

DATED 10 December

2020

BABERGH DISTRICT COUNCIL	(1)
SUFFOLK COUNTY COUNCIL	(2)
R C PARTRIDGE & CO LIMITED	(3)
CATESBY DEVELOPMENT LAND LIMITED	(4)

**Planning Obligation by Deed of Agreement under
Section 106 of the Town and Country Planning Act
1990 relating to land to the East Of Sand Hill
Boxford CO10 5AD**

Planning application reference: DC/20/00330

Birketts

Birketts LLP: Offices in Cambridge | Chelmsford | Ipswich | Norwich

www.birketts.co.uk

BETWEEN:

- (1) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council")
- (3) **R C PARTRIDGE & CO LIMITED (Company Number 03402553)** whose registered office address is at Haywards Farm, Chelsworth, Ipswich, Suffolk, IP7 7HU ("the Owner")
- (4) **CATESBY DEVELOPMENT LAND LIMITED (Company Number SC373759)** whose registered office address is at 4th Floor 115 George Street, Edinburgh, EH2 4JN ("The Applicant")

Together "the Parties"

INTRODUCTION

- (A) The 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
- (B) The County Council is the local education authority and highway authority and 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 Bound Land and the Applicant has a charge and unilateral notice registered against the Bound Land at the H M Land Registry under title number SK165168.
- (D) The Applicant submitted the Application to the Council for the Development and the Council has resolved to grant 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.
- (E) The Council enters into this Deed to the intent that the requirements of the Council's policies are met and that any objections by the Council to the grant of planning permission on the basis of those policies are overcome.

- (F) The Council and the County Council consider and the Owner and Applicant acknowledge that the Development should not take place until certain restrictions regulating the use of the Bound Land 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 in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 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:

"Act"	the Town and Country Planning Act 1990 as amended;
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to buy or rent housing generally available on the open market in accordance with Annexe 2 of the National Planning Policy Framework 2019;
"Affordable Housing Nomination Agreement"	an agreement substantially in the form set out in Schedule 6 (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;

<p>"Affordable Housing Contribution"</p>	<p>means the sum calculated in accordance with the Council's approved affordable housing policies in place at the time to be paid to the Council to spend on Affordable Housing within the administrative district of the Council in the event that the Owner is unable to dispose of the Affordable Housing in accordance with the Second Schedule Part 2</p>
<p>"Affordable Housing Scheme"</p>	<p>A scheme securing the Affordable Housing Units and specifying:</p> <ul style="list-style-type: none"> - The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Housing; - full details of the design of the Affordable Housing - the tenure mix - The identity of the Registered Provider or such details as the Council requires to satisfy itself that the Affordable Housing will be secured as Affordable Housing in perpetuity; - The number, location, type and size of Affordable Housing to be constructed on the Site if that differs from the Affordable Housing Table; - full details of the Affordable Housing Units (such proposal to reflect the Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Council) including the types of Intermediate Housing and Rented Housing; - an indicative mix has been provided at Schedule 2 in Part 2 - such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme

<p>“Affordable Housing Units”</p>	<p>Means thirty five per cent (35%) (rounded to the nearest whole number) of the total Dwellings to be provided on the Site as Affordable Housing of which twenty five percent (25%) of the Dwellings shall be Shared Ownership Dwellings or as agreed in writing with the Council allocated in accordance with the government’s Help to Buy scheme and seventy five percent (75%) of the Dwellings will be for Affordable Rent (allocated in accordance with the Council’s choice based letting scheme) or other such affordable products as defined in the NPPF, as amended and agreed in writing with the Council with the locations to be agreed in writing by the Council in the Affordable Housing Scheme and to be delivered in accordance with Schedule 2;</p>
<p>“Affordable Rent”</p>	<p>means 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 market rent including any service charges applicable;</p>
<p>“Affordable Rent Dwelling”</p>	<p>means an Affordable Housing Unit which is to be let at an Affordable Rent and is let on the Registered Provider’s standard form of letting in accordance with the terms of this Deed by a Registered Provider;</p>
<p>“Application”</p>	<p>means the application for outline planning permission to develop the Site in accordance with the application plans and other materials submitted to the Council for the Development allocated reference number DC/20/00330;</p>
<p>“Bound Land”</p>	<p>means the area of land shown shaded pink on the Plan which forms part of the Site against which this Deed may be enforced and described in the First Schedule;</p>
<p>Bus Stop Shelters Contribution</p>	<p>Means £15,000 (fifteen thousand pounds) to be used by the county council for the construction of raised bus stop kerbs with shelters as the county considers necessary in the vicinity of the Development.</p>

“Chargee”	Any mortgagee or chargee of the Registered Provider’s interest 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 of the whole or any part of the Affordable Housing or any persons or bodies deriving title through such mortgagee or chargee;
“Chargee’s Duty”	the tasks and duties set out in schedule 2, part 2, paragraph 8 of this Deed;
“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 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 on the Site 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, erection of any temporary means of enclosure and the temporary display of site notices or advertisements and “Commence Development” and “Commencement Date” shall be construed accordingly;
“Community Building Land”	an area of the Bound Land of no less than 0.08Ha to be used for local community uses in accordance with the provisions of Part 4 of Schedule 2

