

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

**5. THE OWNER'S COVENANTS**

5.1 The Owners covenant with the Council as set out in the Second Schedule;

5.2 The Owners covenant with the County Council as set out in the Third Schedule.

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

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

6.2 The County Council covenants 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 Council and the County Council to facilitate the discharge and performance of all obligations contained herein;

7.2 The Developer agrees declares and covenants to pay to the Council on completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed;

7.3 The Developer agrees declares and covenants 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;

7.4 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999;

7.5 This Deed shall be registered as a local land charge by the Council;

7.6 Where an approval agreement consent or expression of satisfaction or a subsequent deed is required by the Owners from either the Council or County Council under the terms of this Deed such approval or agreement or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Growth or officer acting under his/her hand and on behalf of the County Council by the Director of Growth Highways and Infrastructure (or duly appointed successor) or officer acting under his/her hand;

- 7.7 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed;
- 7.8 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed;
- 7.9 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 expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owners) and the 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 The Owners agree that any rights to claim compensation in respect of any diminution in value of the Site arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived;
- 7.13 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority;
- 7.14 The Owners covenant and warrant to the Council and the County Council that they have full power to enter into this Deed and there is no other person (apart from the Developer) 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;

7.15 In the event that that the Council shall at any time hereafter grant a planning permission pursuant to an application under Section 73 of the Act in respect of the conditions relating the Planning Permission (and for no other purpose whatsoever) or a non-material amendment is made pursuant to Section 96A of the Act references in this Deed to the Application and the Development shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid in this Deed shall henceforth take effect and be read and construed accordingly so that the planning obligations in this Deed shall apply to development under such subsequent planning permissions;

7.16 The Owners agree declare and covenant to pay to the Council on Commencement of Development the reasonable fee incurred by the Council for monitoring compliance with the obligations within this Deed in the sum of £4,896;

7.17 *UBLP on behalf of the Rushbrooke Consortium Owners Hoplins Homes Ltd and Pigeon (Sunny) Ltd* The Owners further agree declare and covenant to pay to the County Council on Commencement of Development the reasonable fee incurred by the County Council for monitoring compliance with the obligations within this Deed in the sum of £ 5,500.

**8. WAIVER**

No waiver (whether expressed or implied) by the Council the County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council the County Council or the 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 Council and the County Council to give each of them independently written notice of any transfer in ownership of any freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like.

10. **INDEXATION**

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

- 10.1 A is the sum payable under this Deed;
- 10.2 B is the original sum calculated as the sum payable;
- 10.3 C is the BCIS Index for the quarter most recently published before the date on which the sum is payable;
- 10.4 D is the BCIS Index for the quarter most recently published before the date of this Deed; and
- 10.5 C/D is greater than 1.

11. **INTEREST**

If any payment due to the Council and/or the County Council under this Deed is not paid on the due date Late Payment Interest will be payable by the Owners from the due date to the date payment is received.

12. **VAT**

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

13. **NOTICES**

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

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

The Council	The Assistant Director of Growth District Offices College Heath Road Mildenhall Suffolk IP28 7EY;
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The County Council	The Director of Growth, Highways and Infrastructure (or duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX;
The Owners	The addresses in respect of each Owner as listed in the First Schedule save that in the case of the Rushbrooke Consortium Owners any notices or written communication shall be marked for the attention of Ashton Legal of Waterfront House Wherry Quay Ipswich Suffolk IP4 1AS ( reference: JPG/137139-0003) and copied to Hazells Chartered Surveyors of The Annex Short Brackland Bury St Edmunds Suffolk IP33 1EL FAO Mr Jonathan Lloyd;
The Developer	Melton Park House Melton Woodbridge Suffolk IP12 1TJ marked for the attention of Simon Bryan (Development Director) or such other person as the Developer may advise;
The Promoter	Salisbury House Station Road Cambridge Cambridgeshire CB1 2LA marked for the attention of James Buxton (Managing Director) or such other person as the Promoter may advise.

- 13.3 Any notice or other written communication to be given by either the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County Council by a duly authorised officer of the Council or the County Council as appropriate;
- 13.4 The Owners covenant to inform the Council and the County Council by way of written notice within seven (7) days following:
- 13.4.1 Commencement of Development;
  - 13.4.2 Occupation of the first (1<sup>st</sup>) Dwelling in the Northern Neighbourhood;
  - 13.4.3 Occupation of the first (1<sup>st</sup>) Dwelling in the Southern Neighbourhood;
  - 13.4.4 Occupation of fifty (50) Dwellings in the Development;
  - 13.4.5 Occupation of one hundred (100) Dwellings in the Development;

- 13.4.6 Occupation of one hundred (100) Dwellings two hundred (200) Dwellings three hundred (300) Dwellings and thereafter every one hundred Dwelling Occupations in the Northern Neighbourhood (here meaning a separate notice at every 100 Occupations);
- 13.4.7 Occupation of one hundred (100) Dwellings two hundred (200) Dwellings and thereafter every one hundred Dwelling Occupations in the Southern Neighbourhood (here meaning a separate notice at every 100 Occupations);
- 13.4.8 Occupation of one hundred and fifty (150) Dwellings in the Southern Neighbourhood;
- 13.4.9 Occupation of two hundred and fifty (250) Dwellings in the Southern Neighbourhood;
- 13.4.10 Occupation of two hundred and fifty (250) Dwellings in the Development;
- 13.4.11 Occupation of four hundred and fifty (450) Dwellings in the Development;
- 13.4.12 Occupation of four hundred and fifty (450) Dwellings in the Northern Neighbourhood;
- 13.4.13 Occupation of seven hundred and fifty (750) Dwellings in the Development;
- 13.4.14 Occupation of seven hundred and fifty (750) Dwellings in the Northern Neighbourhood;
- 13.4.15 Occupation of the final Dwelling in the Northern Neighbourhood
- 13.4.16 Completion of Development in the Northern Neighbourhood;
- 13.4.17 Completion of Development in the Southern Neighbourhood;
- 13.4.18 Completion of Development.

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

- 14.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) which cannot be resolved by prior agreement

between the parties to the dispute or difference ("the Dispute Parties" shall be referred to determination before a single expert (the "Expert") acting as an expert and not as an arbitrator;

- 14.2 The Dispute Parties shall jointly appoint the Expert not later than twenty eight (28) days after service of a request in writing by any Dispute Party to do so;;
- 14.3 If the Dispute Parties are unable to agree within twenty eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the Dispute Parties as follows:
  - 14.3.1 where the difference or question relates to the rights and liabilities of any Dispute Party or to the terms or conditions embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society;
  - 14.3.2 where the difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers;
  - 14.3.3 where the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Dispute Parties but in default of agreement appointed at the request of either Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
  - 14.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Dispute Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute;
- 14.4 In the event of a reference to determination by expert the Dispute Parties agree to:
  - 14.4.1 prosecute any such reference expeditiously and
  - 14.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim final or otherwise) as soon as reasonably practicable;
- 14.5 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the conclusion of the exchange of written submissions or hearing (if necessary);

- 14.6 The award shall be final and binding on the Dispute Parties and on any persons claiming through or under them and in the absence of manifest error and any costs shall be payable by the Dispute Parties in such proportion as the Expert shall determine and failing such determination shall be borne by the Dispute Parties in equal shares;
- 14.7 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to Clause 14 but without prejudice to the rights and obligations of any of the Parties in relation to the termination of the Deed;
- 14.8 The provisions of this clause shall not affect the ability of the Council or County Council to apply for and be granted any of the following: declaratory relief injunction specific performance payment of any sum damages and any other means of enforcing this Deed and consequential and interim orders and relief.

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

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

16. **APPROVALS**

Where any plans or documents are approved by the Council or the County Council under the terms of this Deed further or amended plans or documents may be submitted from time to time and if approved by the Council or the County Council shall replace those previously approved.

17. **COMMUNITY INFRASTRUCTURE LEVY**

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



18. **CONSENT OF DEVELOPER AND PROMOTER**

The Developer and Promoter acknowledge that the Owners have entered into this Deed with their consent and that the Site is bound by the obligations contained in this Deed PROVIDED THAT the Developer and the Promoter shall not be bound by any of the obligations (other than clause 7.2 and 7.3) unless and until they jointly or severally become a successor in title to the Owners.

19. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law 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.

21 LIMITATION The Liability of Anthony Welton and Anthony John Holliday shall not be Personal and shall be limited to the net assets from time to time of the  
**In witness whereof the Parties hereto have executed this Deed on the day and year first before written**



**THE COMMON SEAL OF WEST SUFFOLK COUNCIL**

was affixed in the presence of:



BLP on behalf of Highwin Homes Ltd and Pigeonbury (dot) Ltd



Authorised Officer

**THE COMMON SEAL OF SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:

)  
)  
)



Authorised Officer



**EXECUTED AS A DEED BY**

)

**HOPKINS HOMES LIMITED**

)

in the presence of:

)

Director



Director / Company Secretary

**EXECUTED AS A DEED BY**

)

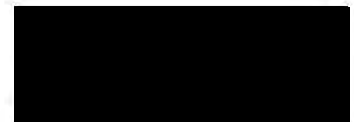
**PIGEON (BURY EAST) LIMITED**

)

Acting by one director

in the presence of:

Director



Witness Signature



Witness Name: SARAH CROWHURST

Witness Address:



Witness Occupation: SECRETARY

**EXECUTED AS A DEED BY**

**MARTIN PAUL WARREN**



In the presence of :

Witness Signature:



Witness Name:

JAMES GRIFFITHS

Witness Address:



Witness Occupation:

Slinter

EXECUTED AS A DEED BY

**TINA HENSHAW**



In the presence of :

Witness Signature:



Witness Name:

*JAMES GRIFFITHS*

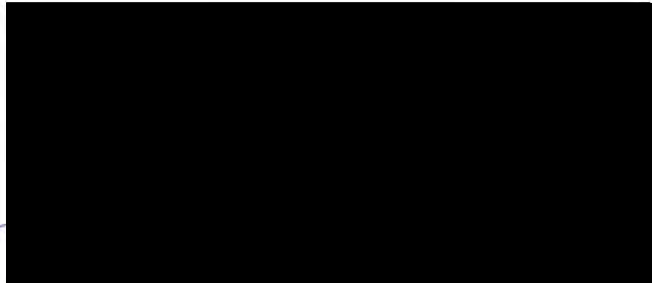
Witness Address:

*As before*

Witness Occupation:

EXECUTED AS A DEED BY

**JOHN CURTIS CASSON**



In the presence of :

Witness Signature:

Witness Name:

*JAMES GRIFFITHS*

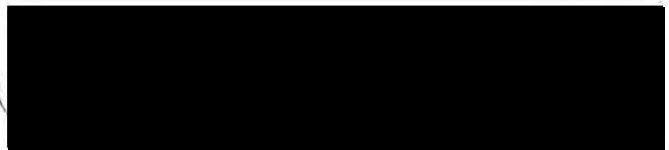
Witness Address:

*As before*

Witness Occupation:

EXECUTED AS A DEED BY

**JULIA MARY SETON ABEL SMITH**



In the presence of :

Witness Signature:



Witness Name:

*RON CLARE*

Witness Address:

Ashtons Legal  
The Long Barn  
Fornham Business Court  
Fornham St. Martin  
Bury St Edmunds  
Suffolk IP31 1SL

Witness Occupation:

*SOLICITOR*

EXECUTED AS A DEED by

**PETER HUGH WOLTON**

In the presence of :

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



JAMES GRIFFITHS

As before

EXECUTED AS A DEED BY

**RACHEL ANNA BUCK**

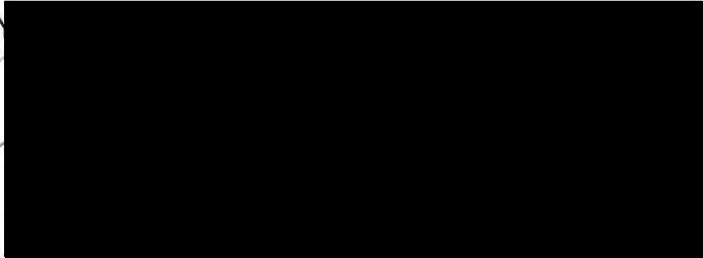
In the presence of :

Witness Signature:

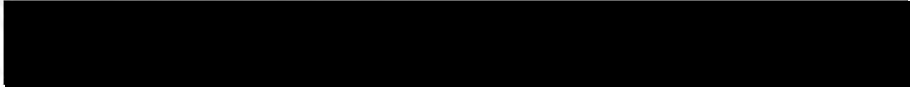
Witness Name:

Witness Address:

Witness Occupation:



Susan Warren



Sales Adviser

EXECUTED AS A DEED BY

**MARTIN CRACK**

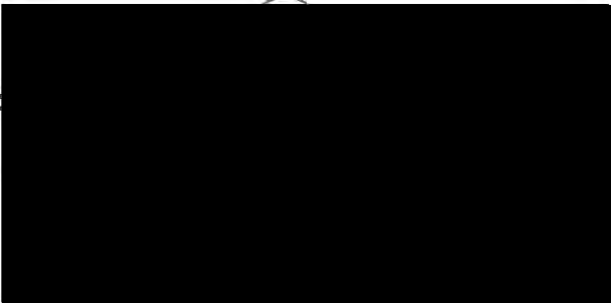
In the presence of :

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



As before

EXECUTED AS A DEED BY

**LESLEY CRACK**



In the presence of :

Witness Signature:

Witness Name:

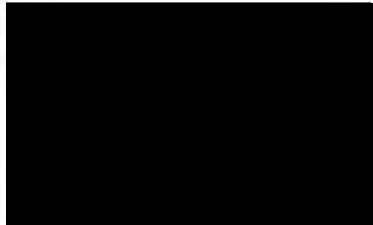
Witness Address:

*As before*

Witness Occupation:

EXECUTED AS A DEED BY

**MICHAELA CRACK**



In the presence of :

Witness Signature:

Witness Name:

*SARAH MOSS*

Witness Address:

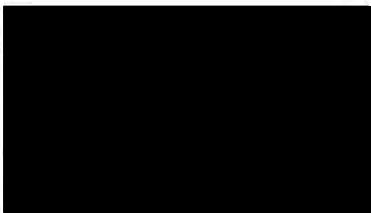
Witness Occupation:

*RECEPTIONIST*

Ashtons Legal  
The Long Barn  
Fornham Business Court  
Fornham St. Martin  
Bury St Edmunds  
Suffolk IP31 1SL

EXECUTED AS A DEED BY

**STEPHANIE CRACK**



In the presence of :

Witness Signature:

Witness Name:

*JAMES GRIFFITHS*

Witness Address:

*As before*

Witness Occupation:

EXECUTED AS A DEED BY

**LYNDON JOHN MILLS**

In the presence of :

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

*As before*

EXECUTED AS A DEED BY

**DAVID ROWELL SWALES**

In the presence of :

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

*JAMES GRIFFITHS*

*As before*

EXECUTED AS A DEED BY

**TIMOTHY ANDREW WAKERLEY**

In the presence of :

Witness Signature:

Witness Name:

Witness Address:

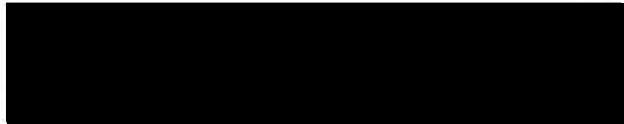
Witness Occupation:

*TINA LONGMOLE*

*Receptionist.*

EXECUTED AS A DEED BY

**CHRISTOPHER DENNIS PITCHERS**



In the presence of :

Witness Signature:



Witness Name:

*JAMES GRIFFITHS*

Witness Address:

*As before*

Witness Occupation:

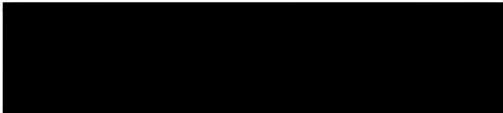
EXECUTED AS A DEED BY

**BRIAN LESLIE DAY**



In the presence of :

Witness Signature:



Witness Name:

*JAMES GRIFFITHS*

Witness Address:

*As before*

Witness Occupation:

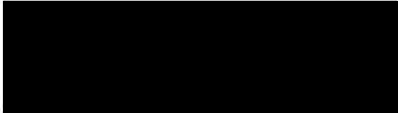
EXECUTED AS A DEED BY

**ALISON JANE TAYLOR**



In the presence of :

Witness Signature:



Witness Name:

*TINA LONGMORE*

Witness Address:

*As before ,*

Witness Occupation:

EXECUTED AS A DEED BY

**MARCIA LYNNED HYLAND**



In the presence of :



Witness Signature:

Witness Name:

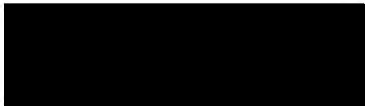
TINA LONGMORE

Witness Address:

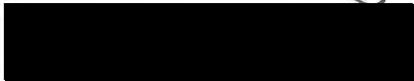
As before

Witness Occupation:

EXECUTED AS A DEED BY ALISON  
JANE TAYLOR AS ATTORNEY FOR  
**MICHELLE KIM TAYLOR-SPEARMAN**



In the presence of :



Alison Jane Taylor  
as attorney for Michelle  
Kim Taylor - Spearman

Witness Signature:

Witness Name:

TINA LONGMORE

Witness Address:

Witness Occupation:

As before

EXECUTED AS A DEED BY

**ANDREW MARK TAYLOR**



In the presence of :



Witness Signature:

Witness Name:

TINA LONGMORE

Witness Address:



Witness Occupation:

Receptionist.