

DATED

23 - 08 -

2019

WEST SUFFOLK COUNCIL (1)

CREST NICHOLSON OPERATIONS LIMITED (2)

**SUPPLEMENTAL PLANNING OBLIGATION UNDER SECTIONS
106 and 106A OF THE TOWN AND COUNTRY PLANNING
ACT 1990**

**RELATING TO
DEVELOPMENT AT LAND EAST OF RED LODGE; LAND SOUTH
OF ST CHRISTOPHER'S PRIMARY SCHOOL (PART OF PHASE
4a KINGS WARREN); LAND SOUTH OF VILLAGE CENTRE
(PHASE 4a KINGS WARREN) AND LAND SOUTH EAST OF
HERRINGSWELL**

Birketts

THIS DEED is made on the day of 23rd August 2019

BETWEEN:

1. **WEST SUFFOLK COUNCIL** of West Suffolk House, Western Way, Bury St Edmunds Suffolk, IP33 3YU (the "**Council**");
2. **CREST NICHOLSON OPERATIONS LIMITED** (company number 1168311) of Crest House Pyrcroft Road Chertsey Surrey KT16 9GN (the "**Owner**");

RECITALS:

- A The Council replaced Forest Heath District Council and St Edmundsbury Borough Council and is the local planning authority for the purposes of the Town and Country Planning Act 1990 (hereinafter called the "**Act**") as amended for the area within which the Land is situated and is an authority that may enforce the planning obligations herein.
- B The Owner is the freehold owner of that part of the Land shown edged red on drawing number CN059a-PL-24 Rev A which is registered under title number SK370973.
- C The Land is subject to a planning obligation dated 10 June 2016 entered into by Forest Heath District Council (1) Suffolk County Council (2) Crest Nicholson Operations Limited (3) Crest Nicholson (Eastern) Limited (4) Hugo Edwards Upton (5) EFG Trust Company Limited and EFG Corporate Services Limited and (6) Hugo Edward Upton Harry Charles Buscall and Charles Donald Crole (the "**2016 Agreement**") and planning permission reference number DC/16/2833/FUL granted on 17 May 2017 (the "**2017 Permission**") and a deed of variation to the 2016 Agreement dated 17 May 2017 entered into by (1) Forest Heath District Council (2) the Owner and (3) Crest Nicholson (Eastern) Limited (the "**2017 Deed of Variation**").
- D The Owner has submitted an application to construct 11 dwellings on land which forms part of the site to which the 2016 Agreement (as varied by the 2017 Deed of Variation) attaches and to which the Council has allocated application reference number DC/19/1169/FUL (the "**Application**").
- E The Application when approved will amend the mix of dwellings within part of the site to which the 2016 Agreement (as amended by the 2017 Deed of Variation) attaches and will create a net increase of 5 additional Dwellings on the Land and therefore the Affordable Housing requirement will increase by two Dwellings.
- F The Owner has agreed with an Affordable Housing provider that the Dwellings to be provided pursuant to the Application will subsequently form part of the delivery of

Shared Ownership Housing across the wider part of the site consented by the Planning Permission and the 2017 Permission pursuant to Grant Funding received from Homes England.

G In the event that Grant Funding is provided and the Dwellings are delivered as Shared Ownership Housing the Council's Affordable Housing policy requirement in relation to the Application will be met and there will be no requirement to provide additional Affordable Dwellings pursuant to the Application.

H The parties have agreed that in the event that the Grant Funding is not secured prior to Occupation of Plots 3 and 4, this Deed shall secure the provision of two additional Affordable Dwellings and that this is necessary to ensure that the Application when approved meets the Council's Affordable Housing policy requirement.

