

DATE 14 January 2021

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) PROPITEER ABBOTS GATE LIMITED

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

relating to

**Land at Hardwick Industrial Estate Laundry Lane
Bury St Edmunds Suffolk**

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

DATE 14 January

2021

PARTIES:

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **PROPITEER ABBOTS GATE LIMITED** (company number 12195518) of Oilvers Barn Maldon Road Witham Essex United Kingdom CM8 3HY (hereinafter called the "**Owner**")

INTRODUCTION

- A The Council is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- B The County Council is the local education authority the local library authority the local highway authority (except for trunk roads) and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- C The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number SK246539
- D The Owner has submitted the Application and the Council has resolved to grant planning permission for the Development pursuant to the Application subject to the prior completion of this Deed intended to regulate the Development and to secure the planning obligations contained in this Deed
- E The Council and the County Council enter into this Deed to the intent that the requirements of the Council's and the County Council's policies are met and that any objections by the Council or the County 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 acknowledges that the Development should not take place until

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

- G The Council 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:

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 rent or buy housing generally available on the open market in accordance with Annex 2 of the NPPF
"Affordable Housing Contribution"	forty-one thousand two hundred pounds (£41,200.00) BCIS Indexed
"Affordable Housing Unit"	one Dwelling (known as Plot 61) to be provided on the Site and is to be delivered through Affordable Rent in accordance with the Planning Permission
"Affordable Rent"	Affordable Housing made available by a Registered Provider as low-cost rental accommodation (as defined by the 2008 Act Section 69) with a rent charged at a level up to 80% of the equivalent local market rent
"Application"	the full application for planning permission to develop the Site deposited with the Council on the 3 June 2020 and bearing the Council's reference number DC/20/0907/FUL
"BCIS Index"	the All In Tender Price Index published by the Building Cost Information Service of the Royal

Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto

"BCIS Indexed"

the increase in any sum referred to in the Second Schedule and the Third Schedule by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 11 of this Deed

"Chargee"

any mortgagee or chargee of the Registered Provider or the owner of the Affordable Housing Units or any receiver or manager (including administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (however appointed) including a housing administrator

"Commencement of Development"

the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance demolition work archaeological investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions diversion and lay of services erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commenced" and "Commence Development" shall be construed accordingly

"Completion of Development"

the date that the last Dwelling is first Occupied

"Development"

the development of the Site as approved under the Application for 66 residential units with parking garaging and landscaping (to complete

	Phase 2 of approved development (SE/06/2414)) as amended by drawings received on 29 September and 5 October 2020
"Dwelling"	a dwelling (including a house flat or bungalow and including both Open Market Dwellings and Affordable Housing Units) to be constructed pursuant to the Planning Permission
"Late Payment Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
"Library Contribution"	one thousand nine hundred and forty-four pounds (£1,944.00) BCIS Indexed
"Nomination Agreement"	a deed of agreement dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to the Affordable Housing Unit substantially in the form of the draft in the Sixth Schedule subject to amendments agreed between the Council and the Registered Provider
"NPPF"	National Planning Policy Framework dated February 2019 or any subsequent revision thereto
"Occupation"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied and "Occupy" shall be construed accordingly
"Open Market Dwellings"	those Dwellings that are not the Affordable Housing Unit
"Payee"	the original payee of the Affordable Housing Contribution and/or the Library Contribution and/or the Primary School Contribution and/or the Secondary School Contribution and/or the

		Sixth Form Contribution and/or the TRO Contribution required under this Deed or its nominee
"Phase 1 Application"		the applications for planning permission for the Phase 1 Development given reference SE/06/2414 and/or DC/17/1089
"Phase 1 Development"		the proposal as described in the Phase 1 Application for the erection of i) 125 residential units, (ii) 38 retirement units, (iii) replacement of Headway offices (B1 use class) following demolition of all existing buildings and (iv) provision of public open space, vehicular and pedestrian accesses, garaging and parking, including underground parking
"Phase 1 Permission"		planning permission SE/06/2414 dated 23 August 2007 and/or planning permission DC/17/1089 dated 8 March 2018 for the Phase 1 Development
"Phase 1 Planning Agreement"	Planning	the section 106 agreement made on 22 August 2007 between (1) St Edmundsbury Borough Council, (2) Land Charter Homes PLC, (3) The Hand Laundry (Bury) (4) National Westminster Bank PLC (5) Investec Bank (UK) Limited as varied by a deed of variation dated 2 July 2008 and a further deed of variation dated 2 February 2018 entered into between (1) St Edmundsbury Borough Council, (2) Land Charter Homers Limited, (3) National Westminster Bank PLC (4) Trevor O'Sullivan and David Dunckley of Grant Thornton UK LLP related to the Phase 1 Development approved by the Phase 1 Permission
"Planning Permission"		the planning permission subject to conditions as may be granted by the Council pursuant to the Application or a subsequent planning permission for the Development granted pursuant to Section 73 of the Act
"Primary School Contribution"		fifty-one thousand eight hundred and four

pounds (£51,804.00) BCIS Indexed

"Protected Tenant"

any tenant who has:

(a) has exercised the right to acquire pursuant to the Housing Act 1996 the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Unit

(b) has exercised any statutory right to buy (including the preserved right to buy) (or any equivalent contractual right) in respect of an Affordable Housing Unit

(c) has been granted a Shared Ownership lease by a Registered Provider in respect of a particular Affordable Housing Unit and the purchaser has subsequently staircased and purchased from the Registered Provider all the remaining shares so that the purchaser owns the entire Affordable Housing Unit

"Public Open Space"

the areas of the Site which are to be laid out in accordance with the Planning Permission as open space accessible to the public in perpetuity

"Public Open Space Commuted Sum"

sixty thousand pounds (£60,000.00) BCIS Indexed

"Registered Provider"

a registered provider of social housing as defined in Section 80(2) of the 2008 Act and listed in the registers kept by the RSH under Chapter 3 of that Act and approved by the Council and "Registered Providers" should be construed accordingly

"Regulator of Social Housing"

the executive non-departmental public body (sponsored by the Ministry of Housing Communities and Local Government) which regulates Registered Providers

"RSH"

Regulator of Social Housing

"Secondary School Contribution"	forty-seven thousand five hundred and ten pounds (£47,510.00) BCIS Indexed
"Sixth Form Contribution"	twenty-three thousand seven hundred and seventy-five pounds (£23,775.00) BCIS Indexed
"Site"	the freehold land at Hardwick Industrial Estate, Laundry Lane, Bury St Edmunds shown for identification purposes edged red on the Site Plan
"Site Plan"	the plan marked "Site Plan" attached to the First Schedule of this Deed
"TRO Contribution"	eleven thousand five hundred pounds (£11,500.00) BCIS Indexed
"Working Days"	Monday to Friday (inclusive) except Good Friday Christmas Day and public or bank holidays from time to time in England
"2008 Act"	the Housing and Regeneration Act 2008

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause sub-clause schedule paragraph sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause schedule paragraph sub-paragraph or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.4 Wherever more than one person named as a party and where more than one party undertakes an obligation all their obligations can be

enforced against all of them jointly and severally unless there is an express provision otherwise

- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed shall include the successors in title to that party the personal representatives of that party and any party deriving title through or under that party and in the case of the Council and or the County Council the successors to their respective statutory functions
- 2.7 References to a "Site Plan" in this Deed shall be references to the plan attached to the First Schedule of this Deed or any amended plans as shall be agreed between the Owner the Council and the County Council
- 2.8 The obligations in this Deed shall not be enforceable SAVE in respect of paragraph 1.5 of the Second Schedule dealing with the Affordable Housing Units against:
 - 2.8.1 any individual person who is the owner and/or an occupier for residential purposes of a Dwelling or any mortgagee of such a Dwelling or successors in title
 - 2.8.2 any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services
 - 2.9.3 any Protected Tenant or such person's mortgagee or successors in title
- 2.9 The Affordable Housing obligations within the Second Schedule shall not be binding on:
 - 2.9.1 a Protected Tenant
 - 2.9.2 any successor in title or mortgagee of a Protected Tenant
 - 2.9.3 a Chargee of the whole or any part of the Affordable Housing Units or any persons deriving title through such Chargee PROVIDED THAT:
 - 2.9.3.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable

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

2.9.3.2 if such disposal has not completed within the three-month period the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations within the Second Schedule which provisions shall determine absolutely

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

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

3. LEGAL BASIS

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

3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities against the Owner and their successors in title

3.3 This Deed shall only be capable of being varied by a supplemental deed between the Parties hereto or their respective successors in title or assigns made under section 106A of the Act

4. CONDITIONALITY

4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission and

4.1.2 the Commencement of Development

SAVE FOR the provisions of this clause 4 and clauses 7 8.3 8.4 8.5 8.6 8.7 8.10 8.11 8.12 8.15 8.16 10 14 18 19 and 20 (related to legal and monitoring costs change in ownership right of entry dispute resolution jurisdiction and delivery) and any other relevant provisions which shall come into effect immediately upon completion of this Deed

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

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

4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed this Deed will cease to have any further effect and

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

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

4.3.1 proceedings by way of judicial review are concluded:

4.3.1.1 when permission to apply for judicial review has been refused and no further application can be made

4.3.1.2 when the court has given judgement in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused or

4.3.1.3 when any appeal(s) is or are finally determined

4.3.2 proceedings under Section 288 of the Act are concluded:

4.3.2.1 when leave to apply has been refused and no further application can be made

4.3.2.2 when the court has given judgement in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused or

4.3.2.3 when any appeal(s) is or are finally determined

5. THE OWNER`S COVENANTS

5.1 The Owner covenants with the Council as set out in the Second Schedule

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

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

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

6.2 The County Council covenants with the Owners as set out in the Fifth Schedule

7. OBLIGATIONS RELATED TO THE PHASE 1 PLANNING AGREEMENT

The Council and County Council agree that the obligations contained in the Phase 1 Planning Agreement shall not be binding upon nor enforceable against any interest held by any person in any part of the Site from the date work is initiated (as under section 56 of the Act) on the Development

8. MISCELLANEOUS

8.1 The Owner shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests either of the Council and or the County Council and their duly authorised officers or agents to have access to any part or all of the Site at reasonable times (but not any part in occupation) or any requests to provide documentation within the Owner`s possession which it is lawfully able to provide (at the Owner`s expense) for the purposes of monitoring compliance with the obligations contained herein

8.2 The Owner agrees declares and covenants both with the Council and the County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition

restriction or provision imposed by this agreement and further shall indemnify the Council and the County Council for any reasonable and proper expenses or liability arising to the Council and the County Council in respect of breach by the Owner of any obligation contained herein save to the extent that any act or omission of the Council and the County Council its employees or agents has caused or contributed to such expenses or liability and provided that the Owner shall be notified by the Council and/or County Council immediately any such party becomes aware of a purported breach to which this clause may relate

- 8.3 The Owner agrees declares and covenants to pay to the Council on completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed
- 8.4 The Owner agrees declares and covenants to pay to the County Council on completion of this Deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed
- 8.5 The Owner further agrees declares and covenants to pay to the Council one thousand pounds (£1,000.00) and to pay the County Council one thousand pounds (£1,000.00) on completion of this Deed towards the costs of reporting and monitoring the obligations contained in this Deed
- 8.6 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 8.7 This Deed shall be registered as a local land charge by the Council
- 8.8 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith cancel all entries made in the Register of Local Land Charges in respect of this Deed
- 8.9 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 8.10 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owner) and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed

- 8.11 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants restrictions or reservations in respect of it
- 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 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 8.14 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 either the Council or the County Council
- 8.15 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority
- 8.16 The Owner covenants and warrants to the Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein

9. WAIVER

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

10. CHANGE IN OWNERSHIP

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

11. INDEXATION

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

- 11.1 A is the sum payable under this Deed
- 11.2 B is the original sum payable under this Deed
- 11.3 C is the BCIS Index for the month two (2) months before the date on which the sum is payable
- 11.4 D is the BCIS Index for the month two (2) months before the date of this Deed and
- 11.5 C/D is greater than 1

12. INTEREST

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

13. VAT

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

14. NOTICES

14.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post or emailed to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post or sent by email to the address of the party concerned as nominated in clause 14.2 (save where the Owner has notified the Council and County Council of a change in ownership or change of address)

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

The Council	The Assistant Director of Growth West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU Email: int.planning.help@westsuffolk.gov.uk
The County Council	The Executive Director of Growth Highways and Infrastructure (or a duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX Email: planningcontributions.admin@suffolk.gov.uk
The Owner	Olivers Barn Maldon Road Witham Essex United Kingdom CM8 3HY Email: paulwarner@mountstreetdev.co.uk

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

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

- 13.4.1 Commencement of Development
- 13.4.2 Occupation of the first (1st) Dwelling
- 13.4.3 Occupation of the thirtieth (30th) Dwelling
- 13.4.4 Completion of Development

15. DISPUTE RESOLUTION

- 15.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) which cannot be resolved by prior agreement between the parties to the dispute ("the Dispute Parties") shall be referred to an independent expert (the "Expert")
- 15.2 The Dispute Parties shall jointly appoint the Expert not later than twenty-eight (28) days after service of a request in writing by either Party to do so
- 15.3 If the Dispute Parties are unable to agree within twenty-eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the Dispute Parties as follows:
 - 15.3.1 if the difference or question relates to the rights and liabilities of any Dispute Party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society
 - 15.3.2 if the difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers
 - 15.3.3 if the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Dispute Parties but in default of agreement appointed at the request of any Dispute Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors or
 - 15.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Dispute Parties but in default of

agreement by or on behalf of the President for the time being of the Royal Town Planning Institute

- 15.4 In the event of a reference to determination by the Expert, the Dispute Parties agree to:
- 15.4.1 prosecute any such reference expeditiously and
 - 15.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable
- 15.5 Unless otherwise agreed, the Expert shall give notice to each of the Disputing Parties inviting them to submit to him and each other within twenty (20) Working Days of his appointment written submissions and supporting material. He shall afford an opportunity for the Disputing Parties to make counter-submissions in respect of any such submissions and material within a further twenty (20) Working Days. His written decision with reasons shall be given to the Disputing Parties within twenty (20) Working Days thereafter
- 15.6 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 15.7 In the absence of manifest error and/or fraud, the award shall be final and binding both on the Dispute Parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be
- 15.8 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this clause but without prejudice to the rights and obligations of the Parties in relation to the termination of the Deed
- 15.9 The Expert shall act as an expert and not an arbitrator
- 15.10 The provisions of this clause shall not affect the ability of the Council or County Council to apply for and be granted any of the following: declaratory relief injunction specific performance payment of any sum damages and any other means of enforcing this Deed and consequential and interim orders and relief

16. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

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

17. APPROVALS

Where any details programmes plans strategies reports matters or materials are approved by the Council under the terms of this Deed further or amended details programmes plans strategies reports matters or materials may be submitted from time to time and if approved by the Council shall replace those previously approved

18. COMMUNITY INFRASTRUCTURE LEVY

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

19. JURISDICTION

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

20. DELIVERY

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

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

**THE COMMON SEAL OF
WEST SUFFOLK COUNCIL**

was affixed in the presence of:



ficier

**THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:

Authorised Officer




SIGNED AS A DEED BY

PROPIEER ABBOTS GATE LIMITED

acting by a director in the presence of:



In the presence of:

Witness Signature: 

Witness Name: PAUL WARNER

Witness Address: 24 VIKARLOW AVENUE, CHALMERSFORD CM1 6BG

Witness Occupation: COMPANY DIRECTOR

2010
2011
2012

FIRST SCHEDULE

The Site shown for identification purposes edged red in the Site Plan forming part of the land registered with HM Land Registry under title number SK246539

SITE PLAN



100

24747
SUFFOLK COUNCIL
[Redacted]

2

1370
WEST
SUFFOLK
COUNCIL
[Redacted]

SECOND SCHEDULE

THE OWNER COVENANTS WITH THE COUNCIL:

1. AFFORDABLE HOUSING UNITS

- 1.1 To transfer a freehold or leasehold interest in the Affordable Housing Unit to a Registered Provider and to pay the Affordable Housing Contribution to the Council prior to the Occupation of thirty (30) Open Market Dwellings
- 1.2 Not to Occupy or permit Occupation of more than twenty-nine (29) Open Market Dwellings unless and until the Affordable Housing Unit has been constructed and the Owner has transferred a freehold or leasehold interest in that Affordable Housing Unit to a Registered Provider and until the Affordable Housing Contribution has been paid to the Council
- 1.3 To ensure the transfer referred to in Paragraph 1.1 of this Second Schedule to the Registered Provider and their successors in title will contain a covenant to enter into a Nomination Agreement with the Council for the Affordable Housing Unit prior to Occupation of the Affordable Housing Unit
- 1.4 To ensure the conditions on which the Affordable Housing Unit to be transferred to a Registered Provider shall be transferred shall include but not be limited to the following:
 - 1.4.1 to have good and marketable freehold title
 - 1.4.2 be remediated so that the land is fit for the proposed use
 - 1.4.3 be on terms that at the date of the transfer the following are (unless otherwise agreed by the Registered Provider) provided up to a point immediately adjacent to the boundary of the Affordable Housing Units:
 - 1.4.3.1 an adoptable road constructed to base course and subject to an agreement under Section 38 of the Highways Act 1980
 - 1.4.3.2 adoptable public sewers and drains subject to an agreement under Section 104 of the Water Industry Act 1991
 - 1.4.3.3 gas water electricity telecommunications infrastructure with sufficient capacity to serve each Affordable Housing Unit and

1.4.3.4 such necessary rights as the Owner may reasonably require to be reserved

1.5 Subject to clause 2.9 to ensure the Affordable Housing Unit shall not be used for any purpose other than as Affordable Housing

2. PUBLIC OPEN SPACE

2.1 To complete the Public Open Space in accordance with the Planning Permission prior to the Occupation of sixty (60) Dwellings

2.2 Not to Occupy or permit Occupation of more than fifty-nine (59) Dwellings unless and until the Public Open Space has been laid out in accordance with the Planning Permission

2.3 Upon completion of the Public Open Space to maintain the Public Open Space in accordance with the Planning Permission until such time the Public Open Space is transferred to either:

2.3.1 the Council

2.3.2 a management company (such transfer will restrict the use of land only as Public Open Space in perpetuity)

2.4 Not to Occupy or permit Occupation of the final Dwelling unless and until the Public Open Space has been transferred to either the Council or a management company together with any requisite rights of access to the Public Open Space both for use and for maintenance and rights for drainage if appropriate

2.5 If option 2.3.1 is elected then to pay the Public Open Space Commuted Sum to the Council immediately upon completion of a transfer of Public Open Space to the Council

THIRD SCHEDULE

THE OWNER COVENANTS WITH THE COUNTY COUNCIL

1. LIBRARY CONTRIBUTION

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

2. PRIMARY SCHOOL CONTRