or chargee of the Registered Provider or the owner of the Affordable Housing Units or any receiver or manager (including 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 (however appointed) including a housing administrator

"Commencement of Development"

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance demolition works archaeological investigations investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions diversion and lay of services erection of any temporary means of enclosure the temporary display of site notices or advertisements and

	"Commenced" and "Commence Development" shall be construed accordingly
"Completion of Development"	the date that the last Dwelling is first Occupied
"Development"	the development of the Site in accordance with the Planning Permission
"Dwelling"	a dwelling (including a house flat or bungalow and including both Open Market Dwellings and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwelling" and "Dwellings" shall be construed accordingly
"Intermediate Housing"	Affordable Housing Units for sale and rent provided at a cost above social rent but below market levels which meet the definition of Affordable Housing and may include Shared Ownership and equity products other low cost homes for sale and intermediate rent but not Affordable Rent
"Late Payment Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
"Library Contribution"	five hundred and ninety-two pounds (£592.00) BCIS Indexed
"Nomination Agreement"	a deed of agreement dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the related Affordable Housing Units substantially in the form of the draft in the Sixth Schedule

"Occupation"	occupation 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 and "Occupied and "Occupy" shall be construed accordingly
"Open Market Dwellings"	those Dwellings that are not Affordable Housing Units
"Payee"	the original payee of any financial contributions required under this Deed
"Planning Permission"	the full planning permission subject to conditions as may be granted by the Council pursuant to the Application or a subsequent planning permission for the Development granted pursuant to Section 73 or the Act
"Primary School Contribution"	seventy-three thousand and eighty-six pounds (£73,086.00) BCIS Indexed
"Protected Tenant"	any tenant who has: <ul style="list-style-type: none"> <li>(a) has exercised the right to acquire pursuant to the Housing Act 1996 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 (as defined in the Second Schedule)</li> <li>(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit</li> </ul>
"Public Open Space"	areas of the Site that are to be laid out in accordance with the Councils Supplementary Planning Document for Open Space Sport and Recreation Facilities October 2011 and the Planning Permission and which are to be provided for use by the public in perpetuity

"Public Open Space Commuted Sum"	twenty-two thousand nine hundred and nine pounds (22,909.00) BCIS Indexed
"Public Open Space Contribution"	thirty-three thousand pounds (£33,000.00) BCIS Indexed
"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 RSH under Chapter 3 of that Act and approved by the Council
"Rental Dwelling"	an Affordable Housing Unit which is to be let at an Affordable Rent and / or Social 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
"RSH"	the Regulator of Social Housing whose registered office is Level 1A City Tower Piccadilly Plaza Manchester M1 4BT or any statutory successor thereof or other government body with the function of regulating social housing development
"Secondary School Contribution"	seventy-four thousand nine hundred and seventy-two pounds (£74,972.00) BCIS Indexed
"Shared Ownership"	where the purchaser buys an initial share in the property from the housing provider who retains the remainder and may charge a rent with the purchaser being able to purchase additional shares (staircasing)
"Shared Ownership Lease"	a lease of a Shared Ownership Dwelling substantially in the form of the RSH model shared ownership lease
"Site"	the land described in the First Schedule against which this Deed may be enforced and as shown edged red for identification purposes only on the Site Plan

"Site Plan"	the plan marked "Site Plan" attached to this Deed
"Social Rent"	Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008) for which guideline target rents are determined through the national rent regime and it may also be owned by other persons and provided under equivalent rental arrangements to the above as agreed with the Council or with the RSH
"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
"Working Days"	Monday to Friday (inclusive) except Good Friday Christmas Day and public or bank holidays from time to time in England

**2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause sub-clause schedule paragraph sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause schedule paragraph sub-paragraph or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.4 Wherever 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 shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions



and directions for the time being made issued or given under that Act or deriving validity from it