“Community Building Contribution”	means the sum of £254,000 (two hundred and fifty four thousand pounds) to be used for community purposes at the Development or in its vicinity
“Completion Date”	the date that the last Dwelling is first Occupied;
“Development”	Residential development comprising the erection of up to 64 Dwellings and provision of land for a community building
“Dwelling”	any dwelling (including a house flat maisonette or bungalow) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly;
Traffic Regulation Order Contribution	Means the sum of £20,000 (twenty thousand pounds) to be paid by the Owner to the county council and to be used by the county council to extend a 30mph speed limit and introduce a 20mph speed limit associated with the Highway Improvement Works.
Highway Contribution	Means the Traffic Regulation Order Contribution and the Bus Stop Shelters Contribution.
“Homes England”	the non-departmental public body responsible for creating thriving communities and affordable homes in England and which is the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body that may replace it in either function;
“Index”	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 Council and the Owner;

"Index Linked"	the increase in any sum referred to in Schedule 2 and Schedule 3 by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 12 of this Deed;
"Interest"	Interest at four (4) per cent above the base lending rate of the Bank of England from time to time;
"LAP"	means an area within the Open Space to be used as a local areas for play in accordance with the Open Space Specification;
"LEAP"	means an area within the Open Space to be used as a locally equipped area of play in accordance with the Open Space Specification;
"Management Company"	a company or body who will take over responsibility for the future maintenance of the Open Space and which may include a resident's association or residents management company being a private company limited by guarantee established or incorporated for this purpose
"Market Housing Units"	those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units
"Notice of Actual Commencement"	notice in writing to advise of the actual Commencement Date;
"Notice of Expected Commencement"	notice in writing to advise of the expected Commencement Date;
"Occupation" and "Occupied"	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;

<p>"Open Space "</p>	<p>the areas of publicly accessible open space to be made available for public use in perpetuity as shown on the Open Space Plan to include a LEAP or LAP to be provided in accordance with the Open Space Specification;</p>
<p>"Open Space Commuted Sum"</p>	<p>Means the sum of £9.80 per square metre for a period of 10 years from the Open Space Transfer to be paid to the Council in accordance with schedule 2 part 3 of this deed to spend on the maintenance of the Open Space</p>
<p>"Open Space Plan"</p>	<p>means the showing an area of no less than 2.03Ha / 20,300sqm2 to be provided by the Owner showing the Open Space together with the LEAP or LAP in accordance with the Open Space Specification and to be provided in accordance with the provisions of schedule 2 part 3 of this Deed</p>
<p>"Open Space Specification"</p>	<p>means the specification for delivery of the publicly accessible Open Space in accordance with the Open Space Plan 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 proposed play areas and equipment landscaping, paths and access arrangements, street furniture and fencing together with details of the proposed future management regime for the Open Space to be agreed in writing by the Council in accordance with schedule 2 part 3 paragraph 1 of this Deed;</p>

"Open Space Transfer"	<p>A transfer of the Open Space to be approved of in writing by the Council and which inter alia shall contain the following provisions:</p> <p>a) The Owner shall transfer the fee simple estate free from encumbrances that would interfere or impact on the use of the Open Space by the public;</p> <p>b) All easements and rights necessary in relation to access for the benefit of the Open Space;</p> <p>c) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;</p> <p>d) Restrictive covenants by the transferee;</p> <p>(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;</p> <p>(ii) Not to use or permit the Open Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development;</p>
"Plan"	Means the plan attached to this deed showing the Site and the Bound Land
"Planning Permission"	The planning permission subject to conditions as may be granted by the Council pursuant to the Application
Primary School Transport Contribution	Means the sum of £107,520 (one hundred and seven thousand five hundred and twenty pounds) for the purposes of funding school transport provision for a minimum of seven years (being the number of years a pupil is in primary school) for primary age children generated by the Development.

“Practical Completion”	means the completion of a Dwelling to a standard which is wind and watertight and fit for habitation in terms of heating, plumbing, electrics and sanitation and “Practically Complete” shall be construed accordingly;
“Protected Person ”	<p>any person who:</p> <p>a) 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;</p> <p>b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</p> <p>c) any person who has staircased the equity in their Shared Ownership Dwelling to 100%;</p> <p>d) any successor in title to paragraph a- c above;</p>
“Public Right of Way Contribution”	Means the sum of £4,000 (four thousand pounds) to be used by the County Council to be used by the County Council to undertake improvements to public rights of way in the vicinity of the Development.
“Reasonable Consideration”	Offer prices from Registered Providers which give the Owner a reasonable consideration having regard to current market conditions in the disposal of Affordable Housing of a similar type and location by Registered Providers on a grant free basis via section 106 agreements;
“Registered Provider” or “RP”	an organisation which is a private Registered Provider of social housing or other provider registered in accordance with the provisions of chapter 3 of the Housing and Regeneration Act 2008 and whom has been approved by the Council in writing;
School Transport Contribution	means the Primary School Transport Contribution and the Secondary School Transport Contribution

Shared Ownership Dwellings	Dwellings purchased on a Shared Ownership Lease
Shared Ownership Lease	<p>a lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following:</p> <ul style="list-style-type: none"> - not more than 70% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider - power to the purchaser to increase their ownership up to 100% if they so wish - an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England
Secondary School Transport Contribution	Means the sum of £57,600 (fifty seven thousand and six hundred pounds) for the purposes of funding school transport provision for a minimum of 5 years (being the number of years a pupil is in secondary school) for secondary age pupils generated by the Development
"Site"	Means the land shown edged red on the Plan;
"Working Days"	Means any day Monday to Friday inclusive except bank or public holidays in England.

“Unencumbered”	Means free from all adverse rights, easements, restrictions or other encumbrances which would interfere with the use of the Open Space Land as public open space and all encumbrances which might result in additional cost or liability to the Management Company not normally associated with the use of the Open Space
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2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause sub-clause paragraph sub-paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause paragraph sub-paragraph 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 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 and to any person deriving title through or under that party and in the case of the Council its successor or successor in title to its relevant statutory functions;
- 2.7 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;
- 2.8 The headings are for reference only and shall not affect construction.

3. LEGAL BASIS

- 3.1 This agreement is a Deed made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 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 on the Bound Land and are enforceable by the Council and County Council as a local planning authorities against the Owner and their successors in title SAVE that the obligations will not be enforceable against individual purchasers or tenants of any Dwelling (save in respect of the Affordable Dwellings which shall be enforceable in respect of any restriction on use or Occupation only) nor their mortgages or persons deriving title from them

4. **CONDITIONALITY**

- 4.1 The planning obligations contained in the Schedules to this Deed are conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development

the remainder of this Deed shall come into effect immediately upon completion of this Deed

5. **THE OWNER'S COVENANTS**

- 5.1 The Owner covenants with the Council so as to bind the Bound Land and each and every part thereof as set out in Schedule 2;

- 5.2 The Owner covenants with the County Council so as to bind the Bound Land and each and every part thereof as set out in Schedule 3;

6. **COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Owner as set out in Schedule 4.

7. **COUNTY COUNCIL'S COVENANTS**

- 7.1 The County Council covenants with the Owner as set out in Schedule 5.

8. **MISCELLANEOUS**

- 8.1 The Applicant consents to this Deed so that its interest in the Bound Land shall be bound by the obligations contained in this deed and that its security over and interest in the Bound Land shall take effect subject to this Deed PROVIDED THAT the Applicant shall not be required to observe or perform the obligations in this Deed unless it takes possession of the Bound Land or becomes the successor in title to the Owner.

- 8.2 The Applicant shall pay to the Council and the County Council on completion of this Deed their respective reasonable legal costs incurred in the negotiation, preparation and execution of this Deed and a monitoring fee of £824 (£412 per obligation) to the County Council
- 8.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999;
- 8.4 This Deed shall be registered as a local land charge by the Council;
- 8.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner or Applicant from the 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 Council by the Head of Planning Services (or the equivalent officer of the Council fulfilling such functions) and on behalf of the County Council by the Executive Director of Growth, Highways and Infrastructure.
- 8.6 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;
- 8.7 Insofar as any clause or clauses 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;
- 8.8 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 Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development;
- 8.9 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 Bound Land (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 Bound Land notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it;
- 8.10 This Deed shall not be binding on any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site;

- 8.11 This Deed shall be enforceable against owner-occupiers or tenants of Dwellings or the Community Building constructed pursuant to the Planning Permission only in respect of any restriction on Occupation and use and likewise against those deriving title from them;
- 8.12 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;
- 8.13 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority;
- 8.14 The Owner covenants from the date that this Deed takes effect to allow the Council, the County Council and its respectively duly authorised officers or agents at all reasonable times and upon reasonable notice save in the event of emergencies to enter into and upon the Bound Land for the purposes of monitoring compliance with the provisions of this Deed provided that anyone exercising this right shall not cause any damage to the Bound Land or the Site and shall promptly make good any damage so caused to the reasonable satisfaction of the Owner;
- 8.15 The Owner agrees not to pursue any claim for compensation arising for any limitations or restrictions on the planning use of the Site under the terms of the Deed;
- 8.16 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 Owner and at no cost to the Council;
- 8.17 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions functions powers, duties and obligations of the Council and the County Council under all statutes by-laws statutory instruments orders and regulations in their exercise of their functions as a local authority;
- 8.18 The Owner and the Applicant covenant and warrant to the Council and the County Council that they have the full power to enter into this Deed and there is no other person other than the Owner and Applicant whose consent is necessary to make this Deed binding on the Bound Land and all estates and interests therein.
- 8.19 Unless the Council states otherwise in writing this Deed shall continue to be valid and enforceable following an amendment or variation to the Planning Permission achieved through the submission of a planning application pursuant to section 73 of the 1990

Act as if this Deed had been completed pursuant to such an application and the parties shall comply with the terms of this Deed with the intention that the provisions of this Deed will apply as if the definition of the Planning Permission and the Planning Permission and the Development in this Deed included the new planning permission granted as a result of such an application so as to bind both the original planning permission and the new planning permission and a memorandum of that agreement shall be endorsed on the face of the Deed which is recorded on the planning register

9. WAIVER

9.1 No waiver (whether expressed or implied) by the Council or the County Council 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 and the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. CHANGE IN OWNERSHIP

10.1 As qualified by the following sub-clause the Owner agrees with the Council to give it immediate written notice of any change in ownership of any of its interests in the Bound Land occurring before all the obligations under this Deed have been discharged such notice quoting the Council's reference DC/20/00330 and giving details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Bound Land or unit of occupation purchased by reference to a plan and the title number or numbers thereof;

10.2 The Owner shall not be obliged to notify the Council of every plot or Dwelling disposal or the Community Building disposal.

11. DISPUTE PROVISIONS

11.1 In the event of any dispute or difference arising between any of the Parties in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert ("the Expert") whose decision shall be final and binding on the Parties to the dispute in the absence of manifest error and any costs shall be payable by the Parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the Parties to the dispute in equal shares;

11.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 11.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time

being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all Parties to the dispute in the absence of manifest error and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute in equal shares;

- 11.3 Any Expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant Parties to the dispute within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received any file or written representation;
- 11.4 The Expert shall be required to give notice to each of the said Parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten (10) Working Days;
- 11.5 The provisions of this clause shall not affect the ability of the parties 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.

12. INDEXATION

12.1 Any sum referred to in Schedule 2 and Schedule 3 shall be increased by an amount equivalent to the increase in the Index 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:

- 12.1.1 A is the sum payable under this Deed;
- 12.1.2 B is the original sum calculated as the sum payable;
- 12.1.3 C is the Index for the month two (2) months before the date on which the sum is payable;
- 12.1.4 D is the Index for the month two (2) months before the date of this Deed; and
- 12.1.5 C/D is Not less than 1

13. INTEREST ON PAYMENTS

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

14. **VAT**

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

15. **JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

16. **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.

17. **MORTGAGEE**

No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or any part of the Site or any receiver appointed by such chargee or mortgagee or any person deriving title through such charge mortgagee receiver unless and until such charge mortgagee receiver or person has entered into possession of the Site or it appoints a receiver or administrative receiver (as such terms are defined in the mortgage) over the Site or part thereof to which such obligation relates and such receiver or administrative receiver acts as the chargee or mortgagee's agent PROVIDED THAT such chargee or mortgagee is regulated by the Financial Conduct Authority

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

The Common Seal of
**BABERGH DISTRICT
COUNCIL**

was hereunto affixed
In the presence of;

)
)

[Redacted]



Authorised Signatory.....

The Common Seal of
**SUFFOLK COUNTY
COUNCIL**

was hereunto affixed
In the presence of;

)
)
)
)
)

[Redacted]



Authorised Signatory..... [Redacted]

SIGNED as a deed by
R.C. PARTRIDGE & CO LIMITED
acting by a director

[Redacted]

Witness Signature

[Redacted]

Witness Name:

[Redacted]

Witness Address

BIRKETTS LLP
PROVIDENCE HOUSE
145 PRINCES STREET
IPSWICH IP1 1QJ

**EXECUTED as a DEED by
CATESBY DEVELOPMENT
LAND LIMITED**

acting by a director and its

secretary / two directors

Signature of director



Director

Full name(in block capitals).....*MYRON OSBORNE*.....

Signature of director or secretary



Director / Secretary

Full name(in block capitals).....*MYRON OSBORNE*.....

SCHEDULE 1

DETAILS OF TITLE AND DESCRIPTION OF THE BOUND LAND

The Freehold land shown shaded pink on the Plan being land to the East Of Sand Hill
Boxford CO10 5AD Suffolk registered at the Land Registry under title number SK165168

Part 2
Affordable Housing

1. The Owner covenants not to Commence Development until the Affordable Housing Scheme has been submitted in writing to and approved by the Council in writing PROVIDED THAT an amended, revised or substituted Affordable Housing Scheme may be approved by the Council in writing following the Commencement of the Development and once approved by the Council such scheme will form part of this deed as if the same had been fully set out herein
2. Having given notice under paragraph 1 of this Schedule 2 Part 1 above the Owner shall use reasonable endeavours to agree with the Council within 6 months of said notice on the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred such agreement not to be unreasonably withheld or delayed.
3. In the event that the Registered Provider (within two (2) months' of written invitation) is unable to make an acceptable offer (in the Owner's absolute discretion, acting reasonably) to purchase the Affordable Housing Units or no longer wants to purchase the Affordable Housing Units the Owner shall: (a) notify the Council three (3) months prior to Practical Completion of the Affordable Housing Units; and (b) 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 this part of this Schedule; and (c) submit any other information reasonably requested by the Council to satisfy why the Owner has not been able to enter into a transfer with the Registered Provider pursuant to this part of this Schedule and (d) offer the Affordable Housing Units to the Council to be purchased by the Council as Affordable Housing
4. In the event the Council make an acceptable offer to the Owner (in the Owner's absolute discretion, acting reasonably) (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 Open Market Housing Units until the Owner has provided the Council with a freehold transfer document unconditionally released for completion for the transfer of the Affordable Housing Units
5. In the event the Council does not make an offer which is acceptable to the Owner (in the Owner's absolute discretion, acting reasonably) (within two (2) months' of written invitation) to purchase all or part of the Affordable Housing Units or the Council indicates that it does not want to purchase the Affordable Housing Units the Council shall serve on the Owner written confirmation that the Owner shall be permitted to sell those Affordable Housing Units on the open market (such written confirmation not to be unreasonably withheld or delayed) and shall pay the Affordable Housing

Contribution payable in respect of each Affordable Housing Unit to the Council within ten (10) Working Days of the transfer of the freehold of that unit (Such sum to be calculated in accordance with the Council's policies as are applicable at the time of calculation) in lieu of the provision of the Affordable Housing on the Bound Land

6. Upon payment to the Council of the Affordable Housing Contribution payable in respect of each Affordable Housing Unit that is sold pursuant to paragraph 5 above the provisions of this Part of this Schedule shall no longer be applicable in respect of those Dwellings that were Affordable Housing Units
7. To construct the Affordable Housing Units in accordance with the Planning Permission and to a standard of construction that meets Homes England construction standards and complies with the internal space requirements as detailed in the Nationally Described Space Standards March 2015 or any subsequent standards in place at the time
8. Indicative Affordable Housing Mix
 - **Affordable Rent Dwellings = 75% - 16 dwellings**
 - 4 x 1 bed 2-person flats @ 50 sqm
 - 2 x 2 bed 4-person bungalows @ 70 sqm
 - 8 x 2 bed 4-person houses @ 79 sqm
 - 2 x 3 bed 5-person houses @ 93 sqm

 - **Shared Ownership Dwellings = 25% - 6 dwellings**
 - 4 x 2bed 4-person house – 79 sqm
 - 2 x 3bed 5-person house – 93 sqm
9. The Owner shall not
 - 9.1 Occupy or permit Occupation of more than 50% (fifty per cent) of the Market Housing Units until 50% (fifty per cent) 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 Rent Dwellings or Shared Ownership Dwellings that those units have been transferred to the Registered Provider
 - 9.2 Occupy or permit Occupation of more than 80% (eighty per cent) 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 Rent Dwellings or Shared Ownership Dwellings that those units have been transferred to the Registered Provider
10. Any transfer to a Registered Provider of the land on which the Affordable Housing Units will be constructed shall be:

- 10.1 with vacant possession;
- 10.2 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);
- 10.3 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;
- 10.4 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;
- 10.5 subject to a requirement to enter into the Affordable Housing Nomination Agreement with the Council and completed between the Council and the Registered Provider within one (1) month of the date of the transfer(s) to it of the Affordable Housing Units
11. The Shared Ownership Dwellings shall only be Occupied by persons allocated in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and the Affordable Rent Dwellings shall only be Occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or chosen pursuant to the deed of nomination rights made pursuant to paragraph 5 of this part 2 schedule 2 which confers nomination rights on the Council unless otherwise agreed by the Council in writing.
12. The Owner covenants so as to bind any Registered Proprietor as successor in title that once a leaseholder of a Shared Ownership Unit acquires 100% of the equity in that unit then the capital receipt between 80% and 100% received by the Registered Proprietor is to be recycled by that Registered Proprietor and used to provide new Affordable Housing in the administrative area of the Council
13. From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
 - a) any Protected Person or any mortgagee or chargee of the Protected Person or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargees; or
 - b) any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or
 - c) any purchaser from a mortgagee of an Individual Affordable Housing Unit pursuant to any default by the individual mortgagor

- d) any Affordable Housing Unit sold on the open market pursuant to paragraph 5 of Part 2 of Schedule 2; or
- e) any successor in title of a) - c) above./

14. 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 Council of its intention to dispose:

14.1 in the event that the 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

14.2 if the Council does not serve its response to the notice served under paragraph 14.1 within one (1) month then the Chargee of a Registered Provider shall be entitled to dispose free of the restrictions set out in this Second Schedule Part 2 paragraph 1 which shall from the time of the completion of the disposal cease to apply

14.3 if the Council cannot within two (2) months' of the date of service of its response under paragraph 14.1 secure such transfer then provided that the Chargee of the Registered Provider shall have complied with its obligations under paragraph 9 the Chargee of the Registered Provider shall be entitled to dispose free of the restrictions set out in this Second Schedule part 2 paragraph 1 which shall from the time of the completion of the disposal cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph 14 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 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.

