

DATE 29 October 2019

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) JANETTE KATHRYN ROBINSON

(4) CALA HOMES (NORTH HOME COUNTIES) LIMITED

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

relating to

Land At Brickfield Stud Exning Road Newmarket Suffolk

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

DATE 29 October 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) **JANETTE KATHRYN ROBINSON** of [REDACTED] (hereinafter called the "Owner")
- (4) **CALA HOMES (NORTH HOME COUNTIES) LIMITED** (Company number 08800064) whose registered office is at 1 Falcon Gate Shire Park Welwyn Garden City AL7 1TW (hereinafter called the "Developer")

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 number SK362094
- D The Developer and the Owner have entered into a sale and purchase agreement in respect of the Site which is conditional on planning permission being obtained. The Owner holds the Property on trust for herself and for Gary Francis Lawrence Robinson with whom she carries on business in partnership as a and a Equestrian of Newmarket.
- E The Developer 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

- F 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
- G 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
- H 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)
- I 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, as more particularly defined in the National Planning Policy Framework ("NPPF")
"Affordable Housing Land"	the part of the Site containing the Affordable Housing Units and associated land to be transferred to the Registered Provider together with the Affordable Housing Units

"Affordable Housing Units"	Twenty-four (24) of the Dwellings will be Affordable Housing of which seventeen (17) will be Affordable Rent and seven (7) will 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, as more particularly defined in the NPPF
"Application"	the full application for planning permission to develop the Site in accordance with the application plans deposited with the Council on the 11 th December 2018 and bearing the Council's reference number DC/18/2477/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
"Bus Stops Contribution"	Nineteen thousand and five hundred pounds (£19,500)

"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 work archaeological 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 as approved under the full Application described as 79 dwellings a new vehicle access from Exning Road and public open space together with associated external works including parking and landscaping
"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 shared equity products and other low cost homes for sale and intermediate rent but not Affordable Rent, as more particularly defined in the NPPF

"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"	Seventeen thousand and sixty-four pounds (£17,064.00) BCIS Indexed
"NHS Contribution"	Forty-five thousand and nine hundred pounds (£45,900) 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 Affordable Housing Units
"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
"Planning Permission"	the full planning permission subject to conditions as may be granted by the Council pursuant to the Application such planning permission
"Pre School Contribution"	one hundred and Fifty-four thousand five hundred and seventy-six pounds (£154,576.00) BCIS Indexed
"Primary School"	three hundred and fifty-one thousand six hundred and forty-eight pounds (£351,648.00)

Contribution"	BCIS Indexed
"Protected Tenant"	<p>any tenant who has:</p> <p>(a) 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 including voluntary right to acquire) in respect of an Affordable Housing Unit (as defined in the Second Schedule)</p> <p>(b) exercised any statutory right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit</p>
"Public Service Contribution"	Forty-five thousand pounds (£45,000)
"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 and approved by the Council (or such other Registered Provider as is approved by the Council)
"Rental Dwelling"	an Affordable Housing Unit which is to be let at an Affordable Rent and 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"	two hundred and eighty-nine thousand nine hundred and seventy-eight pounds (£289,978.00) BCIS Indexed
"Shared Ownership"	where the purchaser buys an initial share in the property from the Registered Provider who

retains the remainder and may charge a rent with the purchaser being able to purchase additional shares (staircasing) and the payment for this is recycled for more Affordable Housing, as more particularly defined in the NPPF

"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
"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 and to any party deriving title through or under that party and in the case of the Council and or the County Council their 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 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 Property 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, 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
 - 2.9.4 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

- 2.9.5 a Registered Provider, save for the obligations in the Second Schedule
- 2.10 The Affordable Housing obligations within the Second Schedule shall not be binding on:
- 2.10.1 a Protected Tenant and successors in title
- 2.10.2 a 100% Staircaser and successors in title
- 2.10.3 a mortgagee of a Shared Ownership Lease or shared equity lease lawfully exercising the mortgage protection provision within that lease and successors in title
- 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 19 and 20 (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 Deed 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 Developer 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 Developer 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 (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 Owners 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 District Offices College Heath Road Mildenhall Suffolk IP28 7EY
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	[REDACTED]
The Developer	1 Falcon Gate Shire Park Welwyn Garden City AL7 1TW

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 thirty-fourth 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 Clause 14 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 agreement 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. SECTION 73 PERMISSIONS

17.1 If any new planning permission ("New Permission") is granted by the Council pursuant to Section 73 of the Act following an application by or on behalf of the Owner then unless the New Permission permits development of fewer or more than 79 dwellings or unless otherwise agreed between the parties:-

- (a) the obligations in this Deed shall relate to and bind any development undertaken pursuant to the New Permission PROVIDED THAT the obligations in this Deed shall only be required to be performed once; and
- (b) the definitions of Application, Development and Planning Permission in this Deed shall be construed to include reference to any application under Section 73 of the Act for the New Permission, the New Permission and the development permitted by the New Permission respectively

PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act or the appropriate nature and / or quantum of planning obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act.

