

DATE 11th August 2020

- (1) WEST SUFFOLK COUNCIL
- (2) SUFFOLK COUNTY COUNCIL
- (3) JAYNIC INVESTMENTS LLP

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

relating to

**Land West of Three Counties Way
Three Counties Way Withersfield Suffolk**

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

DATE

11th August

2020

PARTIES:

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **JAYNIC INVESTMENTS LLP** (company registration number OC341984) of The Clubhouse Somerton Farm Stables Forest Road Winkfield Row Bracknell Berkshire RG42 7NJ (hereinafter called the "**Owner**")

INTRODUCTION

- A The Council is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- B The County Council is the local highway authority (except for trunk roads) the local education authority the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- C The Owner is the freehold owner of the Site which is registered at HM Land Registry under title numbers SK198593 and SK289511 SK98535 and SK171179
- D The Owner submitted the Application to the Council and the Council refused planning permission for the Development on the 5th February 2020
- E The Owner intends to appeal to the Planning Inspectorate against the Councils decision to refuse the Application and the Parties agree to enter into this Deed to regulate the Development to secure the necessary planning obligations that they consider should be required if the Planning Inspectorate decide to allow the Owners appeal
- F The Council and the County Council consider and the Owner acknowledges that the Development should not take place until

certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed

- G The Council is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) apart from the £5,000.00 for traffic calming measures which the Owner has offered to pay following a request made by Withersfield Parish Council

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing Contribution"	where the requirement that 30% of the Dwellings are to be Affordable Housing Units results in a requirement that part of a Dwelling is to be affordable the financial contribution payable for that fraction of a Dwelling payable to the Council and calculated in accordance with Appendix 2 of the Council's Affordable Housing Supplementary Planning Document 2019
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market
"Affordable Housing Units"	those Dwellings which are to comprise 30% of the Dwellings (rounded down to whole Dwellings) of which 80% will be Affordable Rent and 20% shall be Intermediate Housing unless otherwise agreed with the Council
"Affordable Rent"	housing made available by a Registered Provider as low cost rental accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level

up to 80% of the equivalent local market rent

"Application"	the outline application for planning permission to develop the Site refused by the Council on the 5 th February 2020 and bearing the Council's reference number DC/19/1711/OUT
"BCIS Index"	the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto
"BCIS Indexed"	the increase in any sum referred to in the Second Schedule and the Third Schedule by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 10 of this Deed
"Chargee"	any mortgagee or chargee of the Registered Provider or the owner of the Affordable Housing Units (or any number of them) and any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (however appointed) including a housing administrator
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site survey site clearance demolition and strip-out 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 or removal of services erection of any temporary

means of enclosure or temporary site accommodation the temporary display of site notices or advertisements and "Commenced" and "Commence Development" shall be construed accordingly

"Completion of Development"	the date that the last Dwelling is first Occupied
"Development"	the development of the Site that may be approved by the Planning Inspectorate at the Appeal against the refusal of the Application described as an outline planning application for up to 155 dwellings associated infrastructure and open space
"Dwelling"	a dwelling (including a house flat or bungalow and including both Open Market Dwellings and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwelling" and "Dwellings" shall be construed accordingly
"Intermediate Housing"	Affordable Housing Units for sale and rent provided at a cost above Social Rent but below market levels which meet the definition of Affordable Housing and may include Shared Ownership and shared equity products and other low cost homes for sale and intermediate rent but not Affordable Rent as more particularly defined in the NPPF
"Highways Contribution"	Twenty-seven thousand pounds (£27,000.00) BCIS Indexed
"Homes England"	the independent regulator for affordable housing in England (formerly known as Homes and Communities Agency) or such other organisation or body that replaces it
"Late Payment Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time

"LEAP"	a children's equipped play area to be incorporated into the Development
"Library Contribution"	sixteen pounds (£16.00) BCIS Indexed per Dwelling
"NHS Contribution"	ninety-one thousand eight hundred pounds (£91,800.00) BCIS Indexed
"Nomination Agreement"	a deed of agreement dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the related Affordable Housing Units substantially in the form of the draft in the Sixth Schedule or such other form as may be agreed between the the Council and the Registered Provider in writing
"NPPF"	National Planning Policy Framework dated February 2019 or any subsequent revision thereto
"Occupation"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied and "Occupy" shall be construed accordingly
"Open Market Dwellings"	those Dwellings that are not Affordable Housing Units
"Payee"	the original payee of any financial contributions required under this Deed
"Planning Permission"	the outline planning permission subject to conditions as may be granted by the Planning Inspectorate to the Appeal
"Primary School Contribution"	three thousand seven hundred and forty-seven pounds and forty-eight pence (£3,747.48) BCIS Indexed per Dwelling

