

DATED

23rd December 2020

2020

(1) MID SUFFOLK DISTRICT COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) CCL HOLDING LIMITED

AGREEMENT
UNDER SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990
relating to land at Crown Farm, The Street,
Weybread, Suffolk

THIS AGREEMENT is made on

23rd December 2020

2020

BETWEEN:-

- (1) **MID SUFFOLK 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) **CCL HOLDING LIMITED (formerly named Crown Chicken Limited)** (Co. Regn. No. 02800280) of Crane Court, Hesslewood Country Office Park, Ferriby Road, Hessle HU13 0PA (the "Owner")

INTRODUCTION:-

- (A) For the purposes of the 1990 Act, the Council and the County Council are the local planning authorities for the area within which the Site is located and the authorities who are entitled to enforce the obligations contained in this Agreement.
- (B) The County Council is also the local education authority for statutory age education and the local highway authority for the area in which the Site is located.
- (C) The Owner is the freehold owner of part of the Site registered at HM Land Registry under title number SK129175, which title is free from encumbrances that would prevent the Owner entering into this Agreement.
- (D) The Planning Application has been submitted to the Council.
- (E) The Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating and facilitating the Development in the manner hereinafter appearing and is satisfied that planning permission for the Development could be granted subject to conditions and to the execution of this Agreement.
- (F) The Council is satisfied that the planning obligations contained in this Agreement are necessary to make the Development acceptable in planning terms; are directly related to the Development and fairly and reasonably relate in scale and kind to the Development.
- (G) The parties have agreed to enter into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the Council and the County Council (as the case may be) against the Owner and its successors in title.

NOW THIS AGREEMENT WITNESSES as follows:

OPERATIVE PART

1. DEFINITIONS

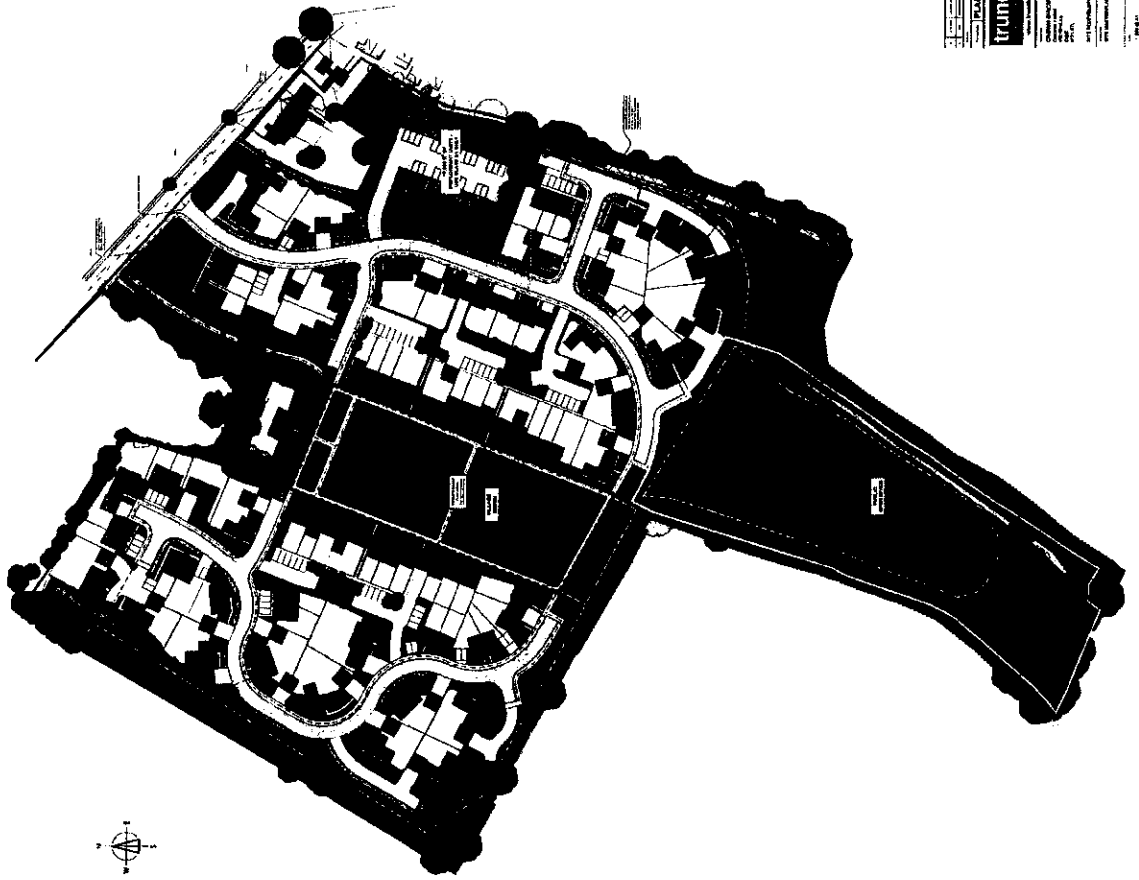
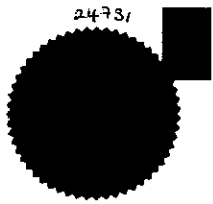
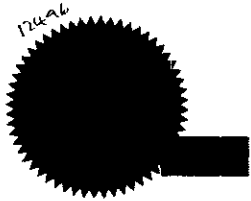
1.1 In this Agreement the following terms and expressions have the following meanings:-

- | | |
|-------------------------------|--|
| "1990 Act" | means the Town and Country Planning Act 1990 (as amended) |
| "Commencement Date" | subject to Clause 3.2 means the date on which the Commencement of Development occurs |
| "Commencement of Development" | means subject to clause 3.2 the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and "Commence Development" shall be construed accordingly |

"Contributions"	means the Additional Affordable Housing Contribution (if payable), the Additional Smarter Choices Contribution (if payable), the Affordable Housing Contribution, the Community Contribution and the Smarter Choices Contribution set out in the Schedules to this Agreement
"Development"	means outline planning permission for development as described by the Planning Application and permitted on the Site pursuant to the Planning Permission
"Dwelling(s)"	means a house or self-contained flat or bungalow constructed as part of the Development
"Index"	the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Council, the County Council and the Owner
"Index Linked"	means increased to reflect any increase in the Index during the period from and including the date of this Agreement to and including the date of actual payment
"the Notice of Commencement"	means the written notice advising of the proposed Commencement Date
"Occupation"	means beneficial occupation for the purposes permitted by the Planning Permission and shall not include (i) occupation for the construction of the Development (ii) daytime occupation by workmen involved in the construction of the Development (iii) in so far as such uses are ancillary to the construction of the Development (a) the use of finished buildings for sales purposes for use as temporary offices or for show homes or (b) for the storage of plant and materials or (c) use for security operations; and "Occupy" and "Occupied" shall mutatis mutandis be construed accordingly
"Plan"	means the location plan attached to this Agreement
"Planning Application"	means the application for outline planning permission carrying reference DC/17/06326 for the demolition of existing buildings and construction of residential development (80 dwellings), and "Business/Employment" uses [10,000 sq ft], public open space, drainage infrastructure and vehicular access at the Site
"Planning Permission"	means the planning permission that will be granted for the Development in pursuance of the Planning Application subject to conditions upon the completion of this Agreement
"Reserved Matters"	means an application for reserved matters approval in relation to the Planning Permission
"Site"	means the freehold land at Crown Farm, The Street registered at H M Land Registry under title number SK129175 and edged red on the Plan
"Working Day(s)"	means Monday to Friday inclusive but excluding days which are public holidays