18. 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

19. JURISDICTION

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

20. DELIVERY

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

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

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



Authorised Officer



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



Authorised Officer



SIGNED AS A DEED BY)

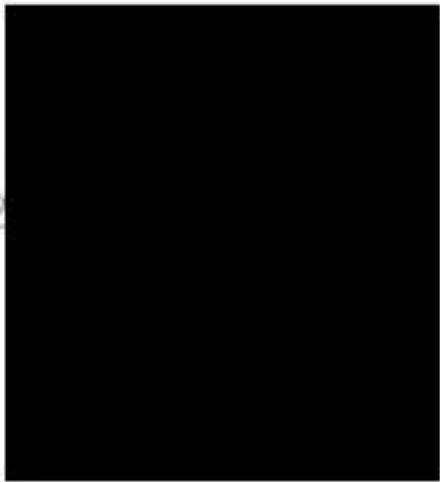
JANETTE KATHRYN ROBINSON)



Signature of witness

Name of witness

Address



Executed

SIGNED AS A DEED BY)

CALA HOMES (NORTH HOME COUNTIES) LIMITED)

*acting by Jim Brunt, a director and
Graham Bridgman, a director*



~~Signature of witness~~

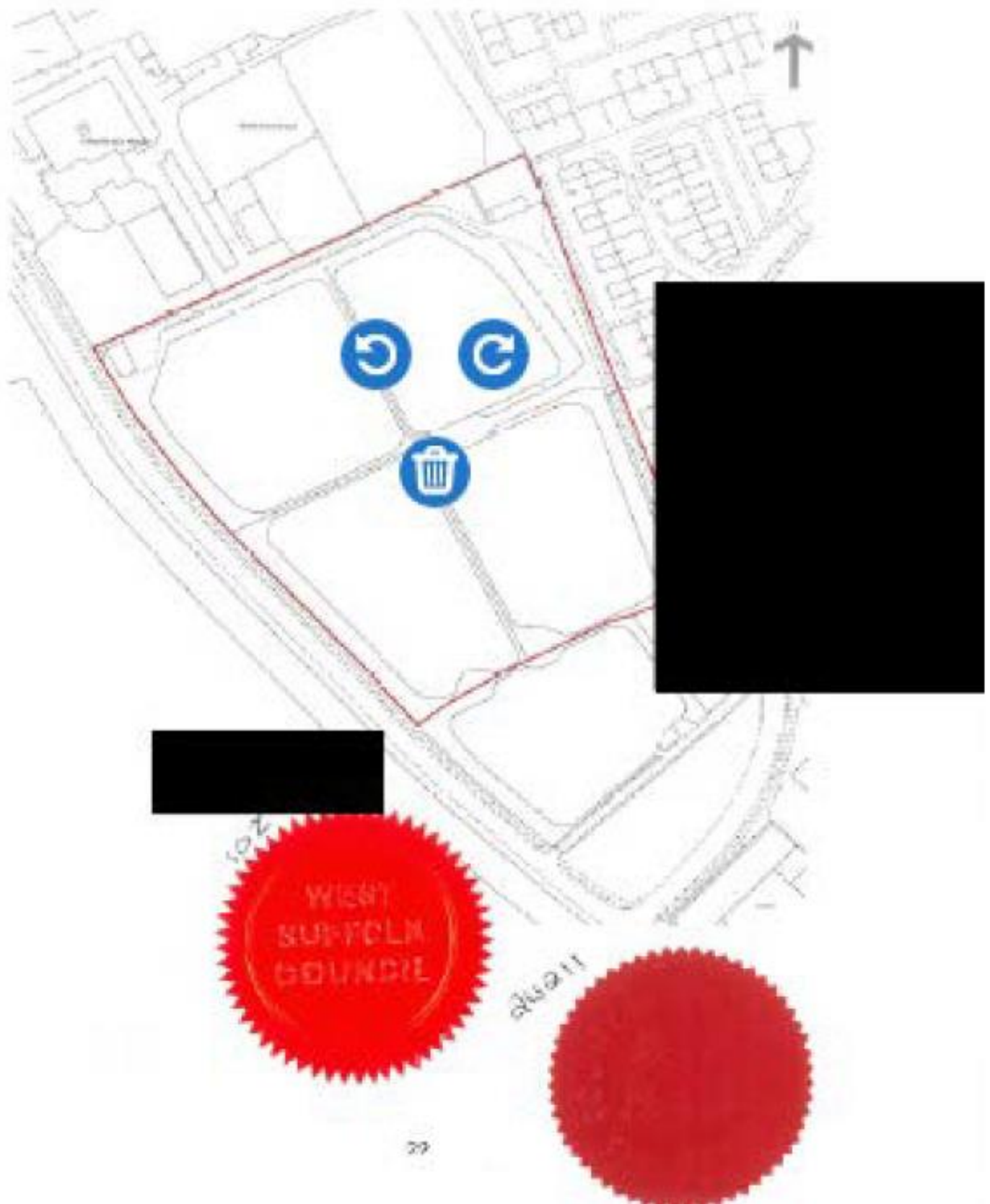
~~Name of witness~~

~~Address~~

FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Owners land registered with the Land Registry under title number BK362094

