

DATED 13th January 2019-20

**Deed pursuant to Section 106 of the Town and
Country Planning Act 1990**

MID SUFFOLK DISTRICT COUNCIL (1)

and

SUFFOLK COUNTY COUNCIL (2)

and

BRIAN GEORGE SUTTON and JUNE MARGARET SUTTON (3)

Relating to

Land off Hunston Road Badwell Ash Bury St Edmunds Suffolk

This Deed is made the 13th day of January 2019/20

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) **BRIAN GEORGE SUTTON** and **JUNE MARGARET SUTTON** both of Shackerland Hall Richer Road Badwell Ash Bury St. Edmunds Suffolk IP31 3EU ("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. For the avoidance of doubt this can include purchase of land or existing open market dwellings to be used for Affordable Housing
“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 eighteen (18) of the Dwellings to be provided on the Site pursuant to the Planning Permission to be Occupied as Affordable Housing in accordance with the Affordable Housing Scheme of which fourteen (14) 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 the remaining four (4) 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 29 March 2019 and allocated reference DC/19/01554
"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 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 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 fifty-two (52) Dwellings including affordable homes and the creation of an access road (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
" Management Company"	a company or body who will take over responsibility for the future maintenance of the Open Space and which definition may include a resident's association established for this purpose or a private limited company
"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
"Nominated body"	one or any of the following as determined by the District Council:

- a) a Parish Council;
- b) the Management Company; or
- c) such other body as the District Council may elect

“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 Space Plan”

a plan to be submitted to the District Council for approval, indicating the location of the Open Space including a landscaped area picnic area and wooded area

“Open Space Specification”

the specification for delivery of the Open and Play Space including the specifications plans and drawings showing but not limited to the layout and design of the Open and Play Space, the phasing and timing of the delivery of the Open and Play Space including details of any landscaping, paths and access arrangements together with details of the proposed future management regime for the Open and Play Space to be agreed in writing with the District Council in accordance with Part 3 of the Second Schedule

“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
"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
"Public Footpath Contribution"	means seven thousand pounds (£7,000) to create, upgrade and improve footpaths in the vicinity of the Development which shall include officer time and legal costs incurred
"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. For the avoidance of doubt this can include the district Council.
"School Transport Contribution"	means twenty-six thousand pounds and eight hundred and eighty pounds (£26,880) towards primary age pupils school transportation and fourteen thousand and four hundred pounds (£14,400) towards secondary age pupils school transportation
"Shared Ownership"	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
"Shared Ownership Lease"	a long lease (over 99 years) of a dwelling granted at a premium whereby not less than twenty-five percent (25%) and no more than 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