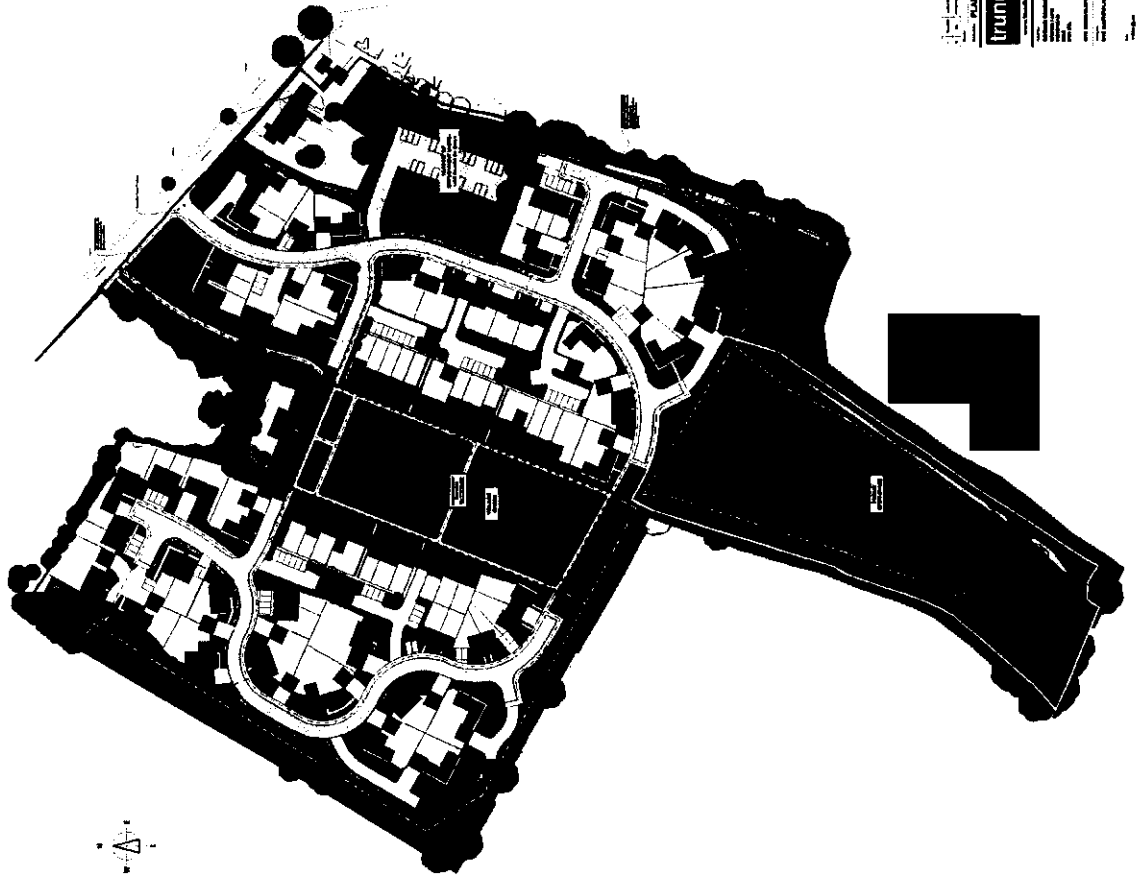
1. All dimensions are in feet and inches.
2. All dimensions are to the centerline of the road or driveway.
3. All dimensions are to the centerline of the building or structure.
4. All dimensions are to the centerline of the lot or parcel.
5. All dimensions are to the centerline of the easement or right-of-way.
6. All dimensions are to the centerline of the utility line or easement.
7. All dimensions are to the centerline of the fence or boundary line.
8. All dimensions are to the centerline of the property line.
9. All dimensions are to the centerline of the street or highway.
10. All dimensions are to the centerline of the railroad track.

trundley
PLANNING
16-27-LP001A



10-137-LP001A

trundley
10-137-LP001A



1.2 In this Agreement:

1.2.1 the clause and Schedule headings do not affect its interpretation:

- (a) unless otherwise indicated, references to clauses and Schedules are to clauses of, and Schedules to, this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- (b) references to any statute or statutory provision include references to:
 - (i) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - (ii) any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- (c) references to the Site include any part of it;
- (d) references to any party to this Agreement include the successors in title of that party. In addition, references to the Council and the County Council include any successor local planning authority exercising planning powers under the 1990 Act;
- (e) "including" means "including, without limitation";
- (f) any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing; and
- (g) if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.

1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act. To the extent that they fall within the terms of section 106 of the 1990 Act, the obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are enforceable by the Council and the County Council (as the case may be).
- 2.2 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other enabling powers.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the Council or the County Council of any of their respective statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 The obligations in this Agreement will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated or is to be situated) by the Owner to that statutory undertaker.
- 2.5 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than one relating to the Development as specified in the Planning Application, granted after the date of this Agreement, whether or not pursuant to an appeal.
- 2.6 A mortgagee of the Site will not incur any liability for any breach of the obligations contained in this Agreement unless and until it becomes a mortgagee in possession of the Site

- 2.7 The obligations in this Agreement will not be enforceable against the individual owners or occupiers or mortgagees of any Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.

3. COMMENCEMENT DATE

- 3.1 Save in respect of this Clause and Clauses 1, 2, 4.6, 4.7, 4.11, 4.15, 4.17, 5, 7, 8, 10 and 11 (which will become operative on the date of this Agreement), in respect of obligations expressly in this Agreement requiring compliance prior to the Commencement Date and which will become operative on the issue of the Planning Permission, this Agreement will come into effect on the Commencement Date.

- 3.2 The Commencement Date and Commencement of Development will not be triggered by any of the following operations:

- 3.2.1 site investigations or surveys;
- 3.2.2 site decontamination;
- 3.2.3 the clearance of the Site including demolition;
- 3.2.4 works connected with infilling;
- 3.2.5 works for the provision or relocation of drainage or mains services to prepare the Site for development together with access roads;
- 3.2.6 erection of fencing or boarding;
- 3.2.7 erection of boards advertising the development; or
- 3.2.8 the construction of a temporary site compound or a temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite.

4. OBLIGATIONS OF THE PARTIES

- 4.1 The Owner covenants with the Council and the County Council (as the case may be) to comply with the Owner's obligations set out in the Schedules to this Agreement.
- 4.2 The Owner covenants with the Council and the County Council to provide (so far as practical) not less than two months' notice in writing to the Council and the County Council of the anticipated date of Commencement of the Development and Notice of Commencement to the Council and the County Council no later than twenty (20) Working Days prior to the Commencement Date.
- 4.3 The Owner covenants with the Council and the County Council to provide not less than ten (10) Working Days' notice in writing of the intended first Occupation of a Dwelling on the Site and notice in writing every three (3) months thereafter until first Occupation of the last Dwelling indicating the number and type of Dwellings occupied on the Site.
- 4.4 The Council covenants with the Owner to comply with the obligations on the part of the Council set out in the Schedules to this Agreement.
- 4.5 The County Council covenants with the Owner to comply with the obligations on the part of the County Council set out in the Schedules to this Agreement.
- 4.6 The Council and the County Council covenant with the Owner to act reasonably, properly and diligently in exercising their discretion and discharging their functions under this Agreement. In particular, where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the Council and where appropriate the County Council

will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or similar affirmation

- 4.7 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs, but they will remain liable for any breaches of their obligations in this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause.
- 4.8 No compensation shall be payable by the Council or the County Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) and (save where expressly provided otherwise) are to be at the sole expense of the Owner and at no cost to the Council or the County Council.
- 4.9 Representatives of the Council may enter upon the Site at any reasonable time and on reasonable notice to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with, subject to complying with all health and safety and/or security requirements of the Owner or of any developer carrying out the Development.
- 4.10 Any agreement, obligation, covenant or Agreement contained herein by any of the parties which comprise more than one person or entity shall be joint and several and where any agreement, obligation, covenant or Agreement is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.11 If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, and the parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality, provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.12 No variation to this Agreement shall be effective unless made by deed, and for the avoidance of doubt the consent, seal, signature, execution or approval of the purchaser tenant or residential occupier of any Dwelling or their mortgagees shall not be required to vary any part of this Agreement.
- 4.13 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 4.14 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply, the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.15 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the Council as such and the Council covenants with the Owner it will note on the local land charges register when compliance with all of the said obligations has occurred.
- 4.16 In the event that the Owner fails to serve on the Council and/or the County Council any of the notices that they are required by the provisions of this Agreement to serve then the Council and/or the County Council (as the case may be) shall be entitled to payment of the various Contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of the relevant Contribution, and the time period for the return of the relevant Contribution shall be extended accordingly.
- 4.17 If the Council agrees following an application under section 73 of the 1990 Act to vary or release of any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the 1990 Act the covenants or provisions of this Agreement shall be

deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the Council in determining the application for the new planning permission indicate that consequential amendments are required to this Agreement to reflect the impact of the section 73 application, when a separate deed under section 106 of the 1990 Act will be required to secure relevant planning obligations relating to the new planning permission.

5. TERMINATION OF THIS AGREEMENT

- 5.1 This Agreement will come to an end if the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date, or the Planning Permission expires before the Commencement Date
- 5.2 Where the Agreement comes to an end under Clause 5.1 the Council covenants on the written request of the Owner, to vacate or cancel the entry made in the local land charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

6. NOTICES

- 6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following address, or to such other address as one party may notify in writing to the others at any time as its address for service:
- 6.1.1 for the Owner as set out above
 - 6.1.2 for the Council as set out above and it shall be marked for the attention of the Corporate Manager – Growth and Sustainable Planning with Ref: DC/17/06326
 - 6.1.3 for the County Council as set out above and it shall be marked for the attention of the Executive Director of Growth Highways and Infrastructure (or a duly appointed successor)
- 6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 6.2.1 if delivered by hand, at the time of delivery if delivered between 9.00am and 4.00pm on a Working Day, but otherwise at 9.00am on the next Working Day;
 - 6.2.2 if sent by post, on the second Working Day after posting; or
 - 6.2.3 if sent by recorded delivery, at the time delivery was signed for.
- 6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served at 9.00am on the next Working Day.
- 6.4 If a notice, demand or any other communication is served before 9am on a Working Day, it is to be treated as having been served at 9am on that Working Day.
- 6.5 For the avoidance of doubt, purported service by fax or email does not constitute good or proper service for the purpose of this Agreement.