- 2.6 References to any party to this Deed shall include the successors in title to that party the personal representatives of that party and any party deriving title through or under that party and in the case of the Council and or the County Council the successors to their respective statutory functions
- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document
- 2.8 References to a "Site Plan" in this Deed shall be references to the plans attached to this Deed bearing the relevant plan number or any amended plans as shall be agreed between the Owner the Council and the County Council
- 2.9 The obligations in this Deed shall not be enforceable SAVE in respect of part 1 of the Second Schedule dealing with Affordable Housing against:
- 2.9.1 any individual person who is the owner and/or an occupier for residential purposes of a Dwelling or any mortgagee of such a Dwelling
- 2.9.2 any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services
- 2.9.3 any person to whom the Registered Provider grants a Shared Ownership Lease or any successor in title to any such person and who has acquired all of the beneficial interest in their Dwelling
- 2.9.4 a tenant exercising any right to acquire under a purchase grant scheme or right to buy or similar right conferred by statute or any successor in title to such person
- 2.9.5 any mortgagee of a tenant or person to whom the Registered Provider has granted a Shared Ownership Lease or any receiver appointed by such mortgagee or any person deriving title through any such mortgage or receiver

2.10 The Affordable Housing obligations within the Second Schedule shall not be binding on:

2.10.1 a Protected Tenant

2.10.2 a 100% Staircaser

2.10.3 a mortgagee of a Shared Ownership Lease or shared equity lease lawfully exercising the mortgage protection provision within that lease

2.10.4 a Chargee of the whole or any part of the Affordable Housing Units or any persons deriving title through such mortgagee or Chargee or receiver PROVIDED THAT:

2.10.4.1 such mortgagee or Chargee or receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units 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 Housing Units 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 and costs and expenses and

2.10.4.2 if such disposal has not completed within the three-month period the mortgagee, Chargee or receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations within the Second Schedule which provisions shall determine absolutely

2.10.5 any person or body deriving title through any of the parties referred to in clauses 2.10.1 to 2.10.4 above

2.11 The headings are for reference only and shall not affect construction

2.12 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

### **3. LEGAL BASIS**

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

#### **4. CONDITIONALITY**

- 4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission and

4.1.2 the Commencement of Development

SAVE FOR the provisions of this clause and clauses 7.3 7.4 7.6 7.10 9 12 13 14 18 and 19 (related to legal costs change in ownership right of entry dispute resolution jurisdiction and delivery) and any other relevant provisions which shall come into effect immediately upon completion of this Deed

- 4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings

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

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

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

4.3.1 proceedings by way of judicial review are concluded:

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

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

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

4.3.2 proceedings under Section 288 of the Act are concluded:

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

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

## **5. THE OWNERS' COVENANTS**

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

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

## **6. THE COUNCIL'S AND THE COUNTY COUNCIL'S COVENANTS**

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

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

## **7. MISCELLANEOUS**

7.1 The Owner shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests either of the Council and or the County Council and their duly authorised officers or agents to have

- access to any part or all of the Site or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein
- 7.2 The Owner agrees declares and covenants both with the Council and the County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this agreement and further shall indemnify the Council and the County Council for any expenses or liability arising to the Council and the County Council in respect of breach by the Owner or any obligation contained herein save to the extent that any act or omission of the Council and the County Council its employees or agents has caused or contributed to such expenses or liability
- 7.3 The Owner agrees declares and covenants to pay to the Council on completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.4 The Owner agrees declares and covenants to pay to the County Council the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.5 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.6 This Deed shall be registered as a local land charge by the Council
- 7.7 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owner from either the Council or County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Growth or officer acting under his/her hand and on behalf of the County Council by the Interim Director of Growth Highways and Infrastructure or duly appointed successor or officer acting under his/her hand
- 7.8 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed

- 7.9 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.10 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 expires by effluxion of time for the Commencement of the Development or is modified SAVE FOR modification in a permission granted pursuant to Section 73 of the Act (without the consent of the Owner) and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed
- 7.11 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it
- 7.12 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
- 7.13 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 7.14 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to either the Council or the County Council
- 7.15 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority
- 7.16 The Owner covenants and warrants to the Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the

Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein

**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 agrees with the Council and the County Council to give each of them independently written notice of any transfer in ownership of any of any freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like

**10. INDEXATION**

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

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

**11. INTEREST**

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

**12. VAT**

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

**13. NOTICES**

13.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 13.2

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

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

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

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



- 13.4.1 Commencement of Development
- 13.4.2 Occupation of the first (1st) Dwelling
- 13.4.3 Occupation of the ninth (9<sup>th</sup>) Dwelling
- 13.4.4 Completion of Development

#### **14. DISPUTE RESOLUTION**

- 14.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) which cannot be resolved by prior agreement between the parties to the dispute ("the Dispute Parties") shall be referred to arbitration before a single Expert (the "Expert")
- 14.2 The Dispute Parties shall jointly appoint the Expert not later than twenty-eight (28) days after service of a request in writing by either Party to do so
- 14.3 If the Dispute Parties are unable to agree within twenty-eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the Dispute Parties as follows:
  - 14.3.1 if the difference or question relates to the rights and liabilities of any Dispute Party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society
  - 14.3.2 if the difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers
  - 14.3.3 if the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Dispute Parties but in default of agreement appointed at the request of any Dispute Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors or
  - 14.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Dispute Parties but in default of

agreement by or on behalf of the President for the time being of the Royal Town Planning Institute

- 14.4 In the event of a reference to arbitration the Dispute Parties agree to:
- 14.4.1 prosecute any such reference expeditiously and
  - 14.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable
- 14.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 14.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing
- 14.7 The award shall be final and binding both on the Dispute Parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be
- 14.8 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause but without prejudice to the rights and obligations of the Parties in relation to the termination of the Deed
- 14.9 The provisions of this clause shall not affect the ability of the Council or County Council to apply for and be granted any of the following; declaratory relief injunction specific performance payment of any sum damages and any other means of enforcing this Deed and consequential and interim orders and relief

## **15. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED**

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

**16. APPROVALS**

Where any details programmes plans strategies reports matters or materials are approved by the Council under the terms of this Deed further or amended details programmes plans strategies reports matters or materials may be submitted from time to time and if approved by the Council shall replace those previously approved

**17. COMMUNITY INFRASTRUCTURE LEVY**

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

**18. JURISDICTION**

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

**19. DELIVERY**

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

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

**THE COMMON SEAL OF** )  
**WEST SUFFOLK COUNCIL** )  
was affixed in the presence of: )



[Redacted signature]  
Authorised Officer

**THE COMMON SEAL OF**  
**SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:



)  
)  
)  
Authorized Officer



2405A



**SIGNED AS A DEED BY**  
**BARLEY HOMES (GROUP) LIMITED**

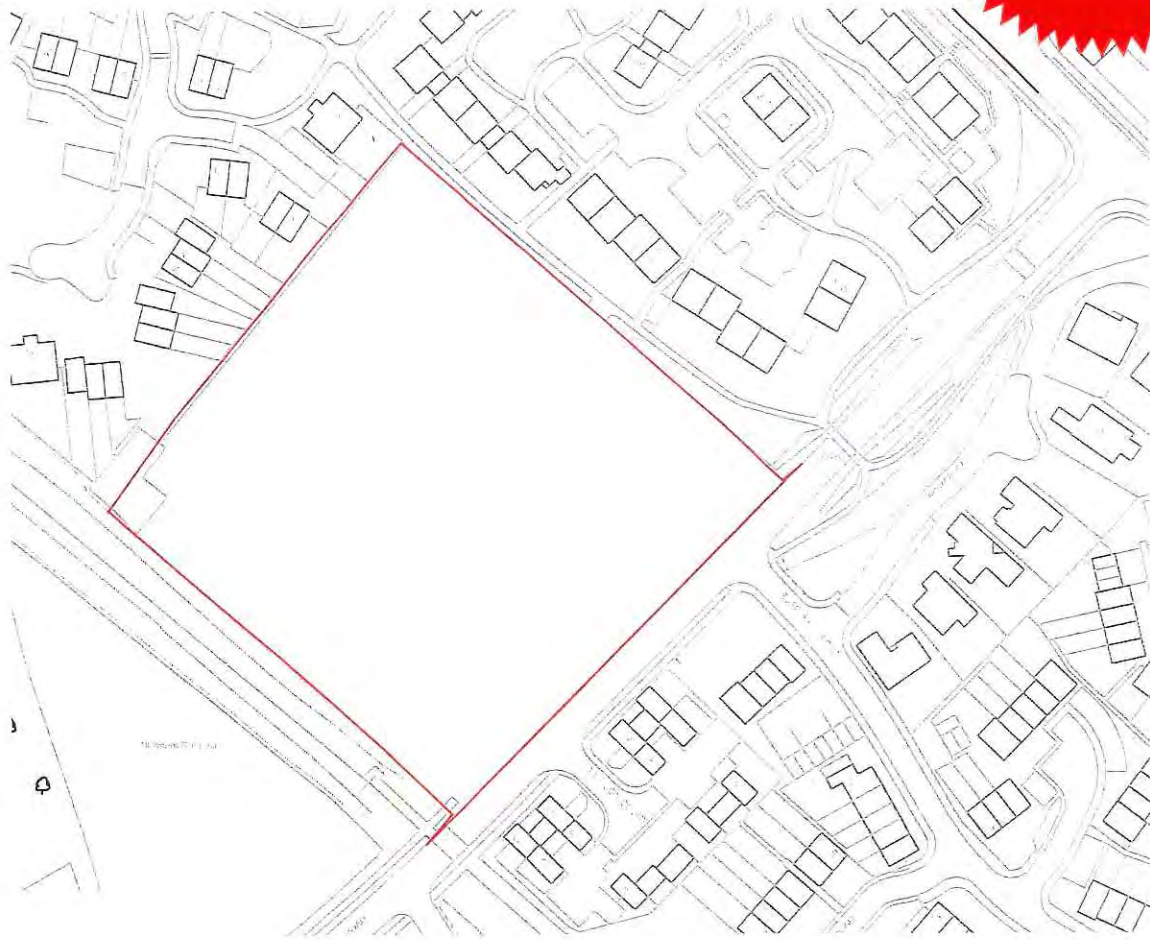
acting by a director in the presence of:



# FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Owners land forming part of land registered with the Land Registry under title numbers SK10369 SK271860 and SK23991

## SITE PLAN



## SECOND SCHEDULE

### THE OWNER COVENANTS WITH THE COUNCIL:

#### 1. AFFORDABLE HOUSING UNITS

- 1.1 To transfer all freehold or leasehold interest in the Affordable Housing Units to a Registered Provider and in relation to the Shared Ownership housing directly to an individual purchaser lessee or tenant prior to the Occupation of ten (10) Open Market Dwellings
- 1.2 Not to Occupy or permit Occupation of more than nine (9) Open Market Dwellings unless and until the Affordable Housing Units have been constructed and the Owner has transferred all freehold or leasehold interest in those Affordable Housing Units to a Registered Provider and in relation to the Shared Ownership housing directly to an individual purchaser lessee or tenant
- 1.3 To ensure the transfer referred to in Paragraph 1.1 of this Second Schedule to the Registered Provider and their successors in title will contain a covenant to enter into a Nomination Agreement with the Council for those Affordable Housing Units prior to Occupation of those Affordable Housing Units
- 1.4 To ensure the conditions on which the Affordable Housing Units shall be transferred shall include but not be limited to the following:
  - 1.4.1 to have good and marketable freehold title
  - 1.4.2 be remediated so that the land is fit for the proposed use
  - 1.4.3 be on terms that at the date of the transfer the following are (unless otherwise agreed by the Registered Provider) provided up to a point immediately adjacent to the boundary (where appropriate) of the Affordable Housing Units:
    - 1.4.3.1 an adoptable road constructed to base course and subject to an agreement under Section 38 of the Highways Act 1980
    - 1.4.3.2 adoptable public sewers and drains subject to an agreement under Section 104 of the Water Industry Act 1991
    - 1.4.3.3 gas water electricity telecommunications infrastructure with sufficient capacity to serve each Affordable Housing Unit and

1.4.3.4 such necessary rights as the Owner may reasonably require to be reserved

- 1.5 To ensure the Affordable Housing Units shall not be used for any purpose other than as Affordable Housing Units except in those cases where a lessee has acquired 100% ownership through 100% Staircasing
- 1.6 To pay the Affordable Housing Contribution to the Council prior to Occupation of ten (10) Open Market Dwellings
- 1.7 Not to Occupy or permit Occupation of more than nine (9) Open Market Dwellings unless and until the Affordable Housing Contribution has been paid to the Council

## **2. PUBLIC OPEN SPACE**

- 2.1 To complete the Public Open Space in accordance with the Planning Permission prior to the Occupation of thirty-five (35) Dwellings
- 2.2 Not to Occupy or permit Occupation of more than thirty-four (34) Dwellings unless and until the Public Open Space has been laid out in accordance with the Planning Permission
- 2.3 Upon completion of the Public Open Space to elect and inform the Council in writing to deal with the Public Open Space by one of the following options:
  - 2.3.1 to maintain the Public Open Space in accordance with the Planning Permission or
  - 2.3.2 to transfer the Public Open Space in accordance with the Planning Permission to either
    - 2.3.2.1 the Council or
    - 2.3.2.2 a management company
- 2.4 Not to Occupy or permit Occupation of more than twenty-five (25) Dwellings unless and until the Public Open Space has been transferred to either the Council or a management company together with any requisite rights of access to the Public Open Space both for use and for maintenance and rights for drainage if appropriate
- 2.5 If option 2.3.2.1 is elected then:
  - 2.5.1 To pay the Public Open Space Commuted Sum to the Council immediately upon completion of a transfer of Public Open

Space to the Council (this paragraph shall not apply to any transfer of the Public Open Space to a management company)

- 2.6 to pay the Public Open Space Contribution to the Council prior to Occupation of twenty (20) Dwellings
- 2.7 Not to Occupy or permit Occupation of more than nineteen (19) Dwellings unless and until the Public Open Space Contribution has been paid to the Council



## **THIRD SCHEDULE**

### **THE OWNER COVENANTS WITH THE COUNTY COUNCIL**

#### **1 LIBRARY CONTRIBUTION**

- 1.1 To pay to the County Council the Library Contribution prior to the first Occupation of the first (1st) Dwelling
- 1.2 Not to Occupy or permit Occupation of any Dwellings until the Library Contribution has been paid to the County Council

#### **2 PRIMARY AND SECONDARY SCHOOL CONTRIBUTIONS**

- 2.1 To pay to the County Council the Primary School Contribution and the Secondary School Contribution prior to Occupation of ten (10) Dwellings
- 2.2 Not to Occupy or permit Occupation of more than nine (9) Dwellings until the Primary School Contribution and the Secondary School Contribution have been paid to the County Council

## **FOURTH SCHEDULE**

### **THE COUNCIL COVENANTS WITH THE OWNER:**

#### **1. AFFORDABLE HOUSING CONTRIBUTION**

- 1.1 To use the Affordable Housing Contribution towards the provision of Affordable Housing within the district of West Suffolk Council
- 1.2 After the expiry of five (5) years from the date that the Affordable Housing Contribution was received to pay to the Payee such amount of the Affordable Housing Contribution which has not been committed or expended by the Council in accordance with the provisions of this Deed

#### **2. PUBLIC OPEN SPACE**

- 2.1 If received to use the POS Commuted Sum towards the future maintenance of the Public Open Space
- 2.2 To ensure any area of the Public Open Space that is transferred to the Council is retained for public use in perpetuity
- 2.3 To use the Public Open Space Contribution to improve the wider access provided by the adjacent railway walk
- 2.4 After the expiry of five (5) years from the date that the Public Open Space Contribution was received to pay to the Payee such amount of the Public Open Space Contribution which has not been committed or expended by the Council in accordance with the provisions of this Deed

## **FIFTH SCHEDULE**

### **THE COUNTY COUNCIL COVENANTS WITH THE OWNER:**

#### **1 LIBRARY CONTRIBUTION**

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

#### **2 PRIMARY AND SECONDARY SCHOOL CONTRIBUTIONS**

- 2.1 To use the Primary School Contribution for the improvement and enhancement (including increasing the pupil admission number) of primary school provision at the local catchment primary school and to use the Secondary School Contribution for the improvement and enhancement (including increasing the pupil admission number) of secondary school provision at the catchment secondary schools
- 2.2 If requested to do so in writing after the expiry of ten (10) years of the date that the Primary School Contribution or the Secondary School Contribution was paid within a further period of one (1) year to pay to any person such amount of the Primary School Contribution or the Secondary School Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT

if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable

- 2.3 When the Primary School Contribution and the Secondary School Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the payment of that sum within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

**SIXTH SCHEDULE**

**DRAFT NOMINATION AGREEMENT**

DATED \_\_\_\_\_ 2019

(1) WEST SUFFOLK COUNCIL

and

(2)

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**NOMINATION AGREEMENT**

relating to land to the  
in the County of Suffolk

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BETWEEN

- (1) **WEST SUFFOLK COUNCIL** of  
("the Council") and
- (2)  
("the Association")

WHEREBY IT IS AGREED as follows:-

1. Particulars

- 1.1 The Scheme: The construction works to be carried out to provide \*\* (\*\*\*) dwellings at Land
- 1.2 Dwellings: \*\* (\*\*\*) affordable dwellings erected pursuant to the Scheme
- 1.3 Affordable Rent: As defined in Annex 2 of the National Planning Policy Framework, with \*\* (\*\*\*) affordable rented dwellings erected pursuant to the Scheme (\*\*\*\*\*) to be owned and managed by the Association and provided to the Council for nomination rights
- 1.4 Shared Ownership : As defined in Annex 2 of the National Planning Policy Framework, with \*\* (\*) shared ownership dwellings (\*\*\*) to be erected pursuant to the scheme which are to be sold via the Homebuy Agent
- 1.5 Initial Lets : means the first tenancy of each newly constructed Dwelling
- 1.6 Initial Sale : Means initial sale by the Registered Provider of each newly constructed Shared Ownership Dwelling

- 1.7 Subsequent Sales : means the subsequent sale of a Shared Ownership Dwelling following initial sale
- 1.8 Help to Buy Agents : BPHA Limited, Bedford Heights, Manton Lane, Bedford. MK41 7BJ or any other Homebuy Agents party to and acting in accordance with the Service Level Agreement
- 1.9 Service Level Agreement : An agreement made between the Association and the Help to Buy Agent dated for the governance of procedures and performance standards of the Help to Buy Agents and the Registered Provider in their roles in enabling any affordable housing scheme or any subsequent service level agreement made between the Registered Provider and the Help to Buy Agents for the same provision.
- 1.10 Voids : means a Dwelling which does not have a tenancy and any void period shall be measured in calendar days between the date of termination of the previous tenancy, or repossession, and the start date of a new tenancy
- 1.11 Dwellings : Unless the context requires otherwise means both the Affordable Rented Dwellings and the Shared Ownership Dwellings and "Dwelling" means any one of these

1.12 Chargee	:	Means any mortgagee or chargee of Havebury
1.13 Receiver	:	receiver or manager (including an administrative receiver) appointed by a mortgagee or chargee or any other person appointed under any security documentation to enable a mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator)

2. Agreement

The Association hereby grants the Council nomination rights of 100% for the Initial Lets and thereafter 75% of Voids in relation to the Dwelling to be erected on the Scheme in accordance with the terms of this Deed.

PROVIDED THAT

Affordable Rented Dwellings

- (a) In relation to the Initial Lets of the Dwelling the Association should refer to the Cambridge Sub Regional Choice Based Lettings Scheme ("Home-Link") or any successor scheme and if no such nominations are made within ten working days of such reference then nothing in this clause shall prevent the Association from offering the Dwellings to any person who the Association considers to be in need of such accommodation.
- (b) In relation to any Dwelling that becomes Void after the Initial Let the Association should refer to the Cambridge Sub-Regional Choice Based lettings Scheme ("Home-Link) or any successor scheme for applicants and if no such nominations are made within ten working days of such reference then nothing in this clause shall prevent the Association from offering the Dwellings to any person who the Association considers to be in need of such accommodation.
- (c) The Association shall in every case inform the Council in writing as soon as possible of the name of the tenant to whom an Affordable Rented Dwelling has been offered.
- (d) On any disposal of the Affordable Rented Dwellings to another Registered Provider of Social Housing the Association will use reasonable endeavours to



ensure that the purchaser enters into an agreement with the Council in the same terms as this Agreement.

### Shared Ownership Dwellings

- (e) In relation to the Initial Sales of the Shared Ownership Dwellings the Association shall upload details of the Shared Ownership Dwellings being offered for sale to the Help to Buy Agent's website and seek nominations for purchasers from the Help to Buy Agent and shall then offer for sale the Shared Ownership Dwelling to persons nominated by the Help to Buy Agent.
- (f) In the event the Help to Buy Agent is unable to provide nominations for purchasers on the Initial Sales of Shared Ownership Dwellings within six months of practical completion notification given by the Association, then the Association may offer for sale the Shared Ownership Dwellings on the open market to any person the Association considers to be in need of such accommodation.
- (g) In relation to the Subsequent Sales of the Shared Ownership Dwellings the Association shall as soon as it receives notification from a shared ownership lessee that a Shared Ownership Dwelling is being offered for sale upload details of the Shared Ownership Dwellings being offered for sale to the Help to buy Agent's website and seek nominations for purchasers from the Help to Buy Agent and then direct the shared ownership lessee to sell the Shared Ownership Dwelling to such nominee.
- (h) In the event that the Help to Buy Agent is unable to provide nominations for purchasers on a Subsequent Sale of the Shared Ownership Dwelling within eight weeks then the shared ownership lessee may offer for sale the Shared Ownership Dwelling on the open market to any person the Association considers to be in need of such accommodation.
- (i) On any disposal of the Dwellings to another Registered Provider of Social Housing the Association will use reasonable endeavours to ensure that the purchaser enters into an agreement with the Council in the same terms as this Agreement.

### General

- (j) The provisions of this Agreement shall not be binding on a Chargee or Receiver of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such Chargee or Receiver PROVIDED THAT:
  - such Chargee or Receiver shall first give written 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 and costs and expenses; and

if such disposal has not completed within the three month period, the Chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the Affordable Housing provisions in this Agreement which provisions shall determine absolutely

- (k) The Scheme is subject to an agreement made in accordance with section 106 of the Town and Country Planning Act 1990 made between the Councils (1), and the Association (2) dated [\*\*\*\*] and a Deed of Variation dated [ ] and all nominations and occupation of the Dwellings shall comply with the provisions of those agreements.

**IN WITNESS** whereof the Council and the Association have caused their respective common seals to be hereunto affixed the day and year first before written

THE COMMON SEAL of **WEST SUFFOLK** )  
**COUNCIL** )  
was hereunto affixed as its deed in the presence of:- )  
)

.....  
Authorised Officer

.....  
Authorised Officer

THE COMMON SEAL of )  
was hereunto affixed as its deed in )  
the presence of:- )  
)

.....  
Authorised Officer

.....  
Authorised Officer