SITE PLAN



SECOND SCHEDULE

THE OWNERS COVENANT 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 prior to the Occupation of forty-one (41) Open Market Dwellings
- 1.2 Not to Occupy or permit Occupation of more than forty-two (42) 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
- 1.3 To ensure the transfer referred to in Paragraph 1.1 of this Second Schedule to the Registered Provider 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 Land (including 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 or leasehold title
 - 1.4.2 the Affordable Housing Land having to be remediated ^(if necessary) *AMC* so that the land is fit for the proposed use
 - 1.4.3 to 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 of the Affordable Housing Land and providing necessary service to the Affordable Housing Units:
 - 1.4.3.1 a road constructed to base course (to be built to adoptable standards once use by construction vehicles has ceased)
 - 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 or a Protected Tenant has exercised a right to buy or a right to acquire

2. NHS CONTRIBUTION

2.1 To pay to the Council the NHS Contribution prior to the Occupation of the thirtieth (30th) Dwelling

2.2 Not to Occupy or permit Occupation of more than twenty-nine (29) Dwellings unless and until the NHS Contribution has been paid to the Council

THIRD SCHEDULE

THE OWNERS COVENANT 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 PRE SCHOOL PRIMARY & SECONDARY SCHOOL CONTRIBUTIONS

- 2.1 To pay to the County Council fifty percent (50%) of the Pre School Contribution and fifty percent (50%) of the Primary School Contribution and fifty percent (50%) of the Secondary School Contribution prior to the first Occupation of the first (1st) Dwelling
- 2.2 Not to Occupy or permit Occupation of any Dwellings until fifty percent (50%) of the Pre School Contribution and fifty percent (50%) of the Primary School Contribution and fifty percent (50%) of the Secondary School Contribution has been paid to the County Council
- 2.3 To pay to the County Council the remaining fifty percent (50%) of the Pre School Contribution and fifty percent (50%) of the Primary School Contribution and remaining fifty percent (50%) of the Secondary School Contribution prior to the Occupation of the thirty-fifth (35th) Dwelling
- 2.4 Not to Occupy or permit Occupation of more than thirty-four (34) Dwellings until the remaining fifty percent (50%) of the Pre School Contribution and fifty percent (50%) of the Primary School Contribution and remaining fifty percent (50%) of the Secondary School Contribution has been paid to the County Council

3 TRANSPORT CONTRIBUTIONS

- 3.1 To pay to the County Council the Public Service Contribution prior to the first Occupation of the first (1st) Dwelling
- 3.2 To pay to the County Council the Bus Stops Contribution prior to the first Occupation of the first (1st) Dwelling

FOURTH SCHEDULE

THE COUNCIL COVENANTS WITH THE OWNERS:

1. NHS CONTRIBUTION

- 1.1 To use the NHS Contribution towards the improvement of doctors surgeries capacity serving the Development
- 1.2 After the expiry of five (5) years from the date that the NHS Contribution was received to pay to the Owner such amount of the NHS Contribution which has not been committed or expended by the Council in accordance with the provisions of this Deed such payment to be made within twenty eight (28) Working Days of such request

FIFTH SCHEDULE

THE COUNTY COUNCIL COVENANTS WITH THE OWNERS:

1 LIBRARY CONTRIBUTIONS

- 1.1 To use the Library Contribution towards improving the provision of the local library service in Newmarket
- 1.2 If requested to do so in writing after the expiry of ten (10) years of the Completion of Deveopment 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
- 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 PRE SCHOOL & PRIMARY SCHOOL & SECONDARY SCHOOL CONTRIBUTIONS

- 2.1 To use the Pre School Contribution towards providing pre-school places at a new primary school setting in Newmarket and Primary School Contribution towards providing places at a new Primary School setting in Newmarket and to use the Secondary School Contribution towards proving places at Newmarket Academy
- 2.2 If requested to do so in writing after the expiry of ten (10) years of the date that the Pre School Contribution and the Primary School Contribution and 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 and 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
- 2.3 When the Pre School Contribution and 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

3 TRANSPORT CONTRIBUTIONS

- 3.1 To use the Public Service Contribution towards horse, cycle and pedestrian provisions and the Bus Stops Contribution towards bus stop improvements.
- 3.2 If requested to do so in writing after the expiry of ten (10) years of the date that the Public Service Contribution and the Bus Stops Contribution was paid within a further period of one (1) year to pay to any person such amount of the Public Service Contribution and the Bus Stops 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
- 3.3 When the Public Service Contribution and the Bus Stops 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