7. COSTS OF THIS AGREEMENT

- 7.1 Upon completion of this agreement the Owner covenants to pay to the Council its reasonable and proper legal costs in a sum not to exceed fourteen thousand pounds (£14,000) (no VAT) and the County Council its reasonable and proper costs in a sum not to exceed two thousand pounds (£2,000) (no VAT) in connection with the preparation, negotiation and completion of this agreement.

7.2 The Owner covenants to pay to the Council on or before the Commencement Date a contribution of Two Thousand Five Hundred Pounds (£2,500) (no VAT) towards the Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this agreement.

7.3 The Owner covenants to pay to the County Council on or before the Commencement Date a contribution of One Thousand Two Hundred and Thirty Six Pounds (£1,236) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this agreement.

8. DETERMINATION OF DISPUTES

8.1 Subject to Clause 8.7, if any dispute arises relating to or arising out of the terms of this Agreement, any party to the dispute may give to the others written notice requiring the dispute to be determined under this Clause 8. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

8.2 For the purposes of this Clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten (10) years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of any party to the dispute to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under Clause 8.4.

8.4 Any dispute over the identity of the Specialist is to be referred at the request of any party to the dispute to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute).

8.5 The Specialist is to act as an independent expert and:

8.5.1 each party to the dispute may make written representations within ten (10) working days of his appointment and will copy the written representations to the other parties;

8.5.2 each party to the dispute is to have a further ten (10) working days to make written comments on the others' representations and will copy the written comments to the other parties;

8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties to the dispute and to seek such legal or other expert assistance as he or she may reasonably require;

8.5.4 the Specialist is not to take oral representations from the parties to the dispute without giving those parties the opportunity to be present and to give evidence and to cross-examine each other;

8.5.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and

8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) working days of his appointment.

- 8.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist or failing such decision will be shared equally between the parties to the dispute.
- 8.7 This Clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England.
- 8.8 If the Specialist should become incapacitated, die or refuse or otherwise be unable to act then any party to the dispute may ask the relevant President to dismiss him and appoint another Specialist in his place and the provisions of this clause 8 shall apply to any replacement appointment and may be repeated as many times as necessary.

9 INTEREST

- 9.1 If any payment due under this Agreement is paid late, Late Payment Interest will be payable from the date payment is due to the date of payment.

10 JURISDICTION

- 10.1 This Agreement is to be governed by and interpreted in accordance with the law of England.

11 COUNTERPARTS

- 11.1 This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original but all counterparts together shall constitute the one deed

12 EXECUTION

- 12.1 The parties have executed this Agreement as a deed and it is delivered on the date set out above.

SCHEDULE 1

VIABILITY REVIEW

1. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

“Additional Affordable Housing Contribution”

means a further financial contribution to be calculated in accordance with the Valuation Exercise to be used towards the provision of off-site Affordable Housing (as defined in Schedule 3) within the Council's administrative district and for the avoidance of any doubt the Additional Affordable Housing Contribution is a Deferred Payment

“Additional Smarter Choices Contribution”

means a further financial contribution to be agreed with the Council but which shall be no more than the Additional Smarter Choices Balance to be used towards to Smarter Choices Purposes (as defined in Schedule 4) and for the avoidance of any doubt the Additional Smarter Choices Contribution is a Deferred Payment

“Additional Smarter Choices Balance”

means the sum of £57,440 (Fifty Seven Thousand Four Hundred and Forty Pounds) calculated by subtracting £144,055 (being the sum originally requested by the County Council for the Smarter Choices Purposes) from £86,615 (being the Smarter Choices Contribution) such sum to be Index Linked.

“Agreed Land Value”

means the value of £2,400,000 (two million four hundred thousand pounds)

“Deferred Payment”

A sum of money (if any) which shall be calculated in accordance with the following provision:

- a) 50% of any Surplus Profit shall be paid to the Council such sum shall not exceed the Deferred Payment Cap
- b) The remaining Surplus Profit following the deduction in (a) above shall be retained by the Owner

“Deferred Payment Purposes”

the Deferred Payment is to be used in accordance with the Order of Priority (if such payments are payable pursuant to the provisions of this Schedule):

PROVIDED THAT any payments towards the Additional Smarter Choices Contribution shall be conditional on the County Council confirming at the time of payment that the Additional Smarter Choices Contribution is in part or in whole necessary to make the Development acceptable

“Deferred Payment Cap”

means the sum calculated via the Valuation Exercise plus

the Additional Smarter Choices Balance

“Deferred Payment Payment Date”

means the first working day falling twenty (20) Working Days after the date upon which the Council confirms that the Further Updated Appraisal is agreed

“Development Cost”

means the actual or anticipated costs of carrying out the Development and all costs associated with it which for the avoidance of doubt shall include but not limited to the Agreed Land Value and all associated costs and expenses, site servicing, infrastructure, demolition, decontamination, ecological costs, archaeological investigations, off site highway works, build costs, site overheads and costs, holding costs, NHBC warranty fees, staffing and professional fees, consultation fees, contractor fees and legal fees, finance, sales costs (including legal costs), estate agent costs, costs associated with show house(s) and publicity and the costs of obtaining and complying with the Planning Permission and Developer's Profit and this Agreement PROVIDED that it is agreed between the parties that for the purposes of this Deed the “holding costs” shall accord with the advice and guidance contained in the RICS Guidance Note

“Developer's Profit”

means a sum the equivalent of 18% of the total actual revenue achieved by the Disposals of the Dwellings

“Disposal(s)”

The disposal of the Owner's interest in a Dwelling by way of the sale of a freehold interest or the granting of a leasehold interest or other initial tenancy agreement

“Further Updated Appraisal”

means a further updated appraisal to be carried out in accordance with paragraph 3 below based on the Original Appraisal run on the same basis, to detail: the address; the date of Disposal of each of the Dwellings; the price achieved for the said Disposal; the Development Cost; and the Surplus Profit and undertaken in accordance with Appendix 2A and Appendix 2B PROVIDED ALWAYS THAT in the event of any conflict arising between the basis of the Original Appraisal and Appendix 2A and/or Appendix 2B the Original Appraisal shall prevail

“Implementation”

means the time when the Development begins pursuant to s56 of the 1990 Act

“Order of Priority”

the Deferred Payment is to be used in the following order:

- (a) primarily towards Affordable Housing (as defined in Schedule 3); and
- (b) towards the Additional Smarter Choices Contribution up to a maximum of the Additional Smarter Choices Balance

In such proportions as the Council and the County Council considers appropriate.

“Original Appraisal”

means the appraisal dated 20 February 2020

"RICS Guidance Note"

1. means the Royal Institution of Chartered Surveyors (RICS) Guidance Note into Financial Viability in Planning (GN 94/2012) as amended from time to time

"Surplus Profit"

means the sum calculated in accordance with the following formulae:

$$A-B=C$$

Where:

A = total actual revenue achieved from the Disposal of the Dwellings

B= total Development Cost of the Site

C= Surplus Profit

"Updated Appraisal"

an updated version of the Original Appraisal run on the same basis to detail: the address and the date of Disposal of each of the Dwellings; the price achieved for the said Disposal; the Development Cost; and the Surplus Profit

and to be undertaken in accordance with Appendix 1A and Appendix 1B PROVIDED ALWAYS THAT in the event of any conflict arising between the basis of the Original Appraisal and Appendix 1A and/or Appendix 1B the Original Appraisal shall prevail

"Valuation Exercise"

means an exercise undertaken to determine the value of the notional Affordable Housing Dwellings that would have been required to be delivered on Site to comply with the Council's current affordable housing policy such value to be based on:

A = the value of the Site on the assumption that 100% of the Dwellings built on the Site are Market Dwellings and completed in accordance with the Planning Permission without any on-Site Affordable Housing provision; and

B= the value of the Site pursuant to the Planning Permission and on the assumption that 65% of the Dwellings built on the Site are Market Dwellings with the remaining 35% of the Dwellings build on site are Affordable Housing Dwellings in accordance with the Council's current affordable housing policy.

With the Deferred Payment Cap being the difference between A and B above.

2. Where Implementation has not occurred within 24 months of the date of the first approval by the Council of an application for Reserved Matters the Owner shall prior to Implementation submit an Updated Appraisal to the Council for approval and the Council shall be deemed to have approved the Updated Appraisal if it fails to provide the Owner with written confirmation that the Updated Appraisal is approved or otherwise within forty (40) Working Days of the Council receiving the Updated Appraisal but in the event that the Council advise the Owner in writing that the Updated Appraisal submitted pursuant to this paragraph 2 is not approved the Owner may refer the issue to a Specialist pursuant to clause 8 of this Agreement
3. The Owner covenants to provide a Further Updated Appraisal to the Council within two (2) months of the first Occupation of 75% of the Dwellings.