NOW THIS DEED WITNESSES AS FOLLOWS

1. DEFINITIONS

In this Deed the following words and expressions have the following meaning:

"Additional Affordable Housing"	the delivery of two Dwellings to be provided pursuant to the Application as Affordable Housing;
"County Council"	Suffolk County Council or the successor to its statutory education functions;
"Grant Funding"	grant funding provided by Homes England to facilitate the conversion of 56 Open Market Dwellings on the Land from private tenure to Shared Ownership Housing;
"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 Council and the Owner

"Index Linked"	the increase in the 2019 Primary Education Contribution by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 2.9
"Plots 3 and 4"	those plots comprised in the Application and marked as plots 3 and 4 on drawing number CN059a-PL-29 rev A;
"Specified Date"	the date upon which an obligation arising under this Deed is due to be performed
"2019 Permission"	the permission granted pursuant to the Application; and
"2019 Primary Education Contribution"	the sum of nineteen thousand three hundred and twenty two pounds (£19,322.00) (Index Linked) to be expended by Suffolk County Council towards the build costs of a new primary school in the vicinity of the Development.

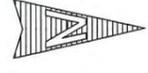
2. EFFECT OF THIS DEED

2.1 This Deed is made in pursuance of sections 106 and 106A of the Act and the covenants herein contained are considered to be planning obligations and insofar as any of the covenants contained in this Deed are not planning obligations within section 106 of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972 and all other enabling powers.

2.2 This Deed is conditional upon both:

- (a) the grant of the 2019 Permission to be granted pursuant to the Application; and
- (b) Implementation of the 2019 Permission granted pursuant to the Application.

2.3 This Deed shall be a local land charge and shall be registered as such by the Council.



Project:
Re-Plan of 11 Units
Phases B & C
Land to the East of Warren
Road, Red Lodge

Description:
Location Plan

Crest Nicholson (Eastern) Ltd.
One Myrtle Road
Brentwood
Essex
CM14 5EG

T: 01277 693230
F: 01277 693277

Scale:
1-5000 @ A3

Date:
May 2019
Revision:
A



- 2.4 The Owner hereby covenants with the Council and so as to bind that part of the Land within its ownership that is comprised within the Application to carry out and comply with the obligations specified in this Deed.
- 2.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed (other than a successor in title to one of the original parties or their assignees) shall be entitled in that person's own right to enforce any provisions of this Deed pursuant to the provisions of the said Act.
- 2.6 Reference in this Deed to the Council shall where the context so admits include any public body in which the functions of the Council at the date hereof under the enabling powers may for the time being be vested and any duly appointed servant, agent or contractor of the Council as the case may be or such other bodies.
- 2.7 Reference in this Deed to the Owner shall include successors in title and assigns to that part of the Land that is comprised within the Application or any part or parts thereof and to persons claiming an interest in land through or under it.
- 2.8 The Owner shall pay the reasonable legal costs of the Council incurred in connection with the negotiation preparation and completion of this Deed prior to its completion.
- 2.9 The 2019 Primary Education Contribution shall be increased by an amount equivalent to the increase in the Index from the date hereof to the date on which such sum is payable by the application of the formula $A = B \times C/D$

A is the sum actually payable on the Specified Date under this Deed

B is the original sum calculated as the sum payable

C is the last published Index (whether provisional or final) for the month 2 months before the Specified Date

D is the last published final Index for the month 2 months before the date of this Deed

C/D is greater than 1

3. **VARIATION TO THE 2016 AGREEMENT AS VARIED BY THE 2017 DEED OF VARIATION**

- 3.1 The parties hereby agree that in relation to that part of the Land that is comprised within the Application the 2016 Agreement (as amended by the 2017 Deed of Variation) shall be varied in the matter set out in the Schedule to this Deed.

- 3.2 This Deed incorporates the terms and definitions of the 2016 Agreement (as varied by the 2017 Deed of Variation) save as varied by this Deed.
- 3.3 The 2016 Agreement (as amended by the 2017 Deed of Variation) shall continue in force and effect as varied by this Deed.
- 3.4 Where relevant the 2016 Agreement (as varied by the 2017 Deed of Variation) shall be construed in accordance with this Deed and for the avoidance of doubt in the event of conflict the provision and definitions in this Deed shall take precedence over the 2016 Agreement (as varied by the 2017 Deed of Variation).
- 3.5 If the Grant Funding is secured (as evidenced by receipt by the Council of written confirmation from Homes England of the provision of such grant) prior to Occupation of Plots 3 and 4:
- 3.5.1 there shall be no requirement to deliver the Additional Affordable Housing as part of the Application; and
- 3.5.2 the variations contained at Part 2 of the Schedule to this Deed shall have no effect.
- 3.6 If the Grant Funding is not secured prior to Occupation of Plots 3 and 4 the Owner shall deliver the Additional Affordable Housing in accordance with the provisions of the 2016 Agreement (as varied by the 2017 Deed of Variation) and Part 2 of the Schedule to this Deed.

4. STATUS OF PLANNING OBLIGATIONS CONTAINED WITH THE 2016 AGREEMENT AS VARIED BY THE 2017 DEED OF VARIATION

- 4.1 The Council hereby acknowledges and agrees that the Owner has satisfied and complied in full with all planning obligations due to be performed under the 2016 Agreement (as varied by the 2017 Deed of Variation) prior to the completion of this Deed.
- 4.2 With regard to those planning obligations under the 2016 Agreement (as varied by the 2017 Deed of Variation) which have not been complied with yet (as the relevant trigger date has not been reached by the Owner as at the date of this Deed) the parties hereby acknowledge and agree that the 2016 Agreement (as varied by the 2017 Deed of Variation) shall be carried forward into this Deed to mitigate the impact of the development to be carried out pursuant to the Application other than as varied by this Deed.

5. **PAYMENT OF 2019 PRIMARY EDUCATION CONTRIBUTION**

The Owner shall pay the 2019 Primary Education Contribution to the County Council prior to Occupation of the first Dwelling constructed pursuant to the 2019 Permission.

IN WITNESS whereof this deed of variation has been executed by the Parties hereto and is intended to be and is hereby delivered on the date first above written.

THE SCHEDULE

PART 1

All references refer to the 2016 Agreement (as varied by the 2017 Deed of Variation) which unless otherwise stated shall be varied as follows:

1. In the operative definitions the meaning of the definition of "Planning Permission " shall be deleted and replaced with the new definition:

"Planning Permission"	the hybrid planning permission granted pursuant to the Application or the 2017 Permission or the 2019 Permission when granted or any amendment thereto sought by the Developer pursuant to section 96A of the 1990 Act
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PART 2

All references refer to the 2016 Agreement (as varied by the 2017 Deed of Variation) which unless otherwise stated shall be varied as follows:

1. In the operative definitions the meaning of the definition of "Affordable Dwellings " part (b) shall be deleted and replaced with the new following meaning;

- (b) In respect of Phase B shall mean 54 Affordable Dwellings as described in the table below by plot numbers, house numbers, house type and tenure

Affordable Housing in Phase B (54 Affordable Dwellings in total) by plot numbers, house type and tenure

Phase B

Plot No	Type	Beds	St Ht	Tenure
123	Ha102 4b6p House	4	2	Aff Rented
124	Ha76 2b4p House	2	2	Aff Rented
125	Ha1024b6p House	4	2	Aff Rented
126	Ha51 1b2p Flat	1	2	Aff Rented
127	Ha51 1b2p Flat	1	2	Aff Rented
128	Ha51 1b2p Flat	1	2	Aff Rented
129	Ha51 1b2p Flat	1	2	Aff Rented
130	Ha51 1b2p Flat	1	2	Aff Rented
131	Ha51 1b2p Flat	1	2	Aff Rented
132	Ha51 1b2p Flat	1	2	Aff Rented
133	Ha51 1b2p Flat	1	2	Aff Rented
134	Ha51 1b2p Flat	1	2	Aff Rented
135	Ha102 4b6p House	4	2	Aff Rented
136	Ha98 3b6p House	3	2	Aff Rented
171	Ha118 3BWC Bungalow	3	1	Aff Rented
172	Ha76 2b4p House	2	2	Aff Rented
173	Ha76 2b4p House	2	2	Aff Rented
174	Ha76 2b4p House	2	2	Aff Rented
175	Ha76 2b4p House	2	2	Aff Rented
176	Ha76 2b4p House	2	2	Aff Rented
177	Ha76 2b4p House	2	2	Aff Rented
178	Ha76 2b4p House	2	2	Aff Rented
179	Ha76 2b4p House	2	2	Aff Rented
182	Ha87 3b5p House	3	2	Aff Rented
183	Ha87 3b5p House	3	2	Aff Rented
184	Ha76 2b4p House	2	2	Aff Rented
185	Ha102 4b6p House	4	2	Aff Rented
201	Ha76 2b4p House	2	2	Aff Rented
202	Ha76 2b4p House	2	2	Aff Rented
203	Ha76 2b4p House	2	2	S/O
204	Ha87 3b5p House	3	2	S/O

209	Ha76 2b4p House	2	2	Aff Rented
210	Ha76 2b4p House	2	2	Aff Rented
211	Ha76 2b4p House	2	2	Aff Rented
212	Ha87 3b5p House	3	2	Aff Rented
215	Ha76 2b4p House	2	2	S/O
216	Ha87 3b5p House	3	2	S/O
217	Ha87 3b5p House	3	2	Aff Rented
238	Ha76 2b4p House	2	2	Aff Rented
239	Ha56 1b2p House	1	2	Aff Rented
240	Ha76 2b4p House	2	2	Aff Rented
241	Ha56 1b2p House	1	2	Aff Rented
242	Ha56 1b2p House	1	2	Aff Rented
243	Ha56 1b2p House	1	2	Aff Rented
244	Ha87 3b5p House	3	2	Aff Rented
245	Ha87 3b5p House	3	2	Aff Rented
246	Ha56 1b2p House	1	2	Aff Rented
247	Ha52 1b2p Mais	1	2	Aff Rented
248	Ha52 1b2p Mais	1	2	Aff Rented
249	Ha76 2b4p House	2	2	Aff Rented
250	Ha52 1b2p Mais	1	2	Aff Rented
251	Ha52 1b2p Mais	1	2	Aff Rented
3	HT976 3b4p House	3	2	Aff Rented
4	HT976 3b4p House	3	2	Aff Rented

Summary of 54 Affordable Dwellings in Phase B by house type

No Off	Ref	Beds	Ht	Sq ft	Total Sq
9	Ha51 1b2p Flat	1	2	548.9	4940.1
4	Ha52 1bsp Mais	1	2	559.7	2238.8
5	Ha56 1b2p House	1	2	602.8	3014
20	Ha76 2b4p House	2	2	818	16360
8	Ha87 3b5p House	3	2	936	7488
1	Ha98 3b6p House	3	2	1054.8	1054.8
4	Ha102 4b6p House	4	2	1097.9	4391.6
1	Ha118 3BWC Bungalow	3	1	1270	1270
2	HT976 3b4p House	3	2	976	1934
54					

2. In the operative definitions the meaning of the definition of "Affordable Housing " shall be deleted and replaced with the new following meaning;

Shared Ownership Housing and Affordable Housing for Rent or any other tenure or arrangement acceptable to Homes England or other relevant body and approved by the Council or referred to in the National Planning Policy Framework (February 2019) without prejudice to the generality shared ownership or equity percentage arrangements and shared ownership arrangements as described and defined in Sections 70(4) and (5) of the Housing and Regeneration Act 2008;

3. In the operative definitions the meaning of the definition of “Affordable Rented Housing “ shall be deleted and replaced with the new following meaning;

Affordable housing for rent as set out and described in the Glossary to the National Planning Policy Framework (February 2019);

THE COMMON SEAL OF)

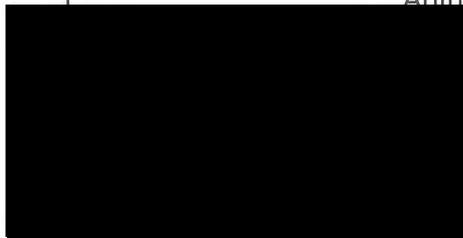
WEST SUFFOLK COUNCIL)

was hereunto affixed in the)

presence of:)



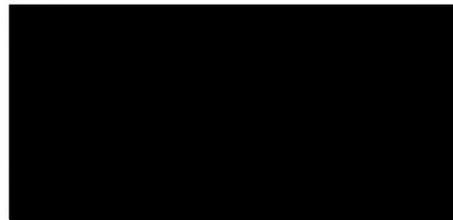
Authorised Person



EXECUTED as a DEED BY

CREST NICHOLSON

OPERATIONS LIMITED



In the presence of:

Director

Witness:



Name:

Address: X
Crest Nicholson
Pycroft Road
Chertsey
Surrey
KT16 9GN

Occupation: X