17-095-001-L

Land Use
Zoning
Topography
Elevation
Contours
Water
Roads
Utilities

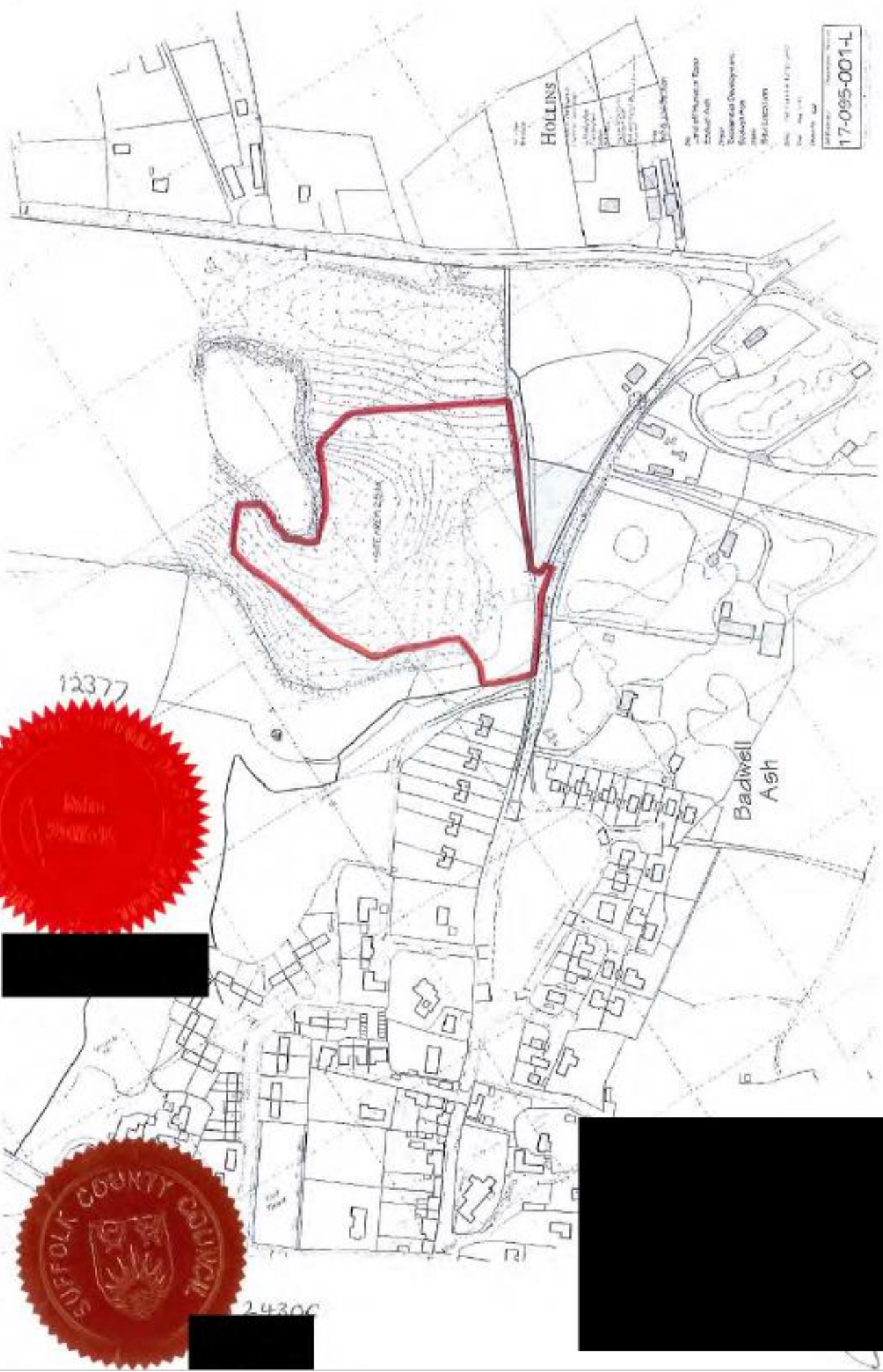
HOLLINS

Badwell Ash

12377



24306



	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
“Site”	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;
“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, 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
- 3.5 The parties agreed that obligations in this Deed shall not bind the purchasers of a single Dwelling

4. **CONDITIONALITY**

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, 7.13, 7.14, 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 Part 1 of 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 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
- 7.13 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
- 7.14 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	Shackerland Hall, Richer Road Badwell Ash Bury St. Edmunds Suffolk IP31 3EU

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:)
)
)



12377

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



Authorised Officer

24306



Executed as a DEED
by **BRIAN GEORGE SUTTON**
in the presence of



Signature of witness:



Name: Hayward Moon
Connexions
Address: 159 Princes Str
Ipswich
Suffolk



Executed as a DEED IP1 1QJ
by **JUNE MARGARET SUTTON**
in the presence of

Signature of witness:



Name: Hayward Moon
Connexions
Address: 159 Princes Street
Ipswich
Suffolk
IP1 1QJ

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 off Hunston Road Badwell Ash Suffolk and being part of the land registered with the Land Registry under Title Number SK276177

SECOND SCHEDULE

OWNERS COVENANTS WITH THE DISTRICT COUNCIL

PART 1

- 1 The Owners shall within five (5) Working Days' give written notice to the District Council following each of the following events
 - 1.1. Commencement of Development
 - 1.2 Occupation of fifty percent (50%) of the Market Housing Units
 - 1.3 Occupation of fifty percent of all dwellings (Market and/or Affordable Housing Units)
 - 1.4 Occupation of eighty percent (80%) of the Market Housing Units
 - 1.5. Completion of the Development

PART 2

AFFORDABLE HOUSING

- 1.1 The Development shall include eighteen (18) Affordable Housing Units comprising 6 x 1 bedroom 2-person flats, 6 x 2 bedroomed 4-person flats, 4 x 2 bedroom 4-person houses, 2 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 – 14 Dwellings

- 6 x 1 bedroom 2-person flats @ 50 sqm
- 6 x 2 bedroom 4-person flats @ 70 sqm
- 1 x 2 bedroom 4-person house @ 79sqm
- 1 x 3 bedroom 5-person house @ 93 sqm

Shared Ownership Dwellings – 4 Dwellings

- 3 x 2 bedroom 4-person houses @ 79sqm

1 x 3-bedroom 5-person house @ 93 sqm

- 1.2 The Owners shall submit the Affordable Housing Scheme to the District Council for approval with the first application for reserved matters consent and the District Council agree to act reasonably when approving the Affordable Housing Scheme and to approve the same as soon as reasonably possible after the date of submission
- 1.3 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
- 1.4 Having given notice under paragraph 1.1 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
- 1.5 The Owners shall construct or procure the construction of the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme to a standard of construction that meets the Nationally described Space Standard in place
- 1.6 Subject to paragraph 1.11 to 1.14 inclusive below the Owners shall not
 - 1.6.1 Occupy or permit Occupation of more than fifty percent (50%) of the Market Housing Units until fifty percent (50%) of the Affordable Housing Units have been constructed, are ready for Occupation and have been transferred to the Registered Provider
 - 1.6.2 Occupy or permit Occupation of more than eighty percent (80%) of the Market Housing Units until (100%) of the Affordable Housing Units have been constructed, are ready for Occupation and have been transferred to the Registered Provider
- 1.7 Any transfer to a Registered Provider of the land on which the Affordable Housing Units will be constructed shall be:
 - 1.7.1 with vacant possession;

- 1.7.2 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);
 - 1.7.3 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;
 - 1.7.4 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;
 - 1.7.5 subject to a requirement to enter into the Affordable Housing Nomination Agreement between the District Council and the Registered Provider
- 1.8 The Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing save where provided otherwise in paragraphs 1.9 and 1.10 below
- 1.9 The District Council and the Owners agree that the obligations and restrictions contained in this Second Schedule Part 2 paragraph 1 shall not bind:
- 1.9.1 a mortgagee, chargee or receiver who has complied with the provisions of paragraph 1.9 of this part of this Schedule;
 - 1.9.2 any Right to Buy or Right to Acquire Purchaser;
 - 1.9.3 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;
 - 1.9.4 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
 - 1.9.5 any person or body deriving title through or from any of the parties mentioned in this paragraph 1.8.
- 1.10 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:
- 1.10.1 in the event that the District Council responds within one (1) month 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

1.10.2 if the District Council does not serve its response to the notice served under paragraph 1.9 within one (1) 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

1.10.3 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 1.10 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.

1.11 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 1.7 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 or (if later) within 3 months of the Registered Provider being unable to make an acceptable offer to purchase 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 1.7 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 1.7 of this part of this Schedule

1.10.4 offer the eighteen (18) Affordable Housing Units to the District Council to be purchased by the District Council as Affordable Housing

1.12 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

- 1.13 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 thirty-four (34) 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 eighteen (18) Dwellings as Market Housing Units PROVIDED THAT the Owner shall not sell more than 80% of the 34 Market Housing Units unless 50% of the Affordable Housing Contribution has been paid to the District Council and shall not sell the final Market Housing Unit until the remainder of the Affordable Housing Contribution has been paid to the District Council.

PART 3

OPEN AND PLAY SPACE

- 1.1 The Owners hereby covenant with the District Council that prior to Commencement of Development and in parallel with the relevant reserved matter application or discharge of condition application to submit the Open and Play Space Plan and the Open and Play Space Specification to the District Council for approval.
- 1.2 The District Council agree to act reasonably when approving the Open and Play Space Plan and the Open and Play Space Specification and furthermore agree to approve the same as soon as reasonably possible after the date of submission.
- 1.3 The Owners covenant not to Commence the Development unless and until the Open and Play Space Plan and the Open and Play Space Specification have been approved by the District Council in writing such approval not to be unreasonably withheld or delayed.
- 1.4 The Owners hereby covenant with the District Council not to permit the Occupation of more than twenty six (26) Dwellings on the Site until the Open and Play Space has been provided in accordance with the approved Open and Play Space Plan and the Open and Play Space Specification.
- 1.5 The Owner further covenants with the District Council at their own cost to maintain and manage the Open and Play Space strictly in accordance with the Open and Play Space Plan the Open and Play Space Specification and the Planning Permission until the date of the Open and Play Space Transfer described in paragraphs 1.7 and 1.8 of this Part 3 of this Second Schedule has been completed and for the avoidance of doubt the Open and Play Space can be transferred in full to the Nominated Body or if the Parties (acting reasonably) so agree in part to different Nominated Bodies.
- 1.6 The Owner covenants that following the District Council's written confirmation that the Open and Play Space has been laid out in accordance with the Open and Play Space Plan and Open and Play Space Specification to offer to transfer by way of a transfer or part thereof as

agreed in writing by the District Council to the appropriate Nominated Body and such transfer to include such items as necessary and outlined in the Open and Play Space Transfer and shall for the avoidance of doubt include a covenant that the Open and Play Space shall thereafter be retained and maintained in accordance with the Open and Play Space Plan the Open and Play Space Specification and the Planning Permission for the benefit of all residents of the Development.