Part 3
Provision of Public Open Space and LEAP or LAP

1. The Owner hereby covenants with the Council not to Commence the Development unless and until it has submitted the Open Space Plan and the Open Space Specification to the Council for approval.
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 Council in writing.
3. The Owner hereby covenants with the 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 approved Open Space Specification and thereafter that the Open Space shall be made available for the purpose of publically accessible open space and play facilities in perpetuity.
4. The Owner further covenants with the Council at their own cost to maintain and manage the Open Space Unencumbered strictly in accordance with the approved Open Space Plan the approved Open Space Specification and the Planning Permission until the date of the Open Space Transfer described in paragraphs 6 and 7 of this part 3 of schedule 2 has been completed or in default in perpetuity.
5. Not to Occupy more than 75% of the Dwellings unless and until: i) the Management Company has been created to the satisfaction of the Council; and ii) the memorandum and articles of association and the form of transfer of the Open Space to the Management Company has been submitted to the Council for approval and has been approved by the Council.
6. The Owner covenants that following the 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 the Open Space Unencumbered to the Management Company 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 approved Open Space Specification and the Planning Permission for the benefit of all residents of the Development and a covenant that the Open Space shall thereafter provide for publically accessible open space and play facilities in perpetuity.
7. The Owner shall prior to Occupation of 80% of the Dwellings transfer the Open Space to the Management Company in accordance with the Open Space Transfer and covenants not to Occupy more than 80% of the Dwellings unless and until the transfer

of the Open Space to the Management Company has taken place PROVIDED THAT the Management Company shall not accept the transfer of the Open Space unless it has been provided and maintained in strict accordance with the approved Open Space Specification

8. The Owner covenants not to Occupy more than 80% of the Dwellings unless and until the Open Space Commuted Sum has been paid to the Council

Part 4
Community Building

1. To pay the Community Building Contribution prior to Occupation of 65% of the Dwellings; and
2. Not to Occupy or allow Occupation of more than 65% of the Dwellings unless and until the Owner has paid the Community Building Contribution to the Council.
3. Prior to Occupation of 65% of the Dwellings, the Owner shall make a written offer to the Council for the transfer of the Community Building Land and such offer is to include details of the terms of such transfer including provision that the Council can transfer the Community Building Land to a separate management company with express provisions as to the use/maintenance of the Community Building Land for a community use ("the Initial Offer").
4. In the event the Council accepts the Initial Offer for the transfer of the Community Building Land the Owner shall transfer the Community Building Land to the Council on the agreed terms and for the sum of £1 within a timescale agreed with the Council.
5. In the event that the Council has either failed to accept the Initial Offer within the period of 3 calendar months from the receipt of the Initial Offer or has responded to the Initial Offer and expressly stated in writing that it does not accept the Initial Offer the Owner shall retain the Community Building Land in its ownership.
6. In the event that paragraph 5 above applies, the Council may within 5 years of the date of the Initial Offer, request the transfer of the Community Building Land on such terms and timescales as to be agreed between the Owner and the Council and following such agreement the Owner will transfer the Community Building Land to the Council on the agreed terms and for the sum of £1 within a timescale agreed with the Council.
7. In the event that the Council do not request the transfer of the Community Building Land within 5 years of the date of the Initial Offer the terms of paragraph 3 to 5 above shall no longer apply and the Owner will retain the ownership of the Community Building Land free of restrictions.

SCHEDULE 3

THE OWNER COVENANTS WITH THE COUNTY COUNCIL

1. The School Transport Contribution

The Owner hereby covenants to pay:

- 1.1 fifty (50) percent of the School Transport Contribution to the County prior to Commencement and shall not Commence until the County has received payment of fifty (50) percent of the School Transport Contribution
- 1.2 the remaining fifty (50) percent of the School Transport Contribution to the County prior to the first Occupation of a Dwelling and shall not cause or allow a Dwelling to be Occupied until the County has received payment of [the remaining fifty (50) percent of the Education Contribution and 100% of the Education Contribution has thereby been paid

2. The Highways Contribution

The Owner covenants:

- 2.1. To pay the Highways Contribution to the County prior to Commencement of the Development;
- 2.2. Not to Commence Development until the Highways Contribution has been paid to the County Council.

3. Public Rights of Way Contribution

The Owner covenants to:

- 3.1. Pay the Public Rights of Way Contribution to the County Council prior to Commencement of the Development.
- 3.2. Not to Commence Development until the Public Rights of Way Contribution has been paid to the County Council.

4. Notice

- 4.1. The Owner shall give the County Council Notice of Expected Commencement not less than seven (7) days before the date that the Owner expect Commencement of the Development to occur and (ii) within twenty-one (21) days of Commencement of Development shall give the Council Notice of Actual Commencement in order to confirm Commencement has occurred.

- 4.2. The Owner shall give the County Council no less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling to be Occupied and the anticipated date for Completion of the Development.

SCHEDULE 4

COUNCIL'S COVENANTS

1. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. Following the performance and satisfaction of all the obligations contained in this Deed the 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.
3. To have the Open Space (if transferred to the Council) made available for the purpose of publically accessible open space and play facilities.
4. To transfer the Open Space Commuted Sum to the Management Company within 28 days of receipt
5. The Council shall hold any sums payable under this Deed in an interest-bearing account and at the end of ten years from the date of receiving the payment the Council shall return to the party who made the payment all money in that account which has not been spent or committed to be spent on the intended purpose as specified in this Deed.
6. To use reasonable endeavours to approve the details of the Management Company submitted in accordance with paragraph 5 of part 3 of schedule 2 within 28 days or to provide comments on such details within 28 days as to any further information that may be required.
7. To use the Community Building Contribution towards community uses on the Community Building Land or within the vicinity of the Development

SCHEDULE 5

COUNTY COUNCIL'S COVENANTS

School Transport Contribution

1. The County Council shall if requested to do so in writing after the expiry of ten (10) years from the Completion Date within a further period of one(1) year to pay any person such amount of the School Transport Contribution paid by that person in accordance with the provisions of this Deed such amount of the School Transport Contribution which has not been committed or expended in accordance with the provisions of this Deed

Highway Contribution

2. The County Council shall if requested to do so in writing after the expiry five (5) years from the Completion Date within a further period of one (1) year to pay any person such amount of the Highway Contribution paid by that person in accordance with the provisions of this Deed such amount of the Highway Contribution which has not been committed or expended in accordance with the provisions of this Deed.

Public Right of Way Contribution

3. The County Council shall if requested to do so in writing after the expiry five (5) years from the Completion Date within a further period of one (1) year to pay any person such amount of the Public Right of Way Contribution paid by that person in accordance with the provisions of this Deed such amount of the Public Right of Way Contribution which has not been committed or expended in accordance with the provisions of this Deed.

'Chargee's Duties' means the tasks and duties set out in Clause 10.4 of this deed;

'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings system;

'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 (2);

'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit;

'Local Connection Criteria' means an individual who immediately before taking up occupation of an affordable housing unit:

had his only or principal home in the District of Babergh 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

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 Babergh and wishes to be near that relative or

is employed in the District of Babergh 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

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 Babergh for three years out of the preceding five years and in either case such period of former residency shall end with the Availability Date

affordable housing units subject to the other provisions of this Schedule

The local connection criteria clauses 1.9.1 to 1.9.6 shall also apply to any applicants for tenants seeking a mutual exchange to an alternative dwelling

'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA;

'Nominee' means a person named on the Gateway to Homechoice Short 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;

'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

'Property' means the development on land to the South of Ipswich Road, Hadleigh, Suffolk.

'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;

'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 under Chapter III of that Act;

'Shared Ownership Dwellings' means Dwellings purchased on a Shared Ownership Lease

'Shared Ownership Lease' means a lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following: (a) not more than 70% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider (b) power to the purchaser to increase their ownership up to 100% if they so wish (c) an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England

'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;

'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 five (5) weeks 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;

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

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

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

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

'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 five (5) weeks from the date of this Deed) the function of such a notice being the notification to the District Council of a Void.

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.

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 Rent Dwellings. In relation to the Initial Lets of the Affordable Housing Units the following provisions shall apply:

- 2. The Registered Provider shall give the District Council not less than four (4) months' written notice of the date when all the Affordable Housing Units will be ready for occupation;*
- 3. The Registered Provider shall serve a Vacancy Notice upon the District Council in respect of an Affordable Housing Unit not earlier than ten (10) weeks prior to an Affordable Housing Unit becoming available for occupation;*

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 SLA procedure shall apply.

Supplemental provisions relating to allocating Initial Lets and Voids

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 1.9.4 of this Schedule and subject to clause 4.2 of this Schedule preference must be given to the applicant/s who have the highest housing need according to Babergh District Council's current allocations policy;

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 1.9.4 of this Schedule than someone who does not have disabilities.

4. REGISTERED PROVIDER COVENANTS

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

to ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units;

to ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or as a Shared Ownership Dwelling and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider;

5. ALTERATION OF LISTS

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.

6. 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.

7. 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 the Homes England under its statutory powers shall enter into a similar Deed mutatis mutandis with the District Council and Gateway to Homechoice simultaneously on completing the transfer of the Property

8. 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

9. AGREEMENTS AND DECLARATIONS

The parties agree:

Nothing in this Deed fetters or restricts the exercise by the District Council of any of its powers

The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33

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:

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*
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*
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;*

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:

1. *in the event that the District Council responds within two (2) months 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;*

2. *if the District Council does not serve its response to the notice within the said period of two (2) months contained in clause 10.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this deed;*

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)

BABERGH DISTRICT COUNCIL)

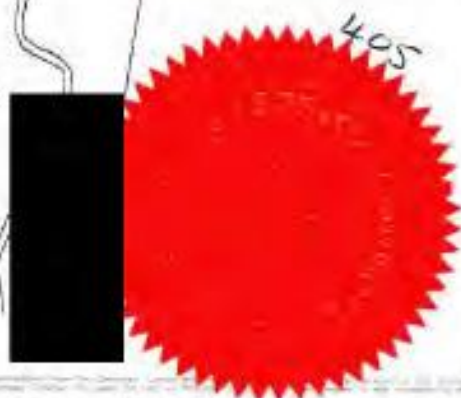
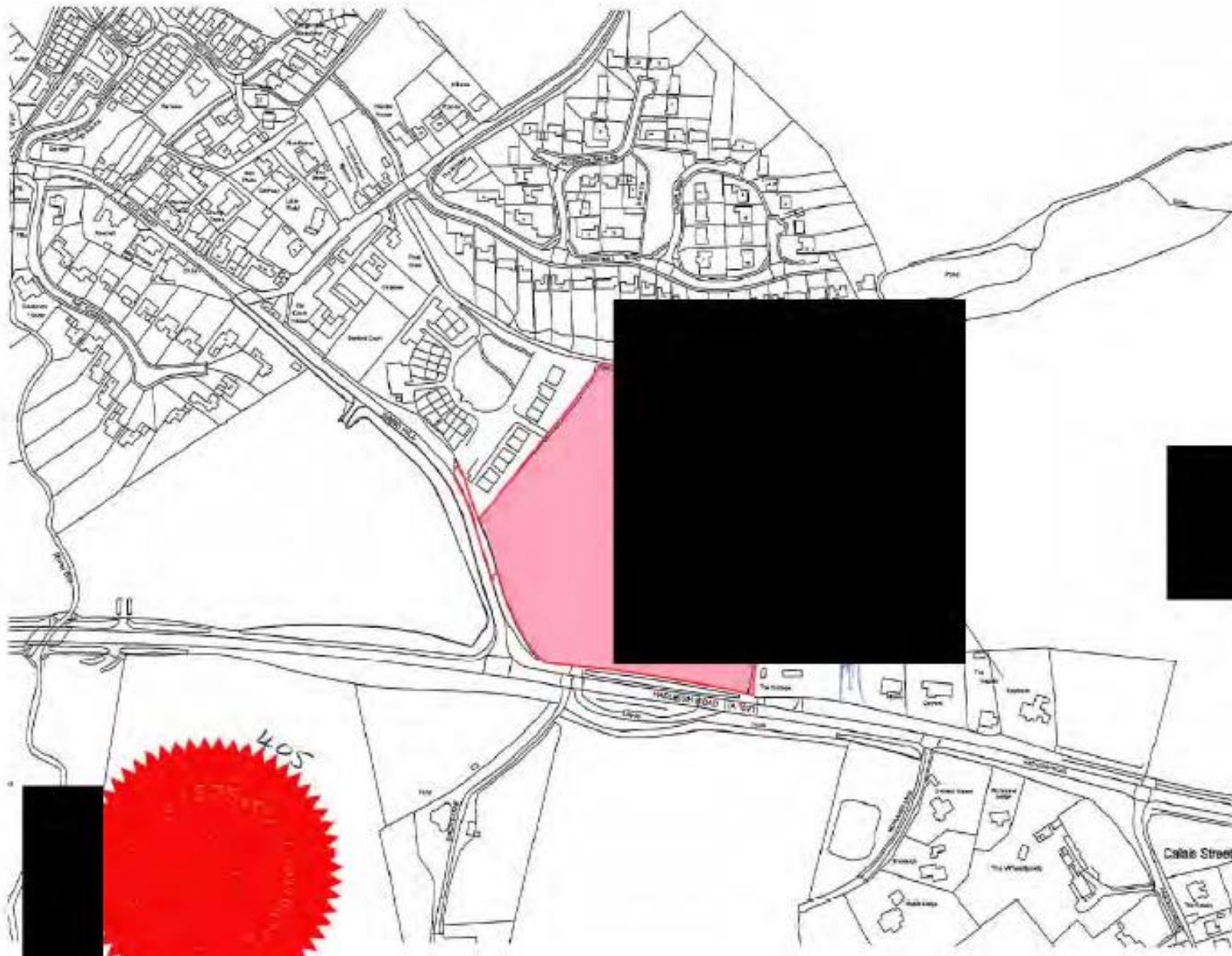
was affixed in the presence of:)

Authorised Officer

THE COMMON SEAL OF)

REGISTERED PROVIDER)

Signature of Authorised Officer)



Plot	10	11	12	13
Sane Hill, Exeter				
10 - 0106 Plan				
Scale	1:1250 @ A1	Drawn	LA	
Date	05/07/2028	Checked	DB	



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