

DATED 28 November

2019

MID SUFFOLK DISTRICT COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

KEITH BRIAN MOXON AND PETER MICHAEL MOXON (3)

**DEED PURSUANT TO SECTION 106 OF THE TOWN AND
COUNTRY PLANNING ACT 1990**

Relating to
Land between Norwich Road and Pesthouse Lane, Barham, Suffolk

Birketts

Birketts LLP: Offices in Cambridge | Chelmsford | Ipswich | Norwich
www.birketts.co.uk

This Deed is made the 28 day of November 2019

Between:

(1) MID SUFFOLK DISTRICT COUNCIL of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the District Council") and

(2) SUFFOLK COUNTY COUNCIL of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council") and

(3) KEITH BRIAN MOXON of [redacted] and PETER MICHAEL MOXON of [redacted] ("the Owners")

Together "the Parties"

INTRODUCTION

- 1. The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
2. The County Council is the local highway authority (except for trunk roads) and is the local education 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
3. The ownership and other interests in the Site are as set out in the First Schedule
4. The Owners submitted the Application to the District Council for the Development and the District Council has resolved to grant the Planning Permission for the Development pursuant to the Application subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed.
5. The District Council enters into this Deed to the intent that the requirements of the District Council's policies are met and that any objections by the District Council to the grant of planning permission on the basis of those policies are overcome
6. The District Council and the County Council consider and the Owners acknowledge that the Development should not proceed unless certain restrictions regulating the use of the Site are imposed in the manner hereinafter 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.
7. The District Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out

in Regulation 122 and Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Second Schedule:

“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 in accordance with Annexe 2 of the National Planning Policy Framework 2019

“Affordable Housing Contribution” means the sum calculated in accordance with the District Council's affordable housing policies in place at the time to be paid to the District Council to spend on Affordable Housing within the administrative district of the District Council in the event that the Owners are unable to dispose of the Affordable Housing in accordance with the Second Schedule

“Affordable Housing Nomination Agreement” an agreement substantially in the form set out in the Sixth Schedule (subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and “Nomination Agreement” shall have the same meaning

“Affordable Housing Scheme”	a written scheme approved by the District Council as part of the reserved matters application for the written approval of the District Council identifying the location number of bedrooms, mix and tenure of each Affordable Housing Unit (unless otherwise agreed in writing with the District Council)
“Affordable Housing Units”	means seven of the Dwellings to be provided on the Site pursuant to the Planning Permission and in accordance with Part 2 of Schedule 3 to this Deed to be Occupied as Affordable Housing in accordance with the Affordable Housing Scheme of which five shall be provided for Affordable Rent and shall be Occupied by persons allocated in accordance with a Choice Based Letting Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to the deed of nomination rights as varied from time to time and two shall be provided for Shared Ownership and shall be Occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme)
“Affordable Rent”	means housing made available by a Registered Provider as low-cost rental accommodation (as defined by section 69 of the Housing and Regeneration Act 2000) with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable
“Application”	the application for outline planning permission for the Development validated by the District Council on 20 January 2017 and allocated reference 0085/17
“Chargee of the Registered Provider”	any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or housing administrator pursuant to

section 101 of the Housing and Planning Act 2016

- “Chargee’s Duty” The tasks and duties set out in paragraph 1.9 of part 2 of the Second Schedule
- “Choice Based Lettings Scheme” an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party
- “Commencement Development” of 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 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, construction of access road; construction of temporary site compound and temporary marketing suite; erection of any temporary means of enclosure and the temporary display of site notices or advertisements and “Commence” and “Commenced” shall be construed accordingly
- “Completion of the Development” the date that the last Dwelling is first Occupied
- “Development” the residential development of twenty (20) Dwellings including affordable homes (with appearance, landscaping layout and scale forming Reserved Matters) as set out in the Application