4. In the event the Council provides written confirmation that the Further Updated Appraisal submitted pursuant to paragraph 3 above is agreed and where this demonstrates that a Deferred Payment is payable the Owner will pay such Deferred Payment to the Council who will in turn ensure onward payment as appropriate to the County Council in accordance with the Order of Priority by the Deferred Payment Date but in no circumstance will the Deferred Payment exceed the Deferred Payment Cap.
5. The Council shall be deemed to have approved the Further Updated Appraisal if it fails to provide the Owner with written confirmation that the Further Updated Appraisal is approved or otherwise within forty (40) Working Days of the Council receiving the Further Updated Appraisal and the Owner will immediately thereafter pay any Deferred Payment due to the Council by the Deferred Payment Date but in no circumstances will the Deferred Payment exceed the Deferred Payment Cap.
6. If within forty (40) Working Days of receiving the Further Updated Appraisal the Council advises the Owner in writing that the Further Updated Appraisal is not approved the Owner may refer the issue to a Specialist pursuant to clause 8 of this Agreement
7. The Owner shall bear any costs of the Council reasonably associated with the review of the Updated Appraisal (if any) and the Further Updated Appraisal (expert costs or otherwise) submitted in accordance with either paragraph(s) 2 and/or 3 above on receiving a demand in writing by the Council and any costs shall be payable within twenty five (25) Working Days.
8. Where the Further Updated Appraisal does not show that a Deferred Payment is payable, the Owner shall be under no obligation to pay a Deferred Payment.

VIABILITY REVIEW APPENDICES

Viability Review

Appendix 1A: Update Review Template

Appendix 1B: Update Review Cap Template

Appendix 2A: Further Update Review Template

Appendix 2B: Further Update Review Cap Template.

Notes on Viability Reviews:

1. All Update Appraisals and Further Update Appraisals to be undertaken using Argus Developer Software.
2. The tables in the four appendices provide the framework for undertaking the Update Appraisals and Further Update Appraisals.
3. The Updated Appraisal (Appendix 1A and 1B) will only take place if the scheme has not been implemented within 24 months of the date of the first approval by the Council of an application for Reserved Matters. As such there will be no confirmed Disposals or significant expenditure of the Development Costs. As such the Updated Appraisal needs to be conducted as an update to the Original Appraisal as set out in Schedule 1. The inputs to be reviewed are anticipated Disposals (sales values) by reference to market evidence and anticipated Development Costs by application of indexation from the date that the scheme secure planning consent until the date of the Updated Review.
4. All cells highlighted yellow in the Appendices require updating as directed.
5. All cells highlighted green are fixed inputs.
6. Appendix 1B provides the framework for calculating the Deferred Payment Cap. This requires an assessment of the anticipated Disposals (Sales Values) based on the policy compliant affordable housing scheme, being 35% of the total number of units (therefore 52 private units and 28 affordable units) and a policy compliant tenure mix.
7. The Further Updated Review (Appendix 2A and 2B) will take place within 2 months of the first occupation of 75% of the dwellings. At this date there will be confirmed Disposals and potentially some units still to sell. Appendix 2A requires confirmation of all confirmed Disposals to date together with anticipated Disposals (remaining sales). In relation to Development Costs these are to be provided on an open book basis to date with an estimate of Development Costs that are still to be incurred.
8. Appendix 2B provides the framework for calculating the Deferred Payment Cap. This requires an assessment of the anticipated Disposals (Sales Values) based on the policy compliant affordable housing scheme, being 35% of the total number of units (therefore 52 private units and 28 affordable units) and a policy compliant tenure mix.

Appendix 1A
Updated Review Review Template

 Cells to be amended by reviewer

--

 Inputs are fixed

	Agreed Appraisal Inputs	Early Stage Review Appraisal Inputs
Revenue		
Residential - Private GDV	N/A	Updated Sales Information
Construction Costs		
Residential Build Costs	£10,275,120	BCIS All Price Index
Contingency	5.00%	5.00%
Utilities	£465,000	BCIS All Price Index
Drainage	£100,000	BCIS All Price Index
Highways Access	£81,656	BCIS All Price Index
Landscaping	£168,500	BCIS All Price Index
Remediation	£1,575,000	BCIS All Price Index
Site Clearance	£181,681	BCIS All Price Index
Site Investigation	£35,000	£35,000
Redundant Services	£75,430	BCIS All Price Index
Demolition	£531,884	BCIS All Price Index
Residential Externals	£547,964	BCIS All Price Index
LPA Contributions		
Community Contribution	£100,000	Index link to date of review
Affordable Housing Contribution	£80,000	Index link to date of review
Smarter Choices Contribution	£86,615	Index link to date of review
Countryside Open Space Maintenance	£75,000	Index link to date of review
CIL Payment	£435,000	Update on Indexed CIL Rates
Professional Fees	8.00%	8.00%
Disposal Fees		
Marketing Costs	0.50%	0.50%
Sales Agent Fee - Private	1.50%	1.50%
Sales Legal Fee - Private	0.50%	0.50%
Finance		
Debit Rate	7.00%	7.00%
Credit Rate	0.75%	0.75%
Profit	20.00% on GDV	20.00% on GDV
Land Costs		
Residual Land Value	TBC	Output of the Updated Appraisal
SDLT	Prevailing Rate	Prevailing Rate
Agent's Fee	1.00%	1.00%
Legal Fee	0.50%	0.50%
Surplus Calculator		
Residual Land Value	Output of the Updated Appraisal	
Less Agreed Land Cost	£2,400,000	
Equals: Surplus / Deficit	£ + / -	
50% of Surplus	Only if Positive Number & Subject to Deferred Payment Cap	

Appendix 1B

Update Review Template Cap

	Cells to be amended by reviewer
	Inputs are fixed

Agreed Appraisal Inputs

Early Stage Review Appraisal Inputs

Revenue

Residential - Private GDV - 52 Units	N/A
Residential - Affordable GDV - 28 Units	N/A

Updated Sales Information
Provide Affordable Housing Values

Construction Costs

Residential Build Costs	£10,275,120
Contingency	5.00%
Utilities	£465,000
Drainage	£100,000
Highways Access	£81,656
Landscaping	£168,500
Remediation	£1,575,000
Site Clearance	£181,681
Site Investigation	£35,000
Redundant Services	£75,430
Demolition	£531,884
Residential Externals	£547,964

BCIS All Price Index
5.00%
BCIS All Price Index
BCIS All Price Index
BCIS All Price Index
BCIS All Price Index
BCIS All Price Index
BCIS All Price Index
£35,000
BCIS All Price Index
BCIS All Price Index
BCIS All Price Index

LPA Contributions

Community Contribution	£100,000
Affordable Housing Contribution	£80,000
Smarter Choices Contribution	£86,615
Countryside Open Space Maintenance	£75,000
CIL Payment	£435,000

Index link to date of review
£0 (Accounted for as based on 35% AH scheme)
Index link to date of review
Index link to date of review
Update on Indexed CIL Rates

Professional Fees

	8.00%
--	-------

8.00%

Disposal Fees

Marketing Costs	0.50%
Sales Agent Fee - Private	1.50%
Sales Legal Fee - Private	0.50%
Sales Agent Fee - AH	N/A
Sales Legal Fee - AH	N/A

0.50%
1.50%
0.50%
0.75%
0.25%

Finance

Debit Rate	7.00%
Credit Rate	0.75%

7.00%
0.75%

Profit

20.00% on GDV

20.00% on GDV

Land Costs

Residual Land Value	TBC
SDLT	Prevailing Rate
Agent's Fee	1.00%
Legal Fee	0.50%

Output of the Updated Appraisal
Prevailing Rate
1.00%
0.50%

Early Stage Cap Calculator	
	Difference between:
Early Stage Review RLV	Residual Land Value from Appendix 1A
Early Stage Review Cap RLV	Residual Land Value From Appendix 1B
Early Stage Review Cap	Equals = £ xx

