

DATED

3 October

2020

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

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**MID SUFFOLK DISTRICT COUNCIL (1)**

**and**

**SUFFOLK COUNTY COUNCIL (2)**

**and**

**ROGER ANTHONY CARTER (3)**

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Relating to

Land on the south side of Gipping Road, Stowupland, Stowmarket,  
Suffolk IP14 4AX

**Birketts**

This Deed is made the 8 day of October 2020

**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) **ROGER ANTHONY CARTER** of Green Farm, Stowupland, Stowmarket, Suffolk IP14 4AL ("the Owner") and

**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. Gladman Developments Limited (company registration number 3341567), whose registered office is at Gladman House, Alexandria Way, Congleton, CW12 1LB 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 Owner acknowledges 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 test set out in regulation 122 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)
"Advanced Planting Scheme"	shall mean a scheme to be submitted to the District Council for approval to secure advanced planting for the buffer along the north-eastern boundary of the Site
"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 approved 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 Owner is unable to dispose of the Affordable Housing in accordance with the Second Schedule Part 2

"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 or 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 thirty-five per cent (35%) (rounded to the nearest whole number) 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 which for the avoidance of doubt and unless otherwise agreed in writing with the District Council will have a split of Affordable Rent and Shared Ownership as set out at paragraph 1.1 of Part 1 of the Second Schedule and which in the case of Affordable Rent shall be Occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to the Affordable Housing Nomination Agreement as varied from time to time

"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 8 April 2020 and allocated reference DC/20/01435
"Approval"	the reserved matters approval which first establishes the Composition of the Development PROVIDED THAT where more than one reserved matter approval is obtained in respect of the Development for the purposes of calculating liability for the contributions comprising planning obligations in this Agreement shall mean the reserved matter approval which is implemented for the purposes of section 56(4) of the Act
"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 1.8 of Part 2 of the Second Schedule hereto
"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
"Community Body"	a group made up of people from the community whether already in existence or formed for the purpose of managing Thradstones Meadow who will take on the responsibility of managing Thradstones Meadow in perpetuity
"Completion of the Development"	the date that the last Dwelling is first Occupied
"Composition of the Development"	means the total number of Dwellings comprised in the Approval
"Development"	the outline planning application (all matters reserved) for the erection of up to eighty (80) Dwellings including affordable homes 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
"Education Contribution"	means the sum to be calculated on a per Dwelling basis as :  £6,618.71 x total number of Dwellings (Index Linked)

	to be paid to the County Council in accordance with the Third Schedule towards the Education Purposes
"Education Purposes"	means build costs towards a new Primary School Facility and build costs towards a new Preschool Facility
"HE"	means Homes England or such other organisation as may from time to time be the Regulator of Social Housing or such other body with statutory force charged with regulating Registered Providers
"Highway Mitigation Contribution"	means the sum of £50,000 (fifty thousand pounds) (Index Linked) to be paid to the County Council in accordance with the Third Schedule for Highways Mitigation Purposes
"Highways Mitigation Purposes"	shall mean improvements to the A1120/B1115 to increase capacity and reduce delays for traffic and improve footways at that junction
"Highway Works"	shall mean a pedestrian controlled crossing on the A1120 in the vicinity of the co-op
"Highway Works Scheme"	shall mean a scheme to a standard capable of passing a highway safety audit for the provision of the Highway Works together with a timetable for the delivery of the Highway Works
"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
"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 Thradstones Meadow which definition may include a resident's association established for this purpose or a private limited company whether already in existence or formed for the purposes of managing the Open Space and Thradstones Meadow
"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"	means one or any of the following: a) the Parish Council; or b) the Management Company; or c) such other body as the District Council may approve and "Nominated Bodies" shall be construed accordingly
"Notice of Actual Commencement"	notice in writing to advise of the actual date of Commencement of Development
"Notice of Expected Commencement"	notice in writing to advise of the expected date of Commencement of Development
"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"	the informal open space and landscaping to be provided on the Site together excluding Thradstones Meadow for use by the general public in accordance with the Planning Permission and the Open Space Specification
"Open Space Maintenance Sum"	shall mean the commuted sum of £2500 (two thousand five hundred pounds) payable to the