- 1.7 The Owner shall offer to transfer the Open and Play Space to the Nominated Body in full or Nominated Bodies in part within twelve (12) months of Completion of the Development in accordance with the Open and Play Space Transfer.
- 1.8 The Open and Play Space is to be transferred to the Nominated Body in full or Nominated Bodies in part for the sum of one pound (£1)

THIRD SCHEDULE

OWNERS COVENANT WITH THE COUNTY COUNCIL

1 NOTICES

1.1 The Owner shall give the County Council notice in writing to advise of the actual Commencement date within seven (7) days of Commencement in order to confirm Commencement has occurred

1.2 The Owner shall give the County Council written notice of the first Occupation of the twenty first (21st) Dwelling within seven (7) days of Occupation in order to confirm Occupation has occurred

2. SCHOOL TRANSPORT CONTRIBUTION

2.1 The Owner shall pay the School Transport Contribution to the County Council prior to first Occupation of the first (1st) Dwelling

2.2 The Owner shall not Occupy or permit or allow first Occupation of Dwellings until the School Transport Contribution has been paid to the County Council

3 FOOTPATH IMPROVEMENTS

3.1 The Owner shall pay the Public Footpath Contribution to the County Council prior to first Occupation of the first (1st) Dwelling

3.2 The Owner shall not Occupy or permit or allow first Occupation of Dwellings until the Public Footpath Contribution has been paid to the County Council.

FOURTH SCHEDULE

PART 1

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
3. The District Council will act reasonably and swiftly in approving any application that the Owners are required to submit under this Deed
4. If the Affordable Housing Contribution is paid to comply with the obligations in Part 2 of this Fourth Schedule

PART 2

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
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 (1) month 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 (1) month

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

1. At the written request of the Owner after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

2. If requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year to pay to any person such amount of the School Transport Contribution and Public Footpath 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.

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

- 1.5 **'Chargee's Duties'** means the tasks and duties set out in Clause 10.4 of this deed
- 1.6 **'Gateway to Homechoice'** means the Greater Haven Gateway sub-regional Choice Based Lettings system (or any replacement or similar system in place at the time)
- 1.7 **'Initial Let'** means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit
- 1.8 **'Local Connection Criteria'** means an individual who immediately before taking up occupation of an Affordable Housing Unit:
- 1.8.1 had his only or principal home in the district of Mid Suffolk for a continuous period of not less than 2 years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.8.2 to 1.8.4 inclusive
- 1.8.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than 2 years in the district of Mid Suffolk and wishes to be near that relative or
- 1.8.3 is employed in the district of Mid Suffolk on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for 2 years
- 1.8.4 who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called the "Availability Date") can provide satisfactory written evidence to the District Council of his or her former residency in the district of Mid Suffolk for either (i) six months out of the preceding twelve months or (ii) three years out of the preceding five years and in either case such period of former residency shall end with the Availability Date

- 1.9 **'Nomination List'** means the Gateway to Homechoice Short List produced in accordance with the Service Level Agreement
- 1.10 **'Nominee'** means a person named on the Nomination List who satisfies the Local Connection Criteria and is verified by the District Council as best meeting the criteria for the category of Affordable Housing Unit in respect of which the Registered Provider is to select a person from the Nomination List and offer a Tenancy Agreement
- 1.11 **'Practical Completion'** means issue of a certificate of practical completion by the Registered Provider's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the Registered Provider the issue of a certificate of practical completion by that other party's surveyor
- 1.12 **'Property'** means the land and dwellings at land between Norwich Road and Pesthouse Lane, Barham, Suffolk shown edged red on the plan annexed
- 1.13 **'Protected Tenant'** means any Nominee who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- 1.14 **'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 register kept by Homes England Chapter III of that Act
- 1.15 **"the Service Level Agreement"** means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the Registered Provider and Others (1) and the District Council and Others
- 1.16 **'Shared Ownership Dwelling'** means an Affordable Dwelling to be let on a Shared Ownership Lease in accordance with the terms as set out in Homes England's capital funding guide or any other such guidance as shall replace it
- 1.17 **'Shared Ownership Lease'** means a lease or sub-lease of an Affordable Dwelling granted at a premium whereby not less than 25% and no more than up to 70% of the Open Market Value on first purchase of the legal and equitable interest in the Affordable Dwelling is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to

acquire up to 100% of the legal and equitable interest in the Affordable Dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease or such other figure permitted by Homes England from time to time and any capital receipt received by the Registered Provider in excess of 80% as a result of the tenant exercising their right to staircase out to 100% shall be retained by the Registered Provider for re-investment in Affordable Housing within the district of Mid Suffolk for a period of five years from the date of receipt and if not spent within 5 years the Registered Provider will be able to expend such sums for Affordable Housing elsewhere

- 1.18 **'Tenancy Agreement'** means an assured tenancy agreement in a form prepared by the Registered Provider and containing terms which accord with the form of tenancy agreement being used by the Registered Provider from time to time for its general lettings
- 1.19 **'Vacancy Notice'** means a written notice (in a form to be agreed between the Registered Provider and given by the Registered Provider to the District Council within one month from the date of this Deed) the function of such notice being the notification to the District Council by the Registered Provider of the expected date on which the construction and fitting out of the Affordable Housing Units will be complete
- 1.20 **'Void'** means an Affordable Housing Unit which is vacant otherwise than as a result of the tenant having:
- 1.20.1 moved to other accommodation either by transfer or decant provided by the Registered Provider
 - 1.20.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider
 - 1.20.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere
- 1.21 **'Void Notice'** means a written notice given by the Registered Provider to the District Council (in a form to be agreed between the Registered Provider and the District Council within one

month from the date of this Deed) the function of such a notice being the notification to the District Council of a Void

- 1.22 **'Working Day'** means Monday to Friday (inclusive) except Good Friday, Christmas Day and any public or bank holidays from time to time in England

2 Enabling Provisions

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

3 Procedure

The parties agree that the Service Level Agreement procedure to which they are signatories and the Local Connection Criteria shall apply to the nomination of persons in respect of the Affordable Housing Units

3.1 Initial lets

In relation to the Initial Lets of the Affordable Housing Units the following provisions shall apply

3.1.1 The Registered Provider shall give the District Council not less than three (3) months' written notice of the date when all the Affordable Housing Units will be ready for occupation

3.1.2 The Registered Provider shall serve a Vacancy Notice upon the District Council in respect of an Affordable Housing Unit not earlier than two (2) months prior to an Affordable Housing Unit becoming available for occupation

3.2 Voids

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

4. Supplemental provisions relating to allocating Initial Lets and Voids

4.1 Where there are two or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.8.1 to 1.8.5 of this Schedule and subject to clause 4.2 of this Schedule preference must be given to the applicant/s who have the highest housing need according to the District Council's current allocations policy

4.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities then any such Dwelling may be first offered to a person or persons with disabilities who require such accommodation even where such person(s) have a lesser Local Connection under clauses 1.8.1 to 1.8.5 of this Schedule than someone who does not have disabilities

5. Registered Provider covenants

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

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

5.2 To ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or as Low-Cost Home Ownership and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider

5.3 the Affordable Housing Units are constructed in accordance with current Homes England design and space standard requirements

6. Alteration of lists

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

7. Notices

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served two (2) Working Days' after posting or in the case of electronic mailing the day such notice was transmitted by the party serving the notice

8 Transfer to other Registered Provider

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

9 Disputes

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

10 Agreements and declarations

The parties agree:

- 10.1 Nothing in this Deed fetters or restricts the exercise by the District Council of any of its powers
- 10.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33
- 10.3 From the date of Practical Completion the Affordable Housing Units shall be let in accordance with the terms of this deed save that the obligations and restrictions contained in this deed shall not be binding on:
 - 10.3.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
 - 10.3.2 any Chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or

10.3.3 any mortgagee and any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title to either of them

10.4 The Chargee 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 not less than two (2) months' prior notice to the District Council of its intention to dispose and:

10.4.1 in the event that the District Council responds within one month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee

10.4.2 if the District Council does not serve its response to the notice within the said period of one month contained in clause 10.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this deed.

10.4.3 if the District Council or any other person cannot within two (2) months' of the date of service of its response under clause 10.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 10.4 the Chargee shall be entitled to dispose free of the restrictions set out in this deed

PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

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

Signatories District Council

Registered Provider