"Pre School Contribution"	one thousand three hundred and ninety-one pounds and ninety-two pence (£1,391.92) BCIS Indexed per Dwelling
"Protected Occupier"	any Occupier or owner of any Affordable Housing Unit who has: <ul style="list-style-type: none"> (a) exercised the right to acquire pursuant to the Housing Act 1996 the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Unit (b) exercised any statutory right to buy (including the preserved right to buy) (or any equivalent contractual right) in respect of an Affordable Housing Unit (c) been granted a Shared Ownership lease by a Registered Provider in respect of a particular Affordable Housing Unit and the purchaser has subsequently staircased and purchased from the Registered Provider all the remaining shares or equity so that the purchaser owns the entire Affordable Housing Unit
"Public Open Space"	any areas of the Site that are to be laid out in accordance with the Councils Supplementary Planning Document for Open Space Sport and Recreation Facilities October 2011 and the Planning Permission and which are to be provided for use by the public in perpetuity
"Public Open Space Commuted Sum"	a sum for future maintenance calculated in accordance with the Councils Supplementary Planning Document for Open Space Sport and Recreation Facilities October 2011 that will only be required if the Public Open Space is transferred to the Council
"Registered Provider"	a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by the RSH under Chapter 3 of that Act and approved by the Council

"Rights Of Way Contribution"	eighteen thousand five hundred pounds (£18,500.00) BCIS Indexed
"RSH"	Regulator of Social Housing whose registered office is Level 1A - City Tower, Piccadilly Plaza Manchester M1 4BT or any statutory successor thereof or other government body with the function of regulating social housing development
"Secondary School Contribution"	four thousand two hundred and fifty-four pounds and twenty-one pence (£4,254.21) per Dwelling BCIS Indexed
"Shared Ownership Unit"	means the Affordable Housing Units to be provided by a Registered Provider by way of a Shared Ownership Lease granted to eligible households whose needs are not met by the market and where the purchaser buys an initial share in the property from the Registered Provider who retains the remainder and may charge a rent on the remainder with the purchaser being able to purchase additional shares up to 100% (staircasing)
"Shared Ownership Lease"	means a lease to be granted for a term of not less than 99 years which shall substantially accord with the requirements of, and be consistent with any model shared ownership lease as approved from time to time by Homes England (or any statutory successor) unless otherwise agreed by the Council
"Site"	the land shown edged red on the Site Plan
"Site Plan"	the plan marked "Site Plan" attached to the First Schedule of this Deed
"Social Rent"	social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008) for which guideline target rents are determined through the national rent regime and it may also be owned by other persons and provided under

	equivalent rental arrangements to the above as agreed with the Council or with the RSH
"Travel Plan Evaluation and Support Contribution"	one thousand pounds (£1,000.00) BCIS Indexed per annum payable in accordance with the Third Schedule of this Deed towards the costs of the County Council monitoring the implementation of the travel plans
"Working Days"	Monday to Friday (inclusive) except Good Friday Christmas Day and public or bank holidays from time to time in England

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause sub-clause schedule paragraph sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause schedule paragraph sub-paragraph or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies' corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.4 Wherever more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed shall include the successors in title to that party the personal representatives of that party and any party deriving title through or under that party and in the case of the Council and or the County Council the successors to their respective statutory functions

- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document
- 2.8 References to a "Site Plan" in this Deed shall be references to the plan attached to the First Schedule of this Deed bearing the relevant plan number or any amended plans as shall be agreed between the Owner the Council and the County Council
- 2.9 Subject to clause 2.10 the obligations in this Deed shall not be enforceable against:
- 2.9.1 any owner tenant or Occupier of an individual Dwelling nor against those deriving title from them nor any mortgagees chargees or receivers of such a Dwelling
- 2.9.2 any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services
- 2.9.3 any Registered Provider acquiring Affordable Housing Units
- 2.9.4 the Mortgagees or any Chargee or other chargee or mortgagee from time to time who has the benefit of a charge or mortgage of or on any part or parts of the Site or any receiver until the Mortgagees or such Chargee or other chargee or mortgagee or receiver has entered into possession of the Site or the relevant part thereof or the Development is continued by or at the instigation of a receiver liquidator or other agent appointed by or on behalf of the Mortgagees or any Chargee or other chargee or mortgagee in place of the Owner
- 2.10 The Affordable Housing obligation in paragraph 1.5 shall be enforceable against a Registered Provider and any owner tenant or Occupier of an Affordable Housing Unit and against those deriving title from them but shall not bind and be enforceable against:
- 2.10.1 a Protected Occupier
- 2.10.2 a Chargee of a Protected Occupier
- 2.10.3 a Chargee of a Shared Ownership Lease or shared equity lease lawfully exercising the mortgagee protection provision

within that lease who shall be entitled to dispose of the relevant Affordable Housing Unit free from the Affordable Housing obligation in paragraph 1.5 in the Second Schedule

2.10.4 a Chargee of the whole or any part of the Affordable Housing Units or any persons deriving title through such mortgagee or Chargee or receiver (other than a Chargee referred to in clause 2.10.2 and 2.10.3)PROVIDED THAT:

2.10.4.1 such mortgagee or Chargee or receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses and

2.10.4.2 if such disposal has not completed within the three-month period the mortgagee Chargee or receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations within the Second Schedule which provisions shall determine absolutely in relation to the relevant Affordable Housing Units

2.10.4.2 any person or body deriving title through any of the parties referred to in clauses 2.10.1 to 2.10.4 above

2.11 The headings are for reference only and shall not affect construction

2.12 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person

3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers

- 3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities against the Owner and their successors in title
- 3.3 This Deed shall only be capable of being varied by a supplemental deed between the Parties hereto or their respective successors in title or assigns made under section 106A of the Act

4. CONDITIONALITY

- 4.1 This Deed is conditional upon:

- 4.1.1 the grant of the Planning Permission and
- 4.1.2 the Commencement of Development

SAVE FOR the provisions of this clause and clauses 7.3 7.4 7.5 7.6 7.10 9 12 13 14 18 and 19 (related to legal and monitoring costs change in ownership right of entry dispute resolution jurisdiction and delivery) and any other relevant provisions which shall come into effect immediately upon completion of this Deed

- 4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings

4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed and is not superseded by a subsequent planning permission accepted by the Owner this Deed will cease to have any further effect and

4.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full

- 4.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used) the following provisions will apply:

- 4.3.1 proceedings by way of judicial review are concluded:
 - 4.3.1.1 when permission to apply for judicial review has been refused and no further application can be made
 - 4.3.1.2 when the court has given judgement in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused or
 - 4.3.1.3 when any appeal(s) is or are finally determined
- 4.3.2 proceedings under Section 288 of the Act are concluded:
 - 4.3.2.1 when the court has given judgement in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused or
 - 4.3.2.2 when any appeal(s) is or are finally determined

5. THE OWNER`S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Second Schedule
- 5.2 The Owner covenants with the County Council as set out in the Third Schedule

6. THE COUNCIL`S AND THE COUNTY COUNCIL`S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Fourth Schedule
- 6.2 The County Council covenants with the Owner as set out in the Fifth Schedule

7. MISCELLANEOUS

- 7.1 The Owner shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests either of the Council and or the County Council and their duly authorised officers or agents to have access to any part or all of the Site or any requests to provide documentation within the Owner`s possession (at the Owner`s expense) for the purposes of monitoring compliance with the obligations contained herein

- 7.2 The Owner agrees declares and covenants both with the Council and the County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this agreement and further shall indemnify the Council and the County Council for any expenses or liability arising to the Council and the County Council in respect of breach by the Owner of any obligation contained herein save to the extent that any act or omission of the Council or the County Council its employees or agents has caused or contributed to such expenses or liability
- 7.3 The Owner agrees declares and covenants to pay to the Council on completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.4 The Owner 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
- 7.5 The Owner further agrees declares and covenants to pay to the Council within 28 days of the grant of the Planning Permission one thousand five hundred pounds (£1,500.00) and to pay the County Council three thousand five hundred pounds (£3,500.00) on completion of this Deed towards the costs of reporting and monitoring the obligations contained in this Deed
- 7.6 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.7 This Deed shall be registered as a local land charge by the Council
- 7.8 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owner from either the Council or County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Growth or officer acting under his/her hand and on behalf of the County Council by the Executive Director of Growth Highways and Infrastructure or duly appointed successor or officer acting under his/her hand
- 7.9 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

- 7.10 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
- 7.11 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is not granted or the Planning Permission is quashed revoked or otherwise withdrawn or expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owner) and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed
- 7.12 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
- 7.13 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
- 7.14 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 7.15 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owners and at no cost to either the Council or the County Council
- 7.16 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

7.17 The Owner covenants and warrants to the Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein

8. WAIVER

No waiver (whether expressed or implied) by the Council the County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

9. CHANGE IN OWNERSHIP

The Owner agrees with the Council and the County Council to give each of them independently written notice of any transfer in ownership of any of any freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like

10. INDEXATION

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

- 10.1 A is the sum payable under this Deed
- 10.2 B is the original sum calculated as the sum payable
- 10.3 C is the BCIS Index for the month two (2) months before the date on which the sum is payable
- 10.4 D is the BCIS Index for the month two (2) months before the date of this Deed and

10.5 C/D is greater than 1

11. INTEREST

If any payment due under this Deed is not paid on time Late Payment Interest will be payable from the date payment is due to the date of payment

12. VAT

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

13. NOTICES

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

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

The Council	The Assistant Director of Growth West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU
The County Council	The Executive Director of Growth Highways and Infrastructure (or a duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX
The Owner	The Clubhouse Somerton Farm Stables Forest Road Winkfield Row Bracknell Berkshire RG42 7NJ

13.3 Any notice or other written communication to be given by either the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County Council by a duly authorised officer of the Council or the County Council as appropriate

13.4 The Owner covenants to inform the Council and the County Council by way of written notice within seven (7) days following:

13.4.1 Commencement of Development

13.4.2 Occupation of the first (1st) Dwelling

13.4.3 Occupation of 40% of the Dwellings

13.4.4 Occupation of 70% of the Dwellings

13.4.5 Completion of Development

14. DISPUTE RESOLUTION

14.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) which cannot be resolved by prior agreement between the parties to the dispute ("the Dispute Parties") shall be referred to arbitration before a single Expert (the "Expert")

14.2 The Dispute Parties shall jointly appoint the Expert not later than twenty-eight (28) days after service of a request in writing by either Party to do so

14.3 If the Dispute Parties are unable to agree within twenty-eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the Dispute Parties as follows:

14.3.1 if the difference or question relates to the rights and liabilities of any Dispute Party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society

14.3.2 if the difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers

14.3.3 if the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Dispute Parties but in default of agreement appointed at the request of any Dispute Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors or

- 14.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Dispute Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute
- 14.4 In the event of a reference to arbitration the Dispute Parties agree to:
- 14.4.1 prosecute any such reference expeditiously and
- 14.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable
- 14.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 14.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing
- 14.7 The award shall be final and binding both on the Dispute Parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be
- 14.8 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause but without prejudice to the rights and obligations of the Parties in relation to the termination of the Deed
- 14.9 The provisions of this clause shall not affect the ability of the Council or County Council to apply for and be granted any of the following: declaratory relief injunction specific performance payment of any sum damages and any other means of enforcing this Deed and consequential and interim orders and relief

15. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner's 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 Deed 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 matters are approved by the Council under the terms of this Deed further amendments thereof if approved by the Council shall replace those previously approved

17. COMMUNITY INFRASTRUCTURE LEVY

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

18. JURISDICTION

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

19. DELIVERY

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

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

**THE COMMON SEAL OF
WEST SUFFOLK COUNCIL**

was affixed in the presence of:



**THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:

[Redacted]
Authorised Officer



Signed as a deed by

JAYNIC INVESTMENTS LLP

acting by:

[Redacted]

Director

[Redacted]

Director/Secretary

FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Owners land forming part of land registered with the Land Registry under title numbers SK198593 and SK289511 and SK98535 and SK171179

SITE PLAN



24563.



SECOND SCHEDULE

THE OWNER COVENANTS WITH THE COUNCIL:

1. AFFORDABLE HOUSING UNITS

- 1.1 Not to Occupy or permit Occupation of more than fifty-nine percent (59%) of the Open Market Dwellings unless and until the Affordable Housing Units have been constructed and the Owner has transferred a freehold or leasehold interest in those Affordable Housing Units to a Registered Provider and any Affordable Housing Contribution has been paid to the Council
- 1.2 To ensure the transfer referred to in Paragraph 1.1 of this Second Schedule to the Registered Provider and their successors in title will contain a covenant to enter into a Nomination Agreement with the Council for those Affordable Housing Units prior to Occupation of those Affordable Housing Units
- 1.3 To ensure the conditions on which the Affordable Housing Units to be transferred to a Registered Provider shall be transferred shall include but not be limited to the following:
 - 1.3.1 to have good and marketable freehold title
 - 1.3.2 be remediated so that the land is fit for the proposed use
 - 1.3.3 be on terms that at the date of the transfer the following are (unless otherwise agreed by the Registered Provider) provided up to a point immediately adjacent to the boundary of the Affordable Housing Units:
 - 1.3.3.1 an adoptable road constructed to base course and subject to an agreement under Section 38 of the Highways Act 1980
 - 1.3.3.2 adoptable public sewers and drains subject to an agreement under Section 104 of the Water Industry Act 1991
 - 1.3.3.3 water electricity telecommunications infrastructure with sufficient capacity to serve each Affordable Housing Unit and
 - 1.3.3.4 such necessary rights as the Owner may reasonably require to be reserved
- 1.4 Subject to clause 2.10 to ensure the Affordable Housing Units shall not be used for any purpose other than as Affordable Housing Units

except in those cases where the owner, tenant or lessee has exercised a statutory right to acquire or acquired 100% ownership and is a Protected Occupier in which case those units shall no longer comprise Affordable Housing Units

2. NHS CONTRIBUTION

- 2.1 To pay to the Council the NHS Contribution prior to the first Occupation of thirty percent (30%) of the Dwellings
- 2.2 Not to Occupy or permit Occupation of more than twenty-nine percent (29%) of the Dwellings unless and until the NHS Contribution has been paid to the Council

3. PUBLIC OPEN SPACE

- 3.1 To complete the Public Open Space in accordance with the Planning Permission prior to the Occupation of ninety percent (90%) of the Dwellings
- 3.2 Not to Occupy or permit Occupation of more than eighty-nine percent (89%) Dwellings unless and until the Public Open Space (including the LEAP) has been laid out in accordance with the Planning Permission
- 3.3 Upon completion of the Public Open Space to elect and inform the Council in writing to deal with the Public Open Space (including the LEAP) by one of the following options:
 - 3.3.1 to maintain the Public Open Space in accordance with the Planning Permission or
 - 3.3.2 to transfer the Public Open Space to either
 - 3.3.2.1 the Council or
 - 3.3.2.2 a management company
- 3.4 Where the Owner elects to transfer the Public Open Space (including the LEAP) to either the Council or a management company not to Occupy or permit Occupation of all of the Dwellings unless and until the Public Open Space has been offered to be transferred to either the Council or a management company together with any requisite rights of access to the Public Open Space both for use and for maintenance and rights for drainage if appropriate
- 3.5 If option 3.3.2.1 is elected then:

3.5.1 To pay the Public Open Space Commuted Sum to the Council immediately upon completion of a transfer of Public Open Space to the Council (this paragraph shall not apply to any transfer of the Public Open Space to a management company)

3.6 If option 3.3.2 is elected the Owner shall maintain the Public Open Space (including the LEAP) in accordance with the Planning Permission until the relevant transfer is completed

4. LEAP

To use reasonable endeavours to complete the LEAP in accordance with the Planning Permission prior to the Occupation of the seventy-fifth (75th) Dwelling

THIRD SCHEDULE

THE OWNER COVENANTS WITH THE COUNTY COUNCIL

1. HIGHWAYS CONTRIBUTION

- 1.1 To pay to the County Council the Highways Contribution prior to the first Occupation of the first (1st) Dwellings
- 1.2 Not to Occupy or permit Occupation of any Dwellings until the Highways Contribution has been paid to the County Council

2. LIBRARY CONTRIBUTION

- 2.1 To pay to the County Council the Library Contribution prior to the first Occupation of thirty percent (30%) of the Dwellings
- 2.2 Not to Occupy or permit Occupation of more than twenty-nine percent (29%) of the Dwellings until the Library Contribution has been paid to the County Council

3. PRE SCHOOL PRIMARY AND SECONDARY SCHOOL CONTRIBUTIONS

- 3.1 To pay to the County Council fifty percent (50%) of the Pre School Contribution and the Primary School Contribution and the Secondary School Contribution prior to the first Occupation of forty percent (40%) of the Dwellings
- 3.2 Not to Occupy or permit Occupation of more than thirty-nine percent (39%) of the Dwellings until fifty percent (50%) of the Pre School Contribution and the Primary School Contribution and the Secondary School Contribution have been paid to the County Council
- 3.3 To pay to the County Council a further fifty percent (50%) of the Pre School Contribution and the Primary School Contribution and the Secondary School Contribution prior to the first Occupation of seventy percent (70%) of the Dwellings
- 3.4 Not to Occupy or permit Occupation of more than sixty-nine percent (69%) of the Dwellings until a further fifty percent (50%) of the Pre School Contribution and the Primary School Contribution and the Secondary School Contribution have been paid to the County Council

4. RIGHTS OF WAY CONTRIBUTION

- 4.1 To pay to the County Council the Rights Of Way Contribution prior to the first Occupation of the first (1st) Dwellings

- 4.2 Not to Occupy or permit Occupation of any Dwellings until the Rights Of Way Contribution has been paid to the County Council

5. TRAVEL PLAN EVALUTION AND SUPPORT CONTRIBUTION

- 5.1 To pay to the County Council the first instalment of the Travel Plan Evaluation and Support Contribution prior to the first Occupation of the one hundredth (100th) Dwellings
- 5.2 Not to Occupy or permit Occupation of more than ninety-nine (99th) of the Dwellings until the first instalment of the Travel Plan Evaluation and Support Contribution has been paid to the County Council
- 5.3 To pay a further Travel Plan Evaluation and Support Contribution annually prior to the anniversary of the date of first Occupation of the one hundredth (100th) Dwelling SAVE THAT no further instalments of the Travel Plan Evaluation and Support Contribution shall be payable by the Owner after five years from the first Occupation of the 100th Dwelling or after one year after Occupation of the final Dwelling whichever is the latter

FOURTH SCHEDULE

THE COUNCIL COVENANTS TO THE OWNER:

1. NHS CONTRIBUTION

- 1.1 To use the NHS Contribution on a project or projects that help address the demand within the catchment surgeries serving the Development
- 1.2 After the expiry of ten (10) years from the date that the NHS Contribution is received to pay to the Owner such amount of the NHS Contribution which has not been committed or expended by the Council in accordance with the provisions of this Deed

2. PUBLIC OPEN SPACE

- 2.1 If received to use the Public Open Space Commuted Sum towards the maintenance of the Public Open Space
- 2.2 To ensure any area of the Public Open Space that is transferred to the Council is retained for public use in perpetuity

FIFTH SCHEDULE

THE COUNTY COUNCIL COVENANTS WITH THE OWNER:

1. HIGHWAYS CONTRIBUTION

- 1.1 To use the Highways Contribution in the following way; £5,000.00 (BCIS Indexed) towards a potential traffic calming project in the Parish of Withersfield and £22,000.00 (BCIS Indexed) for the provision of real time screens at the 2 x bus stops on the A1307
- 1.2 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 within one month of such request to any person such amount of the Highways 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. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 1.3 When the Highways Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

2. LIBRARY CONTRIBUTION

- 2.1 To use the Library Contribution towards the provision of lending stock to enhance and improve IT equipment and associated materials for a library service within the vicinity of the Development
- 2.2 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 within one month of such request to any person such amount of the Library Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 2.3 When the Library Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year notify the Owner that such monies have been spent or

committed such notice to include full details of what the said monies were spent on or committed to

3. PRE SCHOOL PRIMARY SCHOOL AND SECONDARY SCHOOL CONTRIBUTIONS

- 3.1 To use the Pre School Contribution for the improvement and enhancement of pre school provision serving the Development
- 3.2 To use the Primary School Contribution for the improvement and enhancement (including increasing the pupil admission number) of primary school provision at the catchment primary schools
- 3.3 To use the Secondary School Contribution for the improvement and enhancement (including increasing the pupil admission number) of secondary school provision at the catchment secondary schools
- 3.4 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 within one month of such request to any person such amount of the Pre School Contribution or the Primary School Contribution or the Secondary School Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 3.5 When the Pre School Contribution and the Primary School Contribution and the Secondary School Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the Completing of Development within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

4. RIGHTS OF WAY CONTRIBUTION

- 4.1 To use the Rights Of Way Contribution to improve and enhance in the vicinity of the Development including to provide a link from Hanchett End along the maintainable highway and for surface improvements to Footpath 43 between Hanchett End and Notley Drive
- 4.2 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 within one month of such request to any person such amount of the Rights Of Way 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. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable

- 4.3 When the Rights Of Way Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

5. TRAVEL PLAN EVALUATION AND SUPPORT CONTRIBUTION

- 5.1 To use the Travel Plan Evaluation and Support Contribution for evaluation and support of the travel plan for the Development
- 5.2 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 within one month of such request to any person such amount of the Travel Plan Contribution paid in full 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. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 5.3 When the Travel Plan Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

SIXTH SCHEDULE
DRAFT NOMINATION AGREEMENT

DATED _____ 2020

(1) THE COUNCIL OF WEST SUFFOLK

And

(2) XXXXXX

NOMINATION AGREEMENT

Relating to Land at XXXX

West Suffolk Council
West Suffolk House,
Western Way,
Bury St Edmunds,
Suffolk. IP33 3YU

THIS AGREEMENT MADE

2020

BETWEEN

(1) **THE COUNCIL OF WEST SUFFOLK** of West Suffolk House, Western Way, Bury St Edmunds, Suffolk IP33 3YU ("the Council") and

(2) **XXXXX** of ("the Association")

WHEREBY IT IS AGREED as follows:-

1. Particulars

- 1.1 The Scheme : The construction works to be carried out to provide **XX (XX)** dwellings at **XXXX**, Suffolk.
- 1.2 Dwellings : **XXXX (XX)** affordable dwellings erected pursuant to the Scheme comprising both the Rented Dwellings and the Shared Ownership Dwellings
- 1.3 Registered Provider : Means either the Association or another Registered Provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator of Social Housing under section 111 of that Act.
- 1.4 Rented : Has the same meaning as Affordable Rent in the Section 106 Agreement
- 1.5 Rented Dwellings : **XXXX (XX)** dwellings **XX X** 1 bed flat (plots **XXXX**) **XX x 2** bed house (plots **XXXX**) **XX x 3** bed house, (plots **XXXXXX**) **XX x 4** bed house (plots **XXXX**) erected pursuant to the Scheme which are to be provided for a Rented tenure (unless otherwise agreed by the Council in accordance with the Section 106 Agreement)

to be owned and managed by the Association and provided to the Council for nomination rights. If the rented dwellings are delivered as Affordable Rent the rents shall not exceed the Local Housing Allowance (and the "Affordable Rented Dwelling" shall be construed accordingly)

- 1.6 Shared Ownership Dwellings : XXXX (XX) dwellings erected pursuant to the Scheme (XX x 2 bedroom house (Plots XXXX) X x 3 bedroom house (plots XXXXX)) which are to be provided for Shared Ownership tenure (unless otherwise agreed by the Council in accordance with the Section 106 Agreement) (and "Shared Ownership Dwelling" shall be construed accordingly)
- 1.7 Shared Ownership : Has the same meaning as Shared Ownersip Unit in the Section 106 Agreement
- 1.8 Initial Lets : means the first tenancy of each newly constructed Rented Dwelling
- 1.9 Initial Sale : Means the initial sale by the Registered Provider of each newly constructed Shared Ownership Dwelling
- 1.10 Subscquent Sales of : means the subsequent sale a Shared Ownership Dwelling following Initial Sale
- 1.11 Help to Buy Agent : BPHA Limited, Bedford Heights, Manton Lane, Bedford. MK41 7BJ or any other Help To Buy Agent party to and acting in

accordance with the Service Level Agreement

1.12 Service Level Agreement

: An agreement made between the Association and the Help to Buy Agent dated 19/12/2014 for the governance of procedures and performance standards of the Help to Buy Agent and the Registered Provider in their roles in enabling any affordable housing scheme or any subsequent service level agreement made between the Registered Provider and the Help to Buy Agent for the same provision.

1.13 Chargee

: means any mortgagee or chargee of the Association or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator.

1.14 Voids

: means a Rented Dwelling which does not have a tenancy and any void period shall be measured in calendar days between the date of termination of the previous tenancy, or repossession, and the start date of a new tenancy.

2. Agreement

2.1 The Association hereby grants the Council nomination rights of 100% for the Initial Lets and thereafter 75% of Voids in relation to the Dwellings to be erected on the Scheme in accordance with the terms of this Deed.

PROVIDED THAT

2.1.1 Rented Dwellings – West Suffolk Council Nomination Rights

- (a) In relation to the Initial Lets of the Rented Dwellings the Association should refer to the Cambridge Sub Regional Choice Based Lettings Scheme ("Home-Link") or any successor scheme and if no such nominations are made within ten working days of such reference then nothing in this clause shall prevent the Association from offering the Rented Dwellings to any person who the Association considers to be in need of such accommodation.
- (b) In relation to any Rented Dwelling that becomes Void after the Initial Let the Association should refer to the Cambridge Sub-Regional Choice Based Lettings Scheme ("Home-Link") or any successor scheme for applicants and if no such nominations are made within ten working days of such reference then nothing in this clause shall prevent the Association from offering the Rented Dwelling to any person who the Association considers to be in need of such accommodation.
- (c) The Association shall in every case inform the Council in writing as soon as possible of the name of the tenant to whom an Rented Dwelling has been offered.
- (d) On any disposal of the Rented Dwellings to another Registered Provider, the Association will use reasonable endeavours to ensure that the purchaser enters into an agreement with the Council in the same terms as this Agreement.

2.2.1 Shared Ownership Dwellings – West Suffolk Council Nomination Rights

- (a) In relation to Initial Sales of Shared Ownership Dwellings the Association shall upload details of the Shared Ownership Dwellings being offered for sale to the Help to Buy Agent's website. Applicants who have been approved by the Help to Buy Agent shall then be assessed by the Association and provided they comply with specific criteria within the Section 106 Agreement the Association shall then offer for sale the Shared Ownership Dwelling to such applicant.
- (b) In the event the Help to Buy Agent is unable to provide applicants on the Initial Sales of Shared Ownership Dwellings within three months of practical completion notification given by the Association, then the Association may offer for sale the Shared Ownership Dwellings on the open market to any person the Association considers to be in need of such accommodation.
- (c) In relation to the Subsequent Sales of the Shared Ownership Dwellings the Association shall as soon as it receives notification from a shared ownership lessee that a Shared Ownership Dwelling is being offered for sale upload details of the Shared Ownership Dwelling being offered for sale to the Help to Buy Agent's website. Applicants who have been approved by the Help to Buy Agent shall then be assessed by the Association and provided they comply with specific criteria within the Section 106 Agreement the Association shall then direct the shared ownership lessee to sell the Shared Ownership Dwelling to such applicant.
- (d) In the event that the Help to Buy Agent is unable to provide applicants on a Subsequent Sale of the Shared Ownership Dwelling within eight weeks then the shared ownership lessee may offer for sale the Shared Ownership Dwelling on

the open market to any person the Association considers to be in need of such accomodation.

- (e) On any disposal of the Shared Ownership Dwellings to another Registered Provider the Association will use reasonable endeavours to ensure that the purchaser enters into an agreement with the Council in the same terms as this Agreement.

3 General

- (a) The provisions of this Agreement shall not be binding on a Chargee of the whole or any part of the Shared Ownership Dwellings or the Rented Dwellings or any persons or bodies deriving title through such Chargee PROVIDED THAT such Chargee has complied with the requirements for disposal in the Section 106 Agreement
- (b) The Scheme is subject to an agreement made in accordance with section 106 of the Town and Country Planning Act 1990 made between the Council (1) Suffolk County Council (2) xxxxxx (3) and xxxxxxxx (4) xxxxx (" the Section 106 Agreement") and Reserved Matters application dated xxxxx and all nominations and occupation of the Rented Dwellings and the Shared Ownership Dwellings shall comply with the provisions of those agreements.

IN WITNESS whereof the Council and the Association have caused their respective common seals to be hereunto affixed the day and year first before written

THE COMMON SEAL of THE COUNCIL OF WEST SUFFOLK was hereunto affixed as its deed in the presence of:-

..... Authorised Officer

..... Authorised Officer

THE COMMON SEAL of XXXXX was hereunto affixed in the presence of:-

..... Authorised Signatory

..... Authorised Signatory