“Dwelling”	any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly
“HE”	means Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers
“Index”	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
“Index Linked”	the increase in any sum referred to in the Second and Third Schedules by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 11 of this Deed
“Joint Local Plan”	shall mean the new local development scheme to be adopted by Babergh District Council and Mid Suffolk District Council
“Late Payment Interest”	interest at 4 per cent above the minimum lending rate of the Bank of England from time to time
“Market Housing Units”	those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units
“Notice of Actual Commencement”	notice in writing to advise of the actual date of Commencement
“Notice of Expected Commencement”	notice in writing to advise of the expected date of Commencement
“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

"Plan" the plan attached to this Deed and labelled Site Plan

"Planning Permission" the outline planning permission subject to conditions which may be granted by District Council pursuant to the Application

"Practical Completion" issue of a certificate of practical completion by the Owners' architect or project manager or in the event that the Development is constructed by a party other than the Owners the issue of a certificate of practical completion by that other party's architect or project manager

"Primary School Construction Contribution" means the sum of £85,267 (eighty-five thousand two hundred and sixty-seven pounds) (Index Linked) to be paid to the County Council in accordance with the Third Schedule

Primary School Land Contribution Means the sum of £5,885 (five thousand and eight hundred eighty-five pounds) Index Linked to be paid in accordance with the Third Schedule

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

"Registered Provider" means 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 HE pursuant to Chapter 3 of that Act

“Shared Ownership”	<p>dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in HE’s capital funding guide</p>
“Shared Ownership Lease”	<p>a long lease (over 99 years) of a dwelling granted at a premium whereby no less than twenty-five percent (25%) and no more than up to seventy percent (70%) on first purchase of the equitable interest in the Shared Ownership dwelling is paid by a lessee upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to acquire up to one hundred percent (100%) of the legal and equitable interest in the Shared Ownership dwelling at some future date or dates</p>
“Site”	<p>the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Plan;</p>
“Working Days”	<p>Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.</p>

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner

- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that act or Directive for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that act or Directive or deriving validity from it
- 2.6 Any references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and the County Council any successors to its statutory functions
- 2.7 The headings and contents list are for reference only and shall not affect construction
- 2.8 References to a "Plan" or "Drawing" in this Deed shall be reference to the plans attached to this Deed bearing the relevant plan number or any amended plans as shall be agreed in writing between the Owners the District Council and the County Council
- 2.9 None of the covenants contained in this Deed on the part of the Owners shall be enforceable against: -
- (a) those persons who purchase (including purchasers by way of long lease) any Dwelling for occupation by themselves or their lessees tenants or individuals of the Dwellings or
 - (b) any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 2.10 Any covenant by the Owners 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 Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council as appropriate as local planning authorities against the Owners or their successors in title

3.3 This Deed is a Deed and may be modified or discharged in part or in total at any time after the date of this Deed by Deed between the Parties in the form of a Deed

3.4 This Deed is a local land charge and upon completion shall be registered by the District Council as such

4. **CONDITIONALITY**

4.1 The obligations set out in the Second and Third Schedules are conditional upon:

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

save for the provisions of Clauses 3.4, 7.3, 7.4, 7.5, 7.8, 7.14, 7.15, 9, 10, 15, 18, 19 and 20 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 Owners 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 Owners 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:

- (a) when permission to apply for judicial review has been refused and no further application can be made;
- (b) when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or
- (c) when any appeal(s) is or are finally determined.

4.3.2 proceedings under Section 288 of the Act are concluded:

- (a) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
- (b) when any appeal(s) is or are finally determined

5. THE OWNERS COVENANTS

- 5.1 The Owners hereby covenant with the District Council as set out in the Second Schedule so as to bind the Site and each and every part thereof
- 5.2 The Owners hereby covenant with the County Council as set out in the Third Schedule so as to bind the Site and every part thereof

6. THE DISTRICT COUNCIL'S AND THE COUNTY COUNCIL'S COVENANTS

- 6.1 The District Council hereby covenant with the Owners as set out in the Fourth Schedule
- 6.2 The County Council hereby covenant with the Owners as set out in the Fifth Schedule