Appendix 2A

Further Update Review Template

Cells to be amended by reviewer
 Inputs are fixed

	Agreed Appraisal Inputs	Late Stage Review Appraisal Inputs
Revenue		
Actual Disposals to Date	Actual	Actual Disposals to Date
Anticipated Disposals to Date	Anticipated	Anticipated Disposal Remaining
Construction Costs		
Development Costs to Date	Actual	Actual Development Costs to Date
Anticipated Development Costs	Actual	Anticipated Remaining Costs
Anticipated Development Costs Contingency	5.00%	5.00%
Surplus from Early Stage Review	Actual	Surplus Profit from Appendix 1A
LPA Contributions		
Community Contribution	Actual	Actual Paid & Any Balance
Affordable Housing Contribution	Actual	Actual Paid & Any Balance
Smarter Choices Contribution	Actual	Actual Paid & Any Balance
Countryside Open Space Maintenance	Actual	Actual Paid & Any Balance
CIL Payment	Actual	Actual Paid & Any Balance
Professional Fees	8.00%	8.00%
Disposal Fees		
Marketing Costs	0.50%	0.50%
Sales Agent Fee - Private	1.50%	1.50%
Sales Legal Fee - Private	0.50%	0.50%
Finance		
Debit Rate	7.00%	7.00%
Credit Rate	0.75%	0.75%
Profit	20.00% on GDV	20.00% on GDV
Land Costs		
Residual Land Value	TBC	Output of the Updated Appraisal
SDLT	Prevailing Rate	Prevailing Rate
Agent's Fee	1.00%	1.00%
Legal Fee	0.50%	0.50%
Surplus Calculator		
Residual Land Value	Output of the Updated Appraisal	
Less Agreed Land Cost	£2,400,000	
Surplus / Deficit	£ +/-	
50% of Surplus	Only if Positive Number & Subject to Deferred Payment Cap	

Appendix 2B

Further Update Review Template Cap

Cells to be amended by reviewer
 Inputs are fixed

Agreed Appraisal Inputs

Late Stage Review Appraisal Inputs

Revenue

Residential - Private GDV - 56 Units
Residential - Affordable GDV - 24 Units

Actual
Estimated

£/sqft rate based on Actual Sales
Provide Affordable Housing Values

Construction Costs

Development Costs to Date
Anticipated Development Costs
Anticipated Development Cost Contingency
Surplus from Early Stage Review

Actual
N/A
5.00%
Actual

Actual Development Costs to Date
Anticipated Remaining Costs
5.00%
Surplus Profit from Appendix 1A

LPA Contributions

Community Contribution
Affordable Housing Contribution
Smarter Choices Contribution
Countryside Open Space Maintenance
CIL Payment

Actual
£80,000
Actual
Actual
Actual

Actual Paid & Any Balance
£0 (Accounted for as based on 35% AH scheme)
Actual Paid & Any Balance
Actual Paid & Any Balance
Actual Paid & Any Balance

Professional Fees

8.00%

8.00%

Disposal Fees

Marketing Costs
Sales Agent Fee - Private
Sales Legal Fee - Private

0.50%
1.50%
0.50%

0.50%
1.50%
0.50%

Finance

Debit Rate
Credit Rate

7.00%
0.75%

7.00%
0.75%

Profit

20.00% on GDV

20.00% on GDV

Land Costs

Residual Land Value
SDLT
Agent's Fee
Legal Fee

TBC
Prevailing Rate
1.00%
0.50%

Output of the Updated Appraisal
Prevailing Rate
1.00%
0.50%

Late Stage Cap Calculator	
	Difference Between:
Late Stage Review RLV	Residual Land Value from Appendix 2A
Late Stage Review Cap RLV	Residual Land Value from Appendix 2B
Late Stage Review Cap	Equals = £ XX

SCHEDULE 2

COMMUNITY CONTRIBUTION

1. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

"Community Contribution"	means the sum of One Hundred Thousand Pounds (£100,000) Index Linked
"Community Contribution Purposes"	to be used towards either Project A and/or Project B
"Project A"	means the refurbishment of and/or new internal facilities at and/or equipment and/or the alteration and/or extension of the Weybread Village Hall, Weybread, Suffolk
"Project B"	means the provision of a new community centre within the village of Weybread, Suffolk.
"Project C"	means the provision of Affordable Housing (as defined in Schedule 3) in the Mid Suffolk District
"Spend Period"	means five (5) years from the date of payment of the Community Contribution

2. The Owner hereby covenants with the Council not to cause or permit the Occupation of more than 30% of the Dwellings unless and until the Community Contribution has been paid to the Council.
3. The Council hereby covenants with the Owner to provide a written form of receipt of payment of the Community Contribution on receipt of the Community Contribution pursuant to paragraph 2 above and to place the Community Contribution when received into an interest-bearing account with a clearing bank.
4. The Council further covenants with the Owner to use the Community Contribution solely for the Community Contribution Purposes as follows:
- 4.1 to use reasonable endeavours to utilise the Community Contribution towards Project A and/or Project B.
- 4.2 if the Community Contribution has not been used towards the Community Contribution Purposes before the expiry of the Spend Period the Council will be entitled to use the Community Contribution towards Project C.
- 4.3 that upon receipt of a written request(s) from the Owner the Council shall provide the Owner with a statement confirming how and when the Community Contribution has been spent.

SCHEDULE 3

AFFORDABLE HOUSING CONTRIBUTIONS

1. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meanings:

“Affordable Housing”	means housing that is made available to Persons in Housing Need in the District of Mid Suffolk
“Affordable Housing Contribution”	means the sum of £80,000 (eighty thousand pounds) Index Linked
“Affordable Housing Contribution Purposes”	means the use of the Affordable Housing Contribution towards the provision of off Site Affordable Housing in the Mid Suffolk District
“Persons in Housing Need”	means a person or persons registered on the housing needs register maintained by the Council or its nominee or persons with an identified need for housing in the Mid Suffolk District

2. The Owner hereby covenants with the Council not to cause or permit the Occupation of more than thirty five percent (35%) of the Dwellings unless and until they have paid the Affordable Housing Contribution to the Council.
3. The Council hereby covenants with the Owner to:
- 3.1. provide a written form of receipt of payment by the Owner of the Affordable Housing Contribution on receipt of the Affordable Housing Contribution; and
 - 3.2. place the Affordable Housing Contribution when received from the Owner into an interest-bearing account with a clearing bank and to utilise the same solely for the Affordable Housing Contribution Purposes.
 - 3.3. that upon receipt of a written request(s) from the Owner the Council shall provide the Owner with a statement confirming how and when the Affordable Housing Contribution has been spent.

SCHEDULE 4

SMARTER CHOICES CONTRIBUTION

1. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

"Smarter Choices Contribution" means the sum of Eighty Six Thousand Six Hundred And Fifteen Pounds (£86,615) Index Linked

"Smarter Choices Contribution Purposes" means a package of sustainable travel measures to include:

- a) school transport; and/or
- b) improvements to public rights of way within the vicinity of the Site; and/or
- c) a travel plan; and/or
- d) other sustainable travel initiatives identified by the County Council

2. The Owner covenants to pay to the County Council the Smarter Choices Contribution prior to the first Occupation of the 25th Dwelling
3. The Owner hereby covenants with the County Council not to permit Occupation of more than more than 24 of Dwellings unless and until the Smarter Choices Contribution has been paid to the County Council.
4. The Owner hereby covenants to notify the County Council of the Occupation of the 24th Dwelling.
5. **The County Council hereby covenants with the Owner to:**
 - 5.1. to use the Smarter Choices Contribution for the provision of the Smarter Choices Contribution Purposes
 - 5.2. The County Council shall if requested to do so in writing after the expiry of ten (10) years of the date upon which the Smarter Choices Contribution is received by it within a further period of one (1) year pay to any person such amount of the Smarter Choices Contribution paid by that person in accordance with the provisions of this Agreement which has not been committed or expended by the County Council in accordance with the provisions of this Agreement, less any deduction for the County Council's reasonable administrative costs associated with holding administering and refunding any part of the Smarter Choices Contribution, such payment to be made within twenty eight (28) Working Days of such request.

SCHEDULE 5

EMPLOYMENT LAND

1. In this Schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

"Employment Land"	means an area of land in a Serviced Condition shown for identification purposes only edged with a solid dark blue on the Plan
"Employment Land Certificate"	means a certificate or certificates in writing relating to the Employment Land issued by the Council that confirms that the Employment Land has been laid out in accordance with the Employment Land Specification
"Employment Land Plan"	means a HM Land Registry compliant plan identifying the Employment Land
"Employment Land Specification"	means the specification for the setting out of the Employment Land as attached at Annex 1
"Serviced Condition"	the provision of a road to the boundary of the Employment Land, and the provision of connection points for services to the boundary of the Employment Land (or as close to the boundary of the Employment Land as may be permitted by the relevant statutory authorities) with sufficient capacity to serve the units on the Employment Land including but not limited to water; gas (if mains gas is available in the village of Weybread, Suffolk); electricity; telecommunications; fibre optic broadband; foul drainage and surface water drainage (including such rights as are reasonably necessary for the discharge of surface water at the greenfield run off rate over the adjoining land); and fencing (in accordance with the Employment Land Specification) of the Employment Land

2. The Owner hereby covenants with the Council:

- 2.1. not to Commence Development unless and until the Employment Land Plan has been provided to and approved by the Council
- 2.2. not to permit the Occupation of any Dwelling unless and until the Employment Land has been provided in accordance with the Employment Land Specification and the Council has issued the Employment Land Certificate and the Employment Land has been offered to be transferred to the Council for the sum of one pound (£1.00)
- 2.3. to maintain the Employment Land by mowing the grass and trimming any hedges until the date upon which the transfer described in paragraphs 2.2 and 3 has been completed

3. The Owner and the Council agree and declare that the transfer of the Employment Land to the Council shall:

- 3.1. include a covenant by the Council to CCL Holdings Limited only to permit the Employment Land to be utilised for use class B1 or such other use as the Council would deem suitable for a residential area excluding use classes B2, B8 and C3 together with an obligation on the Council to ensure that on any disposal of the Employment Land, the disponee shall provide a direct covenant to CCL Holdings Limited on the same terms;
- 3.2. be with vacant possession;

- 3.3. be prepared by the Owner at no cost to the Council and with the Owner being responsible for the Council's reasonable legal costs;
 - 3.4. contain a grant by the Owner to the Council of all rights reasonably necessary of access and passage of services and rights to connect freely into services where they are not delivered to the boundary of the Employment Land and all other rights reasonably necessary for the Employment Land to utilised as use class B1 or such other use as the Council would deem suitable for a residential area excluding use classes B3, B8 and C3 and for the avoidance of any doubt this shall not extend to a right of access over any other land outside of the Site; and
 - 3.5. contain a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development and the beneficial use and enjoyment of the remainder of the Site.
 - 3.6. Include an option granted by the Council in favour of CCL Holdings Limited (company registration number 02800280) enabling CCL Holdings Limited to buy back the Employment Land for £1 (one pound) in the event that the Employment Land remains unused for use class B1 or such other use as the Council would deem suitable for a residential area excluding use classes use class B2, B8 and C3 for a period of twelve years from the date of the transfer to the Council and include an obligation to ensure that on any disposal of the Employment Land, the disponent shall provide a direct covenant to CCL Holdings Limited on the same terms until such time as the option lapses;
 - 3.7. Include a restriction on the title to the Employment Land requiring a certificate from CCL Holdings Limited before any disposition of the Employment Land can be registered that the provisions of paragraphs 3.1 and 3.6 of this Schedule have been complied with.
4. The Council covenants not to unreasonably withhold or delay the issue of the Employment Land Certificate and/or the acceptance and completion of the transfer offered to them in accordance with paragraph 2.2 above provided it is in the terms as set out in paragraph 3.

SCHEDULE 6

COUNTRYSIDE OPEN SPACE LAND

1. In this schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

"Countryside Open Space" means the area of land on the Site shown edged with a solid yellow line on the Plan to be used for community use and recreation purposes all of which shall be laid out in accordance with the approved Countryside Open Space Specification which for the avoidance of doubt shall exclude the Open Space as defined in Schedule 7

"Countryside Open Space Completion Certificate" means a certificate in writing relating to the Countryside Open Space issued by the Council that confirms that the Countryside Open Space has been laid out in accordance with the approved Countryside Open Space Specification

"Countryside Open Space Final Certificate" means a certificate or certificates in writing issued by the Council that confirms that the Countryside Open Space has been maintained and remedial works completed to the reasonable satisfaction of the Council

"Countryside Open Space Maintenance Sum" means the sum of Fifty One Thousand Three Hundred and Forty Eight Pounds (£51,348) Index Linked

"Countryside Open Space Management Plan" means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Countryside Open Space including for the avoidance of doubt provisions for the rectification of any defects in any area of the Countryside Open Space until the completion of the relevant transfer of the Countryside Open Space to the Council

"Countryside Open Space Specification" means a specification to be approved in writing by the Council for the laying out of the Countryside Open Space

"Relevant Documents" means the Countryside Open Space Specification and the Countryside Open Space Management Plan

2. The Owner hereby covenants with the Council to submit the Relevant Documents at the same time as the submission of the first application for Reserved Matters and not to Commence the Development unless and until the Relevant Documents have been approved by the Council.
3. The Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Relevant Documents within three months of receipt in full of the Relevant Documents by the Council.
4. The Owner hereby covenants with the Council not to permit the Occupation of more than 50% of the Dwellings unless and until all of the Countryside Open Space has been provided in accordance with the approved Countryside Open Space Specification and the Council has issued the Countryside Open Space Completion Certificate.
5. Following the provision of the Countryside Open Space in accordance with the approved Countryside Open Space Specification the Owner hereby covenants to serve notice on the Council inviting them to inspect the Countryside Open Space and issue the Countryside Open Space Completion Certificate.
6. The Council covenants with the Owner to inspect the Countryside Open Space within 60 Working Days and may identify remedial works necessary to comply with the approved Countryside Open Space Specification and shall serve notice of any remedial works on the Owner to complete such notified

remedial works in accordance with the Countryside Open Space Specification by the end of the nearest planting season following receipt of such notice or and upon completion of any such remedial works the Owner covenants to serve notice on the Council inviting them to inspect those remedial works and issue a Countryside Open Space Completion Certificate confirming that such works have been completed in accordance with the approved Countryside Open Space Specification and where the Council fails to respond to such notice by way of approval or rejection with reasons within 60 Working Days of being requested to do so the same shall be deemed to be approved (as appropriate). Provided Always that a new 60 Working Day approval period shall commence after each resubmission of a notice to the Council by the Owner to inspect the Countryside Open Space following a refusal by the Council to issue the Countryside Open Space Certificate.

7. the Owner hereby covenants with the Council to maintain the Countryside Open Space in accordance with the Open Space Management Plan following the issue of the Countryside Open Space Completion Certificate as appropriate or until such time as the transfer described in paragraph 8 has been completed and to carry out and complete any remedial works to the Countryside Open Space as reasonably identified by the Council (if any) pursuant to paragraph 8 below.
8. Upon the expiry of 1 year from the issue of the Countryside Open Space Completion Certificate the Owner shall invite the Council in writing to inspect the Countryside Open Space and identify any remedial works reasonably required to be carried out on the Countryside Open Space in accordance with the Countryside Open Space Management Plan.
9. The Council covenants with the Owner to inspect the Countryside Open Space within 60 Working Days of the invitation referred to in paragraph 8 above and the Council may identify remedial works necessary to comply with the approved Countryside Open Space Management Plan and shall serve notice of any remedial works on the Owner to complete such notified remedial works in accordance with the Countryside Open Space Management Plan by the end of the nearest planting season following receipt of any list of remedial works and upon completion of any such remedial works the Owner covenants to serve notice on the Council inviting them to inspect those remedial works and issue a Countryside Open Space Final Certificate confirming that the Countryside Open Space has been maintained in accordance with the Countryside Open Space Management Plan and where the Council fails to respond to such notice by way of approval or rejection with reasons within 60 Working Days of being requested to do so the same shall be deemed to be approved (as appropriate). Provided Always that a new 60 Working Day approval period shall commence after each resubmission of a notice to the Council by the Owner to inspect the Countryside Open Space remedial works following a refusal by the Council to issue the Countryside Open Space Final Certificate.
10. The Owner covenants with the Council:
 - 10.1. That within 3 months following the issue of the Countryside Open Space Final Certificate it shall transfer the Countryside Open Space for the consideration of One Pound (£1.00) to the Council free of encumbrances and with all necessary easements and vacant possession to the Council and with the reasonable legal fees for such transfer being the responsibility of the Owner;
 - 10.2. to pay the Countryside Open Space Maintenance Sum to the Council on or prior to completion of such transfer
11. The Council covenants with the Owner that upon receipt of the Countryside Open Space Maintenance Sum only to utilise the Countryside Open Space Maintenance Sum for the purpose of maintaining the Countryside Open Space in accordance with the Countryside Open Space Management Plan.
12. The Owner and the Council agree and declare that the transfer of the Countryside Open Space to the Council shall:
 - 12.1. Include a covenant by the Council only to permit the Countryside Open Space to be utilised as countryside open space for use by the public as amenity land;
 - 12.2. be with vacant possession.

SCHEDULE 7

ON-SITE OPEN SPACE AND AMENITY AREAS

1. In this part of this schedule unless the context requires otherwise the following words and expressions shall have the following meaning:

"Adult Gym Trail"	means an outdoor adult gym trail the specification of which shall form part of the Open Space Specification but which shall include equipment to be provided on Site as part of the Open Space
"Amenity Areas"	means those areas within the Site comprising areas that are to be laid to grass and/or landscaped and/or hardstanding in accordance with the Amenity Areas Specification excluding such areas that are or are to be publicly maintainable highway or Open Space or to be within the curtilage of Dwellings or to be maintained by owner-occupiers of Dwellings or the Countryside Open Space
"Amenity Areas Completion Certificate"	means a certificate or certificates in writing relating to the Amenity Areas issued by the Council that confirms that the Amenity Areas have been laid out in accordance with the approved Amenity Areas Specification
"Amenity Areas Final Certificate"	means a certificate or certificates in writing issued by the Council that confirms that the Amenity Areas have been maintained and remedial works completed to the reasonable satisfaction of the Council
"Amenity Areas Management Plan"	means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Amenity Areas including for the avoidance of doubt provisions for the rectification of any defects in any area of the Amenity Areas until the completion of the relevant transfer of the Amenity Areas to the Management Company and FOR THE AVOIDANCE OF DOUBT the Amenity Areas Management Plan may be combined with the Open Space Management Plan
"Amenity Areas Plan"	means a plan showing the exact location of the Amenity Areas FOR THE AVOIDANCE OF DOUBT the Amenity Areas Plan may be combined with the Open Space Plan
"Amenity Areas Specification"	means a specification(s) to be approved in writing by the Council for the laying out of the Amenity Areas of the Site and FOR THE AVOIDANCE OF DOUBT the Amenity Areas Specification may be combined with the Open Space Specification

"Management Company"	<p>means:</p> <ul style="list-style-type: none"> (i) a private limited company established or appointed for inter alia the purpose of managing and maintaining the Open Space and/or any part of the Amenity Areas; and/or (ii) any statutory undertakers which are to take on the management of any areas of the Open Space (and/or any part of the Amenity Areas) in accordance with their statutory functions; and/or (iii) the management company must include a nominated member from Weybread Parish Council who is entitled to attend meetings but who has no voting rights and whose non attendance cannot prevent decisions being made
"LEAP"	means a local equipped area for play to be provided on Site as part of the Open Space
"Open Space "	means the areas of land within the Site to be shown on the Open Space Plan which shall include the Adult Gym Trail, LEAP, Pedestrian Links and informal and casual open space all of which shall be laid out in accordance with the approved Open Space Specification
"Open Space Completion Certificate"	means a certificate or certificates in writing relating to the Open Space issued by the Council that confirms that the Open Space has been laid out in accordance with the approved Open Space Specification
"Open Space Final Certificate"	means a certificate or certificates in writing issued by the Council that confirms that the Open Space has been maintained and remedial works completed to the reasonable satisfaction of the Council
"Open Space Plan"	means a plan showing the location of the Open Space
"Open Space Management Plan"	means a management plan prepared by the Owner to be approved in writing by the Council for the ongoing management and maintenance of the Open Space including for the avoidance of doubt provisions for the rectification of any defects in any area of the Open Space until the completion of the relevant transfer of the Open Space to the Management Company
"Open Space Specification"	means a specification to be approved in writing by the Council for the laying out of the Open Space (including the Adult Gym Trail)
"Pedestrian Links"	means links from the Development to the existing public right of way suitable for pedestrian use to be identified on the Open Space Plan to be constructed in accordance with the Open Space Specification and to be maintained as set out in the Open Space Management Plan PROVIDED ALWAYS THAT the Owner shall not be required to acquire any rights over or carry out works on land that is not in its ownership.

"Relevant Documents" means the Amenity Areas Plan, the Amenity Areas Specification and the Amenity Areas Management Plan and the Open Space Plan, the Open Space Specification and the Open Space Management Plan

2. The Owner hereby covenants with the Council to submit the Relevant Documents to the Council at the same time as the submission of the first application for Reserved Matters and not to Commence the Development unless and until the Relevant Documents have been approved by the Council.
3. The Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Relevant Documents within three months of receipt in full of the Relevant Documents by the Council.
4. The Owner hereby covenants with the Council not to permit the Occupation of more than 50% of the Dwellings unless and until all of the Open Space has been provided in accordance with the approved Open Space Plan and the Open Space Specification and the Council has issued the Open Space Completion Certificate for all of the Open Space (including the Adult Gym Trail and LEAP).
5. The Owner hereby covenants with the Council not to permit the Occupation of more than 90% of the Dwellings unless and until the Amenity Areas have been provided in accordance with the approved Amenity Areas Plan and the Amenity Areas Specification and the Council has issued the Amenity Areas Completion Certificate.
6. Following the provision of the Open Space in accordance with the approved Open Space Plan and the Open Space Specification the Owner hereby covenants to serve notice on the Council inviting them to inspect the Open Space and issue the Open Space Completion Certificate.
7. The Council covenants with the Owner to inspect the Open Space within 60 Working Days and may identify remedial works necessary to comply with the approved Open Space Specification and shall serve notice of any remedial works on the Owner to complete such notified remedial works in accordance with the Open Space Specification by the end of the nearest planting season following receipt of such notice or and upon completion of any such remedial works the Owner covenants to serve notice on the Council inviting them to inspect those remedial works and issue a Open Space Completion Certificate confirming that such works have been completed in accordance with the approved Open Space Specification and where the Council fails to respond to such notice by way of approval or rejection with reasons within 60 Working Days of being requested to do so the same shall be deemed to be approved (as appropriate). Provided Always that a new 60 Working Day approval period shall commence after each resubmission of a notice to the Council by the Owner to inspect the Open Space following a refusal by the Council to issue the Open Space Completion Certificate.
8. Following the provision of the Amenity Areas in accordance with the approved Amenity Areas Plan and the Amenity Areas Specification the Owner hereby covenants to serve notice on the Council inviting them to inspect the Amenity Areas and issue the Amenity Area Completion Certificate.
9. The Council covenants with the Owner to inspect the Amenity Areas within 60 Working Days and may identify remedial works necessary to comply with the approved Amenity Areas Specification and shall serve notice of any remedial works on the Owner to complete such notified remedial works in accordance with the Amenity Areas Specification by the end of the nearest planting season following receipt of such notice or and upon completion of any such remedial works the Owner covenants to serve notice on the Council inviting them to inspect those remedial works and issue a Amenity Area Completion Certificate confirming that such works have been completed in accordance with the approved Amenity Areas Specification and where the Council fails to respond to such notice by way of approval or rejection with reasons within 60 Working Days of being requested to do so the same shall be deemed to be approved (as appropriate). Provided Always that a new 60 Working Day approval period shall commence after each resubmission of a notice to the Council by the Owner to inspect the Amenity Areas following a refusal by the Council to issue the Amenity Areas Completion Certificate.

10. The Owner hereby covenants with the Council to maintain the Amenity Areas in accordance with the Amenity Areas Management Plan and the Open Space in accordance with the Open Space Management Plan following the issue of the relevant Amenity Areas Completion Certificate or the relevant Open Space Completion Certificate as appropriate or until such time as the transfer(s) described in paragraph 16 have been completed and carry out and complete any remedial works to the Open Space or the Amenity Areas as appropriate as reasonably identified by the Council (if any) pursuant to paragraph 12 and 14 below
11. Upon the expiry of 1 year from the issue of the relevant Open Space Completion Certificate the Owner shall invite the Council in writing to inspect the Open Space and identify any remedial works reasonably required to be carried out on the Open Space in accordance with the Open Space Management Plan.
12. The Council covenants with the Owner to inspect the Open Space within 60 Working Days of the invitation referred to in paragraph 11 above and the Council may identify remedial works necessary to comply with the approved Open Space Management Plan and shall serve notice of any remedial works on the Owner to complete such notified remedial works in accordance with the Open Space Management Plan by the end of the nearest planting season following receipt of such notice or and upon completion of any such remedial works the Owner covenants to serve notice on the Council inviting them to inspect those remedial works and issue a Open Space Final Certificate confirming that the Open Space has been maintained in accordance with the Open Space Management Plan and where the Council fails to respond to such notice by way of approval or rejection with reasons within 60 Working Days of being requested to do so the same shall be deemed to be approved (as appropriate). Provided Always that a new 60 Working Day approval period shall commence after each resubmission of a notice to the Council by the Owner to inspect the Open Space following a refusal by the Council to issue the Open Space Final Certificate.
13. Upon the expiry of 1 year from the issue of the relevant Amenity Areas Completion Certificate the Owner shall invite the Council in writing to inspect the Amenity Areas and identify any remedial works reasonably required to be carried out on the Amenity Areas in accordance with the Amenity Areas Management Plan.
14. The Council covenants with the Owner to inspect the Amenity Areas within 60 Working Days of the invitation referred to in paragraph 13 above and the Council may identify remedial works necessary to comply with the approved Amenity Areas Management Plan and shall serve notice of any remedial works on the Owner to complete such notified remedial works in accordance with the Amenity Areas Management Plan by the end of the nearest planting season following receipt of such notice or and upon completion of any such remedial works the Owner covenants to serve notice on the Council inviting them to inspect those remedial works and issue an Amenity Areas Final Certificate confirming that the Amenity Areas have been maintained in accordance with the Amenity Areas Management Plan and where the Council fails to respond to such notice by way of approval or rejection with reasons within 60 Working Days of being requested to do so the same shall be deemed to be approved (as appropriate). Provided Always that a new 60 Working Day approval period shall commence after each resubmission of a notice to the Council by the Owner to inspect the Amenity Areas following a refusal by the Council to issue the Amenity Areas Final Certificate.
15. The Owner covenants with the Council that within 3 months following the issue of the respective Open Space Final Certificate and the Amenity Areas Final Certificate it shall transfer the respective Open Space and the Amenity Areas to the Management Company in accordance with the terms set out below.
16. The Owner covenants with the Council to include the following provisions in any transfers of the Amenity Areas and the Open Space to the Management Company:
 - 16.1 a covenant only to permit the Amenity Areas to be utilised as grassed areas and/or parking areas and or roads and the Open Space to be utilised by the public as open areas for recreation in accordance with this Agreement;

- 16.2 a covenant to maintain the Amenity Areas for the life of the Development in accordance with the Amenity Areas Management Plan and the Open Space for the life of the Development in accordance with the Open Space Management Plan;
 - 16.3 a covenant not to transfer the Amenity Areas or the Open Space into the individual ownership of the owners of the Dwellings;
 - 16.4 a covenant by the Management Company to comply with the provisions of this Agreement; and
 - 16.5 an obligation by the Management Company that should the Council so require for the Management Company to enter into a direct covenant with the Council to perform the obligations set out in paragraphs 16.1, 16.2, 16.3 and 16.4 of this Schedule.
17. The Owner shall furnish a copy of the completed transfer(s) (as referred to in paragraph 16) to the Council in relation to the Amenity Areas and the Open Space and shall inform the Council in writing of the contact details of any Management Company.
18. The Owner shall include in each transfer or lease of a Dwelling an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Amenity Areas and the Open Space.

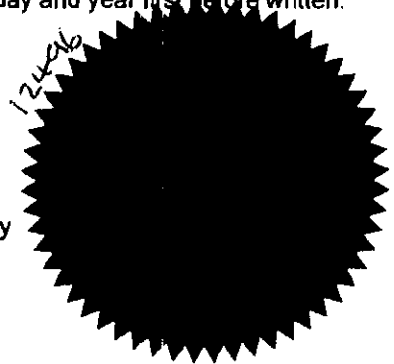
IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

EXECUTED as a DEED by affixing
THE COMMON SEAL of
MID SUFFOLK DISTRICT COUNCIL
in the presence of:

)
)
)
)

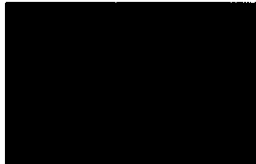


Authorised Signatory

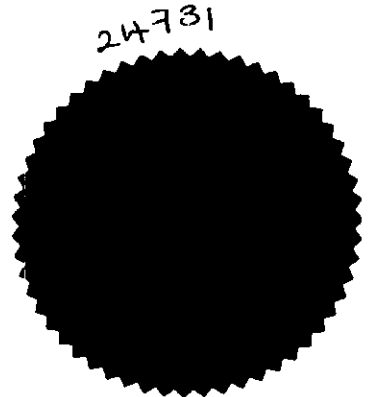


THE COMMON SEAL of
SUFFOLK COUNTY COUNCIL
was affixed in the presence of:

)
)
)



Attesting Officer



SIGNED as a DEED by
CCL HOLDINGS LIMITED
acting by a directors in the presence of witness

)
)
)

Director

Witness Name

.....

Witness Address

.....

.....

.....

**ANNEX 1
EMPLOYMENT LAND SPECIFICATION**

The Employment Land shall be in accordance with the following:

- Suitable for the construction of and utilised for use class B1 or such other use as the Council would deem suitable for a residential area excluding use classes B2, B8 and C3.
- Accessible for vehicles from the adopted public highway.
- Served by safe direct pedestrian/cycle routes.
- Finished falls to be no greater than existing at the date of the Agreement (and up to as much as and also to be at grade to the points of access. At transfer to the Council a survey plan showing survey points shall be provided.
- The existing topsoil shall be free of contamination, free from stone exceeding 16mm and suitable for its intended use. Topsoil shall be placed at a minimum thickness of 150mm above the regarded subsoil. Finished topsoil thickness to be agreed with the Council.
- Archaeological investigations shall be completed as required by the planning permission.
- All ecological mitigation works shall be completed as required by the planning permission.
- There shall be no new utility services or service easements other than those to serve the Employment Land, unless otherwise agreed with the Council and to advise the Council of any services within the vicinity of the Employment Land.
- No new public rights of way to cross the Employment Land and any existing public rights of way crossing the Employment Land are to be extinguished save.
- Free from buildings, structures, spoil and fly tipping.
- To provide a suitable surface water drainage point of connection to (or as close as possible to) the boundary of the Employment Land to cater for green field run off rate at no cost to the Council
- To provide a suitable foul water connection point to (or as close as possible to) the boundary of the Employment Land at no cost to the Council.
- To provide electricity, gas, water, BT Open-reach (or equivalent) to (or as close as possible to) the Employment Land boundary unless otherwise agreed in writing by the Council acting reasonably at no cost to the Council.
- The boundary of the Employment Land is to be fenced by a 1.8m high welded mesh fence. For the avoidance of any doubt, Heras Fencing with wooden posts or equivalent is sufficient for this purpose. Gates to be provided at access points at locations to be agreed with the Council prior to the transfer of the Employment Land. Upon transfer of the Employment Land to the Council the unfenced boundary shall be marked with ground markers/property boundary markers (eg <https://www.yorksurvey.co.uk/ground-markers-c102x3184240>) minimum 500mm length
- The Employment Land shall be free from:
 - Encumbrances other than those set out in the charges register of title number SK129175 and SK334981
 - Protected species or habitats of special interest
 - Soil and water table contamination unless made safe
 - Radiation or potential sources thereof

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

EXECUTED as a DEED by affixing)
THE COMMON SEAL of)
MID SUFFOLK DISTRICT COUNCIL)
in the presence of:)

Authorised Signatory

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

Attesting Officer

SIGNED as a DEED by)
CCL HOLDINGS LIMITED)
acting by a directors in the presence of witness)



ADAM HARTLEY COUCH

Director



Witness Name
[Redacted]

Witness Address
CRANE COURT
WILLOW HALL
VILLAGE MILBOROUGH

ANNEX 1 EMPLOYMENT LAND SPECIFICATION

The Employment Land shall be in accordance with the following:

- Suitable for the construction of and utilised for use class B1 or such other use as the Council would deem suitable for a residential area excluding use classes B2, B8 and C3.
- Accessible for vehicles from the adopted public highway.
- Served by safe direct pedestrian/cycle routes.
- Finished falls to be no greater than existing at the date of the Agreement (and up to as much as and also to be at grade to the points of access. At transfer to the Council a survey plan showing survey points shall be provided.
- The existing topsoil shall be free of contamination, free from stone exceeding 16mm and suitable for its intended use. Topsoil shall be placed at a minimum thickness of 150mm above the regarded subsoil. Finished topsoil thickness to be agreed with the Council.
- Archaeological investigations shall be completed as required by the planning permission.
- All ecological mitigation works shall be completed as required by the planning permission.
- There shall be no new utility services or service easements other than those to serve the Employment Land, unless otherwise agreed with the Council and to advise the Council of any services within the vicinity of the Employment Land.
- No new public rights of way to cross the Employment Land and any existing public rights of way crossing the Employment Land are to be extinguished save.
- Free from buildings, structures, spoil and fly tipping.
- To provide a suitable surface water drainage point of connection to (or as close as possible to) the boundary of the Employment Land to cater for green field run off rate at no cost to the Council
- To provide a suitable foul water connection point to (or as close as possible to) the boundary of the Employment Land at no cost to the Council.
- To provide electricity, gas, water, BT Open-reach (or equivalent) to (or as close as possible to) the Employment Land boundary unless otherwise agreed in writing by the Council acting reasonably at no cost to the Council.
- The boundary of the Employment Land is to be fenced by a 1.8m high welded mesh fence. For the avoidance of any doubt, Heras Fencing with wooden posts or equivalent is sufficient for this purpose. Gates to be provided at access points at locations to be agreed with the Council prior to the transfer of the Employment Land. Upon transfer of the Employment Land to the Council the unfenced boundary shall be marked with ground markers/property boundary markers (eg <https://www.yorksurvey.co.uk/ground-markers-c102x3184240>) minimum 500mm length
- The Employment Land shall be free from:
 - Encumbrances other than those set out in the charges register of title number SK129175 and SK334981
 - Protected species or habitats of special interest
 - Soil and water table contamination unless made safe
 - Radiation or potential sources thereof

- o Invasive plants such as Japanese Knotweed
- o Pipes, conduits, chambers and/or cables (including any high-pressure pipes of high voltage cables within the Employment Land) apart from those existing at the date of the Agreement
- o Ponds, ditches or water courses other than those existing at the date of the Agreement
- o Foundations, fuel tanks and other buried structures
- o Void spaces including wells, sumps and pits unless made safe
- o Any material that could materially negatively impact on buildings and their occupants or the use of the Employment Land as such.