	<p>District Council to spend on the maintenance and management of the Open Space in the event the Open Space is to be managed by the District Council or Parish Council</p>
<p>"Open Space Plan"</p>	<p>a plan to be submitted to the District Council for approval indicating the location of the Open Space</p>
<p>"Open Space Specification"</p>	<p>means the specification for delivery of the Open Space including the specifications plans and drawings showing but not limited to the layout and design of the Open Space, the phasing and timing of the delivery of the Open Space including details of any landscaping, paths, play equipment and access arrangements together with details of the proposed future management regime for the Open Space and the identity of the Nominated Body to be agreed in writing with the District Council in accordance with Part 3 of the Second Schedule</p>
<p>"Open Space Transfer"</p>	<p>a transfer of the Open Space and which inter alia shall contain the following provisions:</p> <ul style="list-style-type: none"> <li>a) The Owner shall transfer the fee simple estate free from encumbrances save for those set out in the title;</li> <li>b) All easements and rights necessary in relation to access for the benefit of the Open Space;</li> <li>c) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;</li> <li>d) Restrictive covenants by the Nominated Body or the Nominated Bodies: <ul style="list-style-type: none"> <li>(i) Not to use or permit the Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space</li> </ul> </li> </ul>

as defined in this deed and shown on the Open Space Plan;

(ii) Not to use or permit the Open Space to be used in a manner which may be or become a nuisance annoyance, disturbance to the Development;

(e) a requirement that the Nominated Body's reasonable conveyancing fees and disbursements are paid by the Owner

"Parish Council"

means Stowupland Parish Council

"Plan"

the plan attached to this deed and numbered 2020-018-103

"Planning Permission"

the outline planning permission subject to conditions which may be granted by District Council pursuant to the Application a draft of which is attached hereto

"Practical Completion"

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

"Preschool Facility"

means new indoor and outdoor facilities for the education and care of preschool children serving the Development and in the vicinity of Stowupland

"Primary School Facility"

means new indoor and outdoor facilities for the education and/or care of children between the aged of 4 to 11 (both inclusive) including those with special educational needs in the vicinity of Stowupland and serving the Development

"Priority Farmland Birds Mitigation Contribution"

means the sum of £2,000 (two thousand pounds) to be paid by the Owners to the Council to be used by Suffolk Wildlife Trust to assist in

the delivery of priority farmland birds mitigation in the vicinity of the Site

"Protected Tenant"

means 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;

has exercised any statutory right to buy or preserved right to buy (or any contractual right) in respect of an Affordable Housing Unit; or

any person who has staircased the equity in their Shared Ownership Unit to 100%

"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 or any other body who may lawfully provide or fund affordable housing from time to time

"RTA Purchaser"

shall mean a right to acquire purchaser pursuant to the provisions in the Housing and Regeneration Act 2008

"Shared Ownership"

dwelling 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 and 'Shared Ownership Unit' shall be construed accordingly

"Shared Ownership Lease"

a long lease (over 99 years) of an Affordable Housing Unit granted at a premium whereby no 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 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
"Thradstones Meadow"	means the area of open space shown shaded green on the Plan and known locally as Thradstones Meadow
"Thradstones Meadow Contribution"	shall mean the sum of £75,000 (seventy five thousand pounds) payable to the District Council to spend on the maintenance and management of Thradstones Meadow over a period of 25 (twenty five) years
"Thradstones Meadow Transfer"	<p>a transfer of Thradstones Meadow and which inter alia shall contain the following provisions:</p> <p>a) The Owner shall transfer the fee simple estate free from encumbrances save for those set out in the title;</p> <p>b) All easements and rights necessary in relation to access for the benefit of Thradstones Meadow;</p> <p>c) Restrictive covenants by the Nominated Body or the Nominated Bodies or the Community Body or the Management Company:</p> <p>(i) Not to use or permit Thradstones Meadow to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space as defined in this deed and shown on the Plan;</p> <p>(ii) Not to use or permit Thradstones Meadow to be used in a manner which may be</p>

or become a nuisance annoyance, disturbance to the Development;

(d) a requirement that the District Council or Community Body's or Management Company's reasonable conveyancing fees and disbursements are paid by the Owner

"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 Owner the District Council and the County Council

- 2.9 None of the covenants contained in this deed on the part of the Owner 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, nor against those deriving title from such owner-occupiers or their mortgagees 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 Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person

### **3. LEGAL BASIS**

- 3.1 This deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council as appropriate as local planning authorities against the Owner or their successors in title
- 3.3 This deed is a deed and may be modified or discharged in part or in total at any time after the date of this deed by deed between the Parties in the form of a deed
- 3.4 This deed is a local land charge and upon completion shall be registered by the District Council as such

### **4. CONDITIONALITY**

- 4.1 The obligations set out in the Second and Third Schedules are conditional upon
- (i) the grant of the Planning Permission; and
  - (ii) the Commencement of the Development
- save for the provisions of Clauses 3.4, 7.3, 7.4, 7.5, 7.8, 7.13, 7.14, 9, 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 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:

(a) when permission to apply 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.

## **5. THE OWNER'S COVENANTS**

5.1 The Owner hereby covenants 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 Owner hereby covenants 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 covenants with the Owner as set out in the Fourth Schedule

6.2 The County Council hereby 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 District 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 of the District Council and or the County Council and their duly authorised officers or agents to 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 District Council and County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein
- 7.3 The Owner agrees 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 Owner agrees 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 agrees to pay the County Council on completion of this deed its monitoring fee to the value of £1,236.00
- 7.6 No provisions of this deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.7 Where the agreement, approval, consent or expression of satisfaction is required by the Owner 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 Chief Planning Officer or officer acting under his hand and on behalf of the County Council by the Executive 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
- 7.8 Following the performance and satisfaction of all the obligations contained in this deed the District Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this deed
- 7.9 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

- 7.10 This deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (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
- 7.11 No person shall be liable for any breach of any of the planning obligations or other provisions of this deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it
- 7.12 Nothing in this deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this deed
- 7.13 Nothing contained or implied in this deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as local authorities
- 7.14 The Owner hereby agrees 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 unless the Planning Permission is modified by any statutory procedure without the consent of the Owner
- 7.15 The Owner covenants and warrants 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
- 7.16 Unless otherwise agreed in writing by the Council and the Owner in the event that the Owner (or any successor in title) obtains planning permission pursuant to an application under section 73 of the Act to vary any condition of the Planning Permission then this deed shall be binding upon any planning permission granted pursuant to such application as if it were the Planning Permission

## 8. **WAIVER**

No waiver (whether expressed or implied) by the District 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 District Council 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 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 DC/18/04357 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 During the construction of the Development on not less than twenty-four (24) hours written notice except in case of emergency the Owner 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 Owner the manager or person in charge thereof produce evidence of identity;

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

10.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary for the purposes of the inspection;

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 Owner or the Owner's representatives reasonable directions and precautions in the interests of safety and the Owner may refuse entry if such employee or agent fails to do so;

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 actual 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 Owner	Green Farm, Stowupland, Stowmarket, Suffolk IP14 4AL

## 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 Owner any of the provisions of this deed have been satisfied the Owner 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:

}

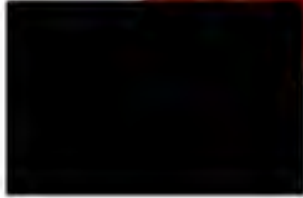


THE COMMON SEAL OF  
SUFFOLK COUNTY COUNCIL  
was affixed in the presence of:

)  
)  
)



Authorized Officer



EXECUTED AS A DEED  
by **ROGER ANTHONY CARTER**  
in the presence of: -

)  
)  
) [Signature]



## FIRST SCHEDULE

### **Details of the Owner's Title, and description of the Site**

The freehold land shown edged red on the Plan consisting of the land known as land lying to the south side of Gipping Road, Stowupland, Stowmarket, Suffolk registered with the Land Registry under Title Number SK314663



## SECOND SCHEDULE

### OWNER'S COVENANTS WITH THE DISTRICT COUNCIL

#### PART 1

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

#### PART 2

### AFFORDABLE HOUSING

- 1.1 The Development shall consist of up to twenty-eight (28) Affordable Housing Units comprising as follows unless otherwise agreed in writing with the District Council:

#### **Affordable Rented – 20 Dwellings**

4 x 1 bedroom 2 person houses @ minimum of 58 sqm

2 x 2 bedroom 4 person bungalows @ minimum of 70 sqm

10 x 2 bedroom 4 person houses @ minimum of 79 sqm

4 x 3 bedroom 5 person houses @ minimum of 93 sqm

#### **Shared Ownership Dwellings – 8 Dwellings**

5 x 2 bedroom 4 person houses @ minimum of 79 sqm

3 x 3 bedroom 5 person houses @ minimum of 93 sqm

- 1.2 The Owner covenants 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 Development and once approved by the District Council such scheme will form part of this deed as if the same had been fully set out herein
- 1.3 Following the Commencement of Development the Owner shall construct the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme shall meet the Nationally Described Space Standards Technical Guidance March 2015 or any that supersede them
- 1.4 Subject to paragraph 1.9 to 1.12 inclusive below the Owner shall not
- 1.4.1 Occupy or permit Occupation of more than 50% (fifty per cent) (rounded up to the nearest whole number) of the Market Housing Units until 50% (fifty per cent) (rounded up to the nearest whole number) of the Affordable Housing Units have been constructed and are ready for Occupation and in the case of the Affordable Housing Units that are either Affordable Rented Housing Units or Shared Ownership Dwellings that those units have been transferred to the Registered Provider
  - 1.4.2 Occupy or permit Occupation of more than 80% (eighty per cent) (rounded up to the nearest whole number) of the Market Housing Units until all of the Affordable Housing Units have been constructed and are ready for Occupation and in the case of the Affordable Housing Units that are either Affordable Rented Housing Units or Shared Ownership Dwellings that those units have been transferred to the Registered Provider
- 1.5 Any transfer to a Registered Provider of the land on which the Affordable Housing Units will be constructed shall be:
- 1.5.1 with vacant possession;
  - 1.5.2 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 Owner to any statutory undertaker);
  - 1.5.3 subject to grant by the Owner 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;

- 1.5.4 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;
- 1.5.6 subject to a requirement to enter into the Affordable Housing Nomination Agreement with the District Council
- 1.6 The Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing save where provided otherwise in paragraphs 1.7, 1.8 and 1.11 below
- 1.7 The District Council and the Owner agree that the obligations and restrictions contained in this Second Schedule Part 2 paragraph 1 shall not bind:
- 1.7.1 a mortgagee, chargee or receiver who has complied with the provisions of paragraph 1.8 of this part of this Schedule;
- 1.7.2 any RTA Purchaser;
- 1.7.3 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;
- 1.7.4 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
- 1.7.5 a Protected Tenant; or
- 1.7.6 any person or body deriving title through or from any of the parties mentioned in this paragraph 1.7.
- 1.8 Any Chargee of the 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:
- 1.8.1 in the event that the District Council responds within 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 the Registered Provider shall cooperate with such reasonable arrangements and use reasonable endeavours to secure such transfer for a consideration not less than the amount due and outstanding under the terms of the relevant charge or mortgage documentation including all accrued principal monies interest and costs

1.8.2 if the District Council does not serve its response to the notice served under paragraph 1.8 within one (1) month then the Chargee of a Registered Provider shall be entitled to dispose of the Affordable Housing Units 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

1.8.3 if the District Council cannot within two (2) months' of the date of service of its response under paragraph 1.8.1 secure such transfer then provided that the Chargee of the Registered Provider shall have complied with its obligations under paragraph 1.8 the Chargee of the Registered Provider shall be entitled to dispose of the Affordable Housing Units 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 1.8 shall not require the Chargee of the 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 the Registered Provider in respect of monies outstanding under the charge or mortgage.

1.9 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 the Owner shall:

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

1.9.2 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 1.5 of this part of this Schedule

1.9.3 submit any other information reasonably requested by the District Council to satisfy why the Owner has not been able to enter into a transfer with the Registered Provider pursuant to paragraph 1.5 of this part of this Schedule

1.9.4 offer the twenty-eight (28) Affordable Housing Units to the District Council to be purchased by the District Council as Affordable Housing

1.10 In the event the District Council make an acceptable offer to the Owner (within two (2) months' of written invitation) for the Affordable Housing Units then the Owner shall not

Occupy or permit Occupation of more than eighty per cent (80%) of the Market Housing Units until the Owner has provided the District Council with a freehold transfer document unconditionally released for completion for the transfer of the Affordable Housing Units

1.11 In the event the District Council does not make an acceptable offer to the Owner (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 Affordable Housing Units shall be free of the provisions of this Second Schedule Part 2 and the Owner shall be able to sell the Affordable Housing Units as Market Housing Units subject to:

1.11.1 paying twenty per cent (20%) of the Affordable Housing Contribution to the District Council after the fifth (5<sup>th</sup>) Affordable Housing Unit has been sold

1.11.2 paying a further twenty per cent (20%) of the Affordable Housing Contribution to the District Council after the tenth (10<sup>th</sup>) Affordable Housing Unit has been sold

1.11.3 paying a further twenty per cent (20%) of the Affordable Housing Contribution to the District Council after the fifteenth (15<sup>th</sup>) Affordable Housing Unit has been sold

1.11.4 paying a further twenty per cent (20%) of the Affordable Housing Contribution to the District Council after the twentieth (20<sup>th</sup>) Affordable Housing Unit has been sold

1.11.5 paying the final twenty per cent (20%) of the Affordable Housing Contribution to the District Council after the twenty-fifth (25<sup>th</sup>) Affordable Housing Unit has been sold

PROVIDED THAT where paragraphs 1.9 – 1.11 hereof apply the Owner shall have paid the full Affordable Housing Contribution to the District Council prior to Occupation of the 40<sup>th</sup> Market Housing Unit and shall not permit Occupation of the 40<sup>th</sup> Market Housing Unit unless and until the Affordable Housing Contribution has been paid to the District Council following which 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 Owner shall be free to dispose of said twenty-eight (28) Affordable Housing Units as Market Housing Units

### **PART 3**

### **OPEN SPACE**

- 1.1 The Owner hereby covenants 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 Space Plan and the Open Space Specification to the District Council for approval.
- 1.2 The Owner covenants not to Commence the Development unless and until the Open Space Plan and the Open Space Specification have been approved by the District Council in writing such approval not to be unreasonably withheld or delayed
- 1.3 If the District Council fails within twenty (20) Working Days of submission of the Open Space Plan and Open Space Specification to notify the Owner of its approval of the Open Space Plan and the Open Space Specification the Owner shall be entitled to assume deemed approval of the Open Space Plan and Open Space Specification
- 1.4 The Owner hereby covenants with the District Council not to permit the Occupation of any more than 75% of the Dwellings until the Open Space has been provided in accordance with the approved Open Space Plan and the Open Space Specification
- 1.5 The Owner further covenants with the District Council at their own cost to maintain and manage the Open Space strictly in accordance with the Open Space Plan the Open Space Specification and the Planning Permission until the date of the Open 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 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 Space has been laid out in accordance with the Open Space Plan and Open Space Specification to transfer it by way of a transfer or part thereof to the appropriate Nominated Body and such transfer to include such items as necessary and outlined in the Open Space Transfer and shall for the avoidance of doubt include a covenant that the Open Space shall thereafter be retained and maintained in accordance with the Open Space Plan the Open Space Specification and the Planning Permission for the benefit of the public
- 1.7 The Open Space is to be transferred to the Nominated Body or Nominated Bodies for the sum of one pound (£1) within twelve months (12 months) of Occupation of the last Dwelling in accordance with the Open Space Transfer and in the event that the Nominated Body is the District Council or the Parish Council the Owner shall pay the Open Space Maintenance Sum to the Nominated Body on the date of the Open Space Transfer
- 1.8 In the event that the Nominated Body does not accept the transfer of the Open Space within two months of a written offer by the Owner to the Nominated Body the Open Space shall be transferred to a Management Company

## **PART 4**

### **THRADSTONES MEADOW**

- 1.1 Prior to the Occupation of 75% of the Dwellings the Owner covenants to offer Thradstones Meadow to be transferred to the District Council for the use as open space. Such offer shall not be made unless and until Thradstones Meadow is in a condition as agreed between the Owner and the District Council
- 1.2 In the event the District Council accept the offer of the transfer of Thradstones Meadow, the Owner shall transfer Thradstones Meadow to the District Council for the sum of £1 (one pound) within a timescale to be agreed between the Owner and the District Council in accordance with the Thradstones Meadow Transfer
- 1.3 The Owner covenants to pay the Thradstones Meadow Contribution to the District Council upon or before the date of the transfer of Thradstones Meadow to the District Council
- 1.4 For the avoidance of doubt the District Council will have the right to offer the transfer of Thradstones Meadow together with the Thradstones Meadow Contribution to a Community Body for the purposes of securing the open space in perpetuity
- 1.5 In the event that neither the District Council or a Community Body accept the transfer of Thradstones Meadow within two months of a written offer by the Owner Thradstones Meadow shall be transferred to a Management Company
- 1.6 The Owner covenants not to lay any services over the land known as Thradstones Meadow and throughout the construction period of the Development shall protect Thradstones Meadow at all times from encroachment by construction related activity
- 1.7 The Owner covenants that Thradstones Meadow shall at all times be available for public use

## **PART 5**

### **ADVANCED PLANTING SCHEME**

- 1.1 The Owner hereby covenants with the District Council that in parallel with submitting the relevant reserved matter application to submit the Advanced Planting Scheme to the District Council for approval.
- 1.2 The Owner covenants not to Commence the Development unless and until the Advanced Planting Scheme has been approved by the District Council and the approved planting as approved has been carried out on Site

## PART 6

### PRIORITY FARMLAND BIRDS

1. In the event that the breeding bird survey submitted for the approval of the District Council pursuant to condition 10 of the Planning Permission indicates that priority farmland birds are found to be present and will be affected by Development on the Site the Owner covenants to pay the Priority Farmland Birds Mitigation Contribution to the District Council within 20 Working Days of confirmation by the District Council that having considered the submitted breeding bird survey payment of the Priority Farmland Birds Mitigation Contribution is necessary.
2. In the event that the Priority Farmland Birds Mitigation Contribution is required in accordance with paragraph 1 above not to Occupy or permit Occupation unless and until the Priority Farmland Birds Mitigation Contribution has been paid in full to the District Council.



## **THIRD SCHEDULE**

### **OWNER'S COVENANTS WITH THE COUNTY COUNCIL**

#### **PART 1**

#### **EDUCATION**

- 1 The Owner shall give the County Council no less than one (1) months' written notice of the anticipated date for the first Occupation of the first Dwelling.
- 2 The Owner shall within five (5) Working Days give written notice to the County Council following
  - 2.1 the date of Occupation of the first Dwelling
  - 2.2 the date of Occupation of the 50% of the Dwellings
  - 2.3 the date of Occupation of the final Dwelling; and
  - 2.4 the date of Completion of the Development
- 3 The Owner covenants to pay the Education Contribution to the County Council prior to first Occupation of 50% of the Dwellings.
- 4 The Owner covenants not to cause or allow the first Occupation of 50% of the Dwellings until the Education Contribution has been paid in full to the County Council.

#### **PART 2**

#### **HIGHWAYS**

- 1.1 The Owner covenants to pay the Highways Mitigation Contribution to the County Council prior to Commencement of Development
- 1.2 The Owner covenants not to Commence the Development unless and until the Highways Mitigation Contribution has been paid to the County Council
- 1.3 The Owner covenants that prior to or upon submission of the relevant reserved matters application to submit the Highway Works Scheme for the approval of the County Council in consultation with the District Council
- 1.4 The Owner covenants not to Commence Development unless and until the County Council has given its written approval to the Highway Works Scheme

- 1.5 The Owner covenants to carry out the Highway Works in accordance with the approved Highway Works Scheme
- 1.6 The Owner covenants not to Occupy or permit Occupation of the Development unless and until the Highway Works have been provided and the controlled crossing is available for use

## **FOURTH SCHEDULE**

### **DISTRICT COUNCIL'S COVENANTS**

- 1.1 The District Council will issue the completed Planning Permission on or within five (5) Working Days of the date of this deed
- 1.2 At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this deed when satisfied that such obligations have been performed

#### **PART 1**

##### **AFFORDABLE HOUSING**

- 1.1 In the event an Affordable Housing Contribution is paid to the District Council to use the Affordable Housing Contribution for the provision of Affordable Housing within the administrative area of the District Council and for no other purpose whatsoever
- 1.2 The District Council shall if requested to do so in writing after the expiry of ten (10) years of the date that the last instalment of the 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 together with any Late Payment Interest due thereon such payment to be made within twenty (20) Working Days of such request
- 1.3 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 Owner after the expiry of ten (10) years of payment of the Affordable Housing Contribution within a further period of one (1) month notify the Owner that such monies have been spent or committed such notice to include details of what the said monies were spent on or committed to

#### **PART 2**

##### **OPEN SPACE**

- 1.1 In the event that the Open Space Maintenance Contribution is paid to the District Council pursuant to paragraph 1.7 of the Second Schedule Part 3 the District Council shall either (i) pay the Open Space Maintenance Contribution into an interest bearing

account and use the Open Space Maintenance Contribution for the maintenance of the Open Space or (ii) transfer the Open Space Maintenance Contribution to the Parish Council for the maintenance of the Open Space.

### **PART 3**

#### **THRADSTONES MEADOW**

- 1.1 In the event that the Thradstones Meadow Contribution is paid to the District Council pursuant to paragraph 1.3 of the Second Schedule Part 4 the District Council shall either (i) pay the Thradstones Meadow Contribution into an interest bearing account and use the Thradstones Meadow Contribution for the maintenance and management of Thradstones Meadow or (ii) transfer the Thradstones Meadow Contribution to the Community Body who has entered into the Thradstones Meadow Transfer for the maintenance and management in perpetuity of Thradstones Meadow.

### **PART 4**

#### **PRIORITY FARMLAND BIRDS**

1. In the event that the Priority Farmland Birds Mitigation Contribution is paid to the District Council pursuant to paragraph 1 of the Second Schedule Part 6 of this Agreement the District Council shall use the contribution for the purposes intended in this Agreement and for no other purpose.
2. The District Council shall if requested to do so in writing after the expiry of 5 (five) years of the date of Completion of the Development, within a further period of 1 (one) month either confirm that the Priority Farmland Birds Contribution has been expended or committed by the District Council or if it has not been committed or expended to repay any balance to the party who made the payment.

**FIFTH SCHEDULE**  
**COUNTY COUNCIL'S COVENANTS**

**PART 1**  
**EDUCATION**

- 1.1 The County Council covenants to use the Education Contribution when received from the Owner solely for the purposes as defined in this deed.
- 1.2 The County Council shall if requested to do so in writing after the expiry of ten (10) years from the date of Completion of the Development pay to any person such amount of the Education Contribution paid by that person in accordance with the provisions of this deed which has not been committed or expended by the County Council in accordance with the provisions of this deed such payment to be made within twenty (20) Working Days of such request.
- 1.3 If the Education 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 twenty (20) Working Days notify the Owner that such monies have been spent or committed such notice to include details of what the said monies were spent on or committed to.