7. MISCELLANEOUS

- 7.1 The Owners shall act in good faith and shall co-operate both with the District Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owners shall comply with any reasonable requests of the District 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 Owners' possession (at the Owners' expense) for the purposes of monitoring compliance with the obligations contained herein
- 7.2 The Owners agree declare and covenant both with the District Council and 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 District Council and/or the County Council (as appropriate) for any expenses or liability arising to the District Council and/or the County Council in respect of breach by the Owners or any obligation contained herein save to the extent that any act or omission of the District Council and/or the County Council its employees or agents has caused or contributed to such expenses or liability

- 7.3 The Owners agree to pay to the District Council on completion of this Deed the proper and reasonable legal costs of the District Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.4 The Owners agree to pay to the County Council on completion of this Deed 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 provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.6 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the District Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council by the Professional Lead or officer acting under his hand and on behalf of the County Council by the Director of Resource Management or officer acting under his hand and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 7.7 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith on the written request of the Owners mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed
- 7.8 Insofar as any clause or clauses or paragraphs of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.9 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of the Development and the District Council will

effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed

7.10 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

7.11 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

7.12 In the event that any new planning applications are made in respect of the development pursuant to section 73 of the Act then with effect from the date when any new planning permission is granted pursuant to section 73 of the Act

7.12.1 The obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission also bind the Site in respect of any planning permission granted pursuant to section 73 of the Act and

7.12.2 The definitions of Application Development and Planning Permission shall be assumed to include references to any new applications under section 73 of the Act the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the council in determining any applications under section 73 of the Act and the appropriate nature of and/or quantum of section 106 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 or a modification pursuant to section 106A of the Act

7.13 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as local authorities

7.14 The Owners hereby agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived

7.15 The Owners covenant and warrant to the District 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 District Council the County Council or the Owners 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 District Council County Council or the Owners from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

9. **CHANGE IN OWNERSHIP**

The Owners agree with the District Council and the County Council to give each of them independently written notice of any transfer in ownership of its freehold interest in the Site (save for disposals of individual Dwellings or to any statutory undertaker) occurring before all the obligations under this Deed have been discharged such notice to be served within twenty (20) Working Days' of such transfer quoting the District Council's reference 0085/17 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 purchased by reference to a plan and a copy of the registered title and plan thereto.

10. **RIGHTS OF ENTRY**

10.1 At all times on not less than twenty-four (24) hours written notice except in case of emergency with or without notice the Owners shall allow any employee or agent of the District Council or the County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

10.1.1 such employee or agent on arrival at the Site shall if requested by any person present who appears to be the Owners the manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Site);

10.1.2 such entry shall be effected between 08:00 and 17:00 on any day;

10.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;

10.1.4 such employee or agent may take photographs measurements and levels;

- 10.1.5 such employee or agent may not remain on the Site for any longer than is reasonably necessary for carrying out a proper inspection;
- 10.1.6 such employee or agent and any other accompanying persons shall comply with the Owners or the Owners' representatives reasonable directions and precautions in the interests of safety;
- 10.1.7 such employee or agent shall not be entitled to access any Dwellings that have been sold

11. INDEXATION

Any sum referred to in the Second or Third Schedules (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the 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:

- 11.1 A is the sum payable under this Deed;
- 11.2 B is the original sum calculated as the sum payable;
- 11.3 C is the Index for the month 2 months before the date on which the sum is payable;
- 11.4 D is the Index for the month 2 months before the date of this Deed; and
- 11.5 C/D is greater than 1

12. INTEREST

If any payment due under this Deed is paid late Late Payment Interest will be payable from the date payment is due to the date of payment

13. VAT

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

14. NOTICES

- 14.1 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 14.2

- 14.2 The address for any notice or other written communication in the case of each party to this Deed shall be as follows: -

The District Council	The Chief Planning Officer, Mid Suffolk District Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
The County Council	The Executive Director of Growth, Highways and Infrastructure, Suffolk County Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
The Owners	14 Brettenham Crescent, Ipswich, Suffolk IP4 2UB

15. DISPUTE PROVISIONS

- 15.1 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) shall be referred to arbitration before a single Expert ("the Expert")
- 15.2 The Parties to the dispute shall jointly appoint the Expert not later than twenty (20) Working Days' after service of a request in writing by any Party to the dispute to do so
- 15.3 If the Parties to the dispute are unable to agree within twenty (20) Working Days' as to the appointment of such Expert then the Expert shall be appointed on the application of either of the Parties to the dispute as follows:
- 15.3.1 difference or question relates to the rights and liabilities of either Party to the dispute 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; or
- 15.3.2 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; or

- 15.3.3 difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Parties but in default of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
- 15.3.4 if such difference of question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.
- 15.4 In the event of a reference to arbitration the Parties to the dispute agree to:
- 15.4.1 prosecute any such reference expeditiously; and
- 15.4.2 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
- 15.5 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
- 15.6 The award shall be in writing signed by the Expert and shall be finalised within ten (10) Working Days' of the hearing
- 15.7 The award shall be final and binding both on the Parties to the dispute and on any persons claiming through or under them and judgment upon the award may be entered in any court having judicial acceptance of the award and an order of enforcement as the case may be
- 15.8 Unless this Deed has already been terminated each of the Parties to the dispute shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this clause 15 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed
- 15.9 The provisions of this clause 15 shall not affect the ability of the District Council and/or County Council to apply for and be granted any of the following: declaratory relief injunction specific performance payment of any sum damages any other means of enforcing this Deed and consequential and interim orders and relief
16. **SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT**
- 16.1 Where in the opinion of the Owners any of the provisions of this Deed have been satisfied the Owners shall be entitled to apply to the District Council or the County

Council for a certificate to that effect and upon the District Council or the County Council being satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the District Council or County Council shall forthwith issue a certificate to such effect

17. **APPROVALS**

17.1 Where any details, programmes, plans, strategies, reports, matters or materials are approved by the District Council or the County 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 District Council or County Council shall replace those previously approved

18. **COMMUNITY INFRASTRUCTURE LEVY**

18.1 The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 (as amended) the obligations imposed in this Deed are

18.1.1 necessary to make the Development permitted pursuant to the Application acceptable in planning terms;

18.1.2 directly relate to the Development permitted pursuant to the Application; and

18.1.3 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 English law and shall be determined in the courts of England

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)
MID SUFFOLK DISTRICT COUNCIL)
was affixed in the presence of:)

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

The COMMON SEAL of)
MID SUFFOLK DISTRICT COUNCIL)
was affixed in the presence of:)



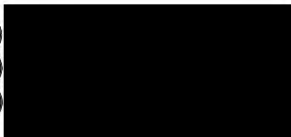
Authorised Signatory

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



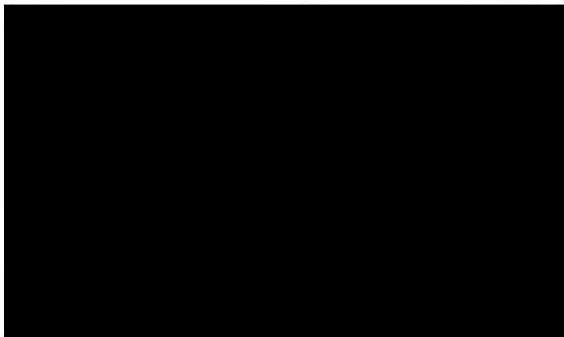
Authorised Officer

Executed as a DEED)
by KEITH BRIAN MOXON)
in the presence of:)



Signature

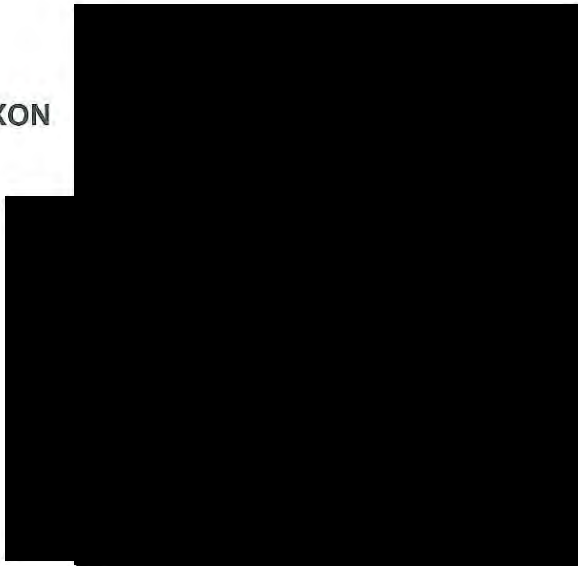
W Name
I
T Address
N
E
S
S Occupation



Executed as a DEED
by **PETER MICHAEL MOXON**
in the presence of:

Signature

W Name
I Address
T
N
E
S
S Occupation



FIRST SCHEDULE

Details of the Owners Title, and description of the Site

The Freehold land shown edged red on the Plan consisting of the land known as land lying between Norwich Road and Pesthouse Lane, Barham, Suffolk registered with the Land Registry under Title Number SK366925

SECOND SCHEDULE

OWNERS COVENANTS WITH THE DISTRICT COUNCIL

PART 1

- 1 The Owners shall give the District Council Notice of Expected Commencement not less than five (5) Working Days' before the date that the Owners expect Commencement of the Development to occur and (ii) within fifteen (15) Working Days' of Commencement of Development Notice of Actual Commencement in order to confirm that Commencement has occurred
- 2 The Owners shall give the District Council no less than one (1) months' written notice of the anticipated date for the first Occupation of the first Dwelling
- 3 The Owners shall within five (5) Working Days' give written notice to the District Council following
 - 3.1 the date of Occupation of the first Dwelling
 - 3.2 the date of Occupation of the final Dwelling
 - 3.3 Completion of the Development

PART 2

AFFORDABLE HOUSING

- 1.1 The Development shall include seven (7) Affordable Housing Units comprising 4 x 1 bedroom 2 person flats, 2 x 2 bedroom 4 person houses, 1 x 3 bedroom 5 person house and shall be made available as Affordable Rented Housing/Shared Ownership as follows unless otherwise agreed in writing with the District Council:

Affordable Rented – 5 Dwellings

4 x 1 bedroom 2 person flats @ 50 sqm

1 x 2 bedroom 4 person houses @ 79 sqm

Shared Ownership Dwellings – 2 Dwellings

1 x 2 bedroom 4 person houses @ 79 sqm

1 x 3 bedroom 5 person houses @ 93 sqm

- 1.2 The Owners covenant not to Commence Development until the Affordable Housing Scheme has been submitted to and approved by the District Council in writing PROVIDED THAT an amended, revised or substituted Affordable Housing Scheme may be approved by the District Council following the Commencement of the Development and once approved by the District Council such scheme will form part of this Deed as if the same had been fully set out herein
- 1.3 Having given notice under paragraph 1 of the Second Schedule Part 1 above the Owners shall endeavour to agree with the District Council on the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred such agreement not to be unreasonably withheld or delayed. The Owners may Commence the Development whilst that process is ongoing but if no agreement has been reached at the expiration of the period of six (6) months' following the Commencement of the Development the District Council shall be entitled to nominate a Registered Provider or other appropriate body for the purpose
- 1.4 The Owners shall construct the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme to a standard of construction which meets the Nationally described Space Standard in place
- 1.5 Subject to paragraph 1.10 to 1.13 inclusive below the Owners shall not
 - 1.5.1 Occupy or permit Occupation of more than seven (7) of the Market Housing Units until four (4) of the Affordable Housing Units have been constructed and are ready for Occupation and in the case of the Affordable Housing Units that are either Affordable Rented Housing Units or Shared Ownership Dwellings that those units have been transferred to the Registered Provider
 - 1.5.2 Occupy or permit Occupation of more than ten (10) of the Market Housing Units until all of the Affordable Housing Units have been constructed and are ready for Occupation and in the case of the Affordable Housing Units that are either Affordable Rented Housing Units or Shared Ownership Dwellings that those units have been transferred to the Registered Provider
- 1.6 Any transfer to a Registered Provider of the land on which the Affordable Housing Units will be constructed shall be:

- 1.6.1 with vacant possession;
 - 1.6.2 free from any encumbrance other than existing at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owners to any statutory undertaker);
 - 1.6.3 subject to grant by the Owners to the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units;
 - 1.6.4 subject to a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the construction, operation, use, maintenance and management of the Development;
 - 1.6.6 subject to a requirement to enter into the Affordable Housing Nomination Agreement with the District Council
- 1.7 The Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing save where provided otherwise in paragraphs 1.8 and 1.9 below
- 1.8 The District Council and the Owners agree that the obligations and restrictions contained in this Second Schedule Part 2 paragraph 1 shall not bind:
- 1.8.1 a mortgagee, chargee or receiver who has complied with the provisions of paragraph 1.9 of this part of this Schedule;
 - 1.8.2 any RTA Purchaser;
 - 1.8.3 any Affordable Housing Unit where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, a voluntary grant scheme under section 21 of the Housing Act 1996 or any amendment or replacement thereof;
 - 1.8.4 a leaseholder of a Shared Ownership Dwelling who is entitled to exercise their right under a shared ownership lease to acquire 100% of the equity of their property; or
 - 1.8.5 any person or body deriving title through or from any of the parties mentioned in this paragraph 1.8.

1.9 Any Chargee of a Registered Provider shall prior to seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge give prior written notice to the District Council of its intention to dispose:

1.9.1 in the event that the District Council responds within twenty (20) Working Days' from receipt of a notice indicating that

(a) reasonable arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard it/them as Affordable Housing Unit(s); and

(b) that such a transfer would take place within two (2) months from receipt of the notice

then the Chargee of a Registered Provider shall cooperate with such reasonable arrangements and use reasonable endeavours to secure such transfer

1.9.2 if the District Council does not serve its response to the notice served under paragraph 1.9 within one month then the Chargee of a Registered Provider shall be entitled to dispose free of the restrictions set out in this Second Schedule Part 2 paragraph 1 which shall from the time of the completion of the disposal cease to apply

1.9.3 if the District Council cannot within two (2) months' of the date of service of its response under paragraph 1.9.1 secure such transfer then provided that the Chargee of a Registered Provider shall have complied with its obligations under paragraph 1.9 the Chargee of a Registered Provider shall be entitled to dispose free of the restrictions set out in this Second Schedule part 2 paragraph 1 which shall from the time of the completion of the disposal cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph 1.9 shall not require the Chargee of a Registered Provider to act contrary to its duties and rights under the charge or mortgage and that the District Council must give consideration to protect the interest of the Chargee of a Registered Provider in respect of monies outstanding under the charge or mortgage.

1.10 In the event that the Registered Provider (within two (2) months' of written invitation) is unable to make an acceptable offer to purchase the Affordable Housing Units or no longer wants to purchase the Affordable Housing Units to enable the Owners to transfer the Affordable Housing Units to the Registered Provider pursuant to paragraph 1.6 of this part of this Schedule the Owners shall:

1.10.1 notify the District Council three (3) months' prior to the Practical Completion of the Affordable Housing Units;

- 1.10.2 set out the reasons (together with any supporting evidence) in writing why a transfer to the Registered Provider has not been entered into pursuant to paragraph 1.6 of this part of this Schedule
 - 1.10.3 submit any other information reasonably requested by the District Council to satisfy why the Owners have not been able to enter into a transfer with the Registered Provider pursuant to paragraph 1.6 of this part of this Schedule
 - 1.10.4 offer the seven (7) Affordable Housing Units to the District Council to be purchased by the District Council as Affordable Housing
- 1.11 In the event the District Council make an acceptable offer to the Owners (within two (2) months' of written invitation) for the Affordable Housing Units then the Owners shall not Occupy or permit Occupation of more than eighty per cent (80%) of the Market Housing Units until the Owners have provided the District Council with a freehold transfer document unconditionally released for completion
- 1.12 In the event the District Council does not make an acceptable offer to the Owners (within two (2) months' of written invitation) to purchase all of the Affordable Housing Units or the District Council indicates that they do not want to purchase the Affordable Housing Units the Owner will be able to sell all thirteen (13) of the Market Housing Units before paying the Affordable Housing Contribution to the District Council and the provisions of this paragraph 1 of part 2 of this Schedule shall no longer be applicable in respect of the Affordable Housing Units and the Owners shall be free to dispose of said seven (7) Dwellings as Market Housing Units

THIRD SCHEDULE

OWNERS COVENANT WITH THE COUNTY COUNCIL

PART 1

EDUCATION

1. The Owners shall give the County Council Notice of Expected Commencement not less than five (5) Working Days' before the date that the Owners expect Commencement of the Development to occur and (ii) within fifteen (15) Working Days' of Commencement of Development Notice of Actual Commencement in order to confirm that Commencement has occurred
2. The Owners covenant to pay the Primary School Land Contribution and the Primary School Construction Contribution to the County Council prior to Commencement of the Development
3. The Owners covenant not to Commence the Development until the Primary School Land Contribution and the Primary School Construction Contribution has been paid in full to the County Council
4. In the event that the Joint Local Plan is adopted without the identified need for a new primary school in Claydon, Barham, Great Blakenham or Bramford to serve the proposed development the Education Contribution will not be required and the Owners shall be free of the obligation to pay the Primary School Land Contribution and the Primary School Construction Contribution and can Commence the Development.

FOURTH SCHEDULE
DISTRICT COUNCIL'S COVENANTS

1. The District Council will issue the completed Permission on or within five (5) Working Days' of the date of this Deed
2. At the written request of the Owners the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed

PART 1

AFFORDABLE HOUSING

1. In the event an Affordable Housing Contribution is paid to the District Council to use the monies for the provision of Affordable Housing within the administrative area of the Mid Suffolk District Council and for the avoidance of doubt this can include the purchase of land or existing dwellings for sale
2. The District Council shall if requested to do so in writing after the expiry of ten (10) years of the date that an Affordable Housing Contribution was paid pay to any person such amount of the Affordable Housing Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the District Council in accordance with the provisions of this Deed such payment to be made within one month (1) of such request
3. If the Affordable Housing Contribution paid to the District Council pursuant to this Deed has been spent or committed the District Council shall upon written request by the Owners after the expiry of ten (10) years of the payment of that sum within a further period of one month (1) notify the Owners 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

FIFTH SCHEDULE
COUNTY COUNCIL'S COVENANTS

PART 1
EDUCATION

1. To use the Primary School Land Contribution and Primary School Construction Contribution towards the site acquisition and build costs of a new primary school in the locality of the Site.
2. The County Council shall if requested to do so in writing after the expiry of ten (10) years of the date that the Primary School Land Contribution and Primary School Construction Contribution was paid within a further period of one (1) year pay to any person such amount of the Primary School Land Contribution and Primary School Construction Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the County Council in accordance with the provisions of this Deed such payment to be made within twenty (20) Working Days' of such request
3. If the Primary School Land Contribution and Primary School Construction Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request made by the Owners after the expiry of ten (10) years of the payment of that sum within a further period of one (1) year notify the Owners 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 such notice to be provided within a period of twenty (20) Working Days' from written request