**PART 2**  
**HIGHWAYS**

- 1.1 The County Council covenants to use the Highways Mitigation Contribution solely for the purposes as defined in this deed.
- 1.2 The County Council shall if requested to do so in writing after the expiry of ten (10) years of the date that the Highways Mitigation Contribution was paid pay to any person such amount of the Highways Mitigation Contribution paid by that person in accordance with the provisions of this deed which has not been committed or expended by the County Council in accordance with the provisions of this deed such payment to be made within twenty (20) Working Days of such request.

- 1.3 If the Highways Mitigation Contribution paid to the County Council pursuant to this Ddeed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the payment of that sum within a further period of twenty (20) Working Days notify the Owner that such monies have been spent or committed such notice to include details of what the said monies were spent on or committed to.

## SIXTH SCHEDULE

### NOMINATIONS AGREEMENT

THIS DEED OF NOMINATION RIGHTS is made the \_\_\_\_\_ day of \_\_\_\_\_ 202X

**BETWEEN:**

- (1) [ \_\_\_\_\_ ] whose registered address is at [ \_\_\_\_\_ ] ('the Registered Provider') and
- (2) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ('the District Council')

#### **1. Definitions**

In this Deed:

- 1.1 **'Affordable Housing'** means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market
- 1.2 **'Affordable Housing Units'** means the twenty-eight (28) dwellings all of which shall be Affordable Housing to be provided on the Property of which eight (8) dwellings shall be Shared Ownership Dwellings and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and twenty (20) dwellings shall be Affordable Rent Dwellings to be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to this deed of nomination rights as varied from time to time and Affordable Housing Units shall be construed accordingly
- 1.3 **'Affordable Rent'** means housing made available by a Registered Provider as low cost rent accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent inclusive of any service charges applicable or the local housing allowance rate
- 1.4 **'Affordable Rent Dwellings'** means an Affordable Housing Unit to be let at an Affordable Rent

- 1.5 **'Chargee'** for the purposes of this Nominations Agreement means 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
- 1.6 **'Chargee's Duties'** means the tasks and duties set out in Clause 10.4 of this deed
- 1.7 **'Choice Based Lettings Scheme'** means 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
- 1.8 **'Initial Let'** means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit
- 1.9 **'Local Connection Criteria'** means an individual who immediately before taking up occupation of an Affordable Housing Unit:
- 1.9.1 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 1.9.2 to 1.9.4 inclusive
- 1.9.2 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
- 1.9.3 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



- 1.9.4 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
- 1.10 **'Nomination List'** means the Gateway to Homechoice Short List produced in accordance with the Service Level Agreement
- 1.11 **'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
- 1.12 **'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
- 1.13 **'Property'** means the land and dwellings at land south of Gipping Road, Stowupland, Stowmarket, Suffolk shown edged red on the plan annexed
- 1.14 **'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 or has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of an Affordable Housing Unit or any successor in title or a person who was staircased the equity in their Shared Ownership dwelling to 100%

- 1.15 **'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
- 1.16 **"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
- 1.17 **'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
- 1.18 **'Shared Ownership Lease'** means a lease or sub-lease of an Affordable Dwelling granted at a premium whereby not less than 25% and 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
- 1.19 **'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

1.20 **'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

1.21 **'Void'** means an Affordable Housing Unit which is vacant otherwise than as a result of the tenant having:

1.21.1 moved to other accommodation either by transfer or decant provided by the Registered Provider

1.21.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider

1.21.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere

1.22 **'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

1.23 **'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**

The Association hereby grants the Council Nomination rights for 100% of the initial lets and thereafter 100% for voids in relation to the Affordable Rented Dwellings allocated through the Choice-based Lettings system in place. 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 1.9.1 to 1.9.5 of this agreement and subject to clause 4.2 of this agreement 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 1.9.1 to 1.9.5 of this agreement than someone who does not have disabilities

**5. Registered Provider covenants**

The Registered Provider covenants with the District Council to the intent that section 33 of 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 Shared 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 in respect of Rented Dwellings) 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

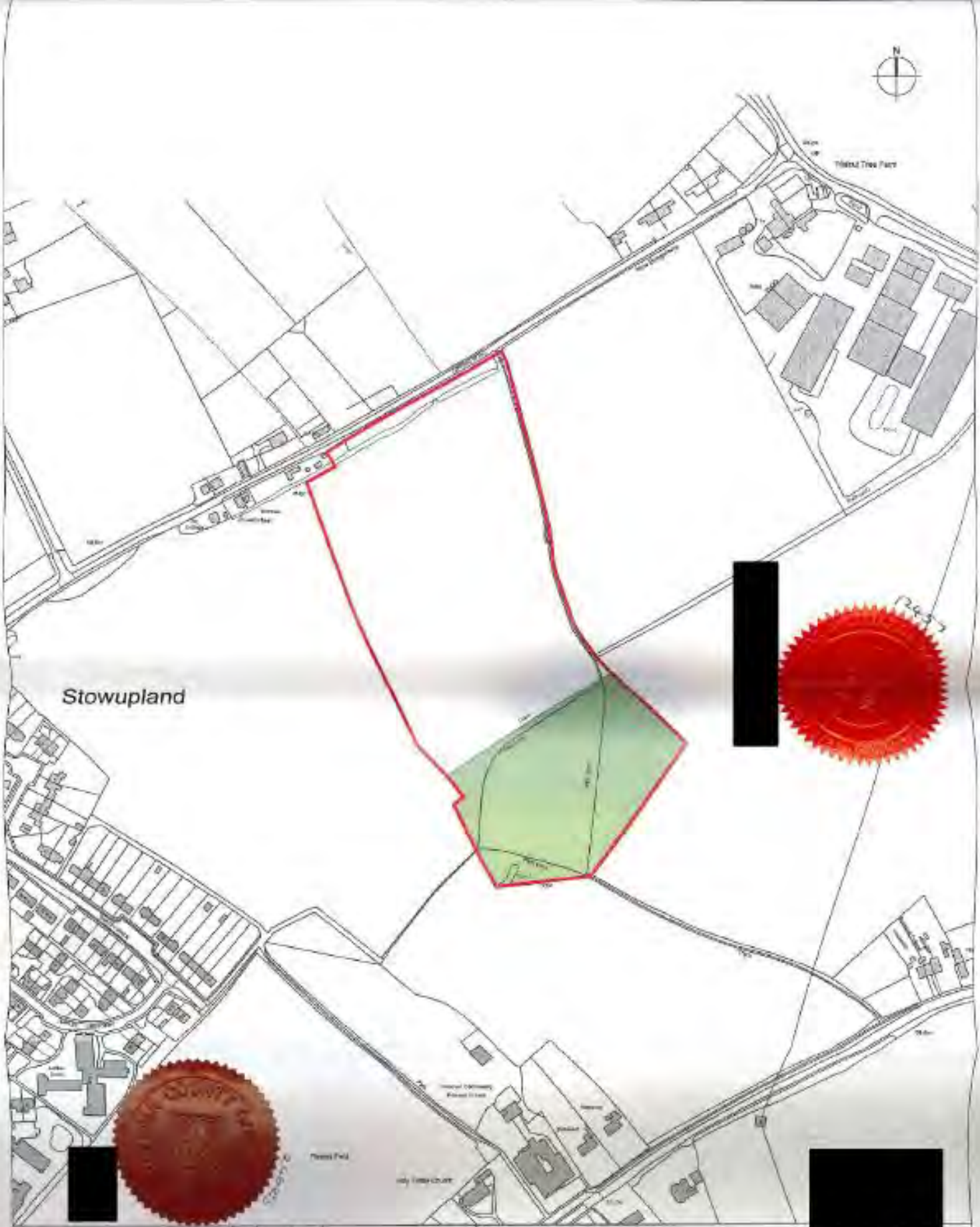
The COMMON SEAL of )  
**MID SUFFOLK DISTRICT COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory

The COMMON SEAL of )  
[ ] )  
was affixed in the presence of: )

Authorised Signatory





Stowupland

Thradstone Farm

Pond Field

Gipping Road



**GLADMAN**  
ARCHITECTS  
PLANNERS  
URBAN DESIGNERS  
LANDSCAPE ARCHITECTS  
100 GIPPING ROAD  
STOWUPLAND  
IP11 2JG  
01473 834444  
www.gladman.co.uk

Rev	Date	By	Checked	Notes

LEGAL

STOWUPLAND, GIPPING ROAD

THRADSTONE MEADOW PLAN

Drawn by <b>CHIEF</b>	Checked by <b>CHIEF</b>
Created by <b>CHIEF</b>	Approved by <b>CHIEF</b>
Date <b>01/11/20</b>	Date <b>01/11/20</b>
Scale <b>1:1 TO 2500 @ A3P</b>	
Drawing No <b>2020-018-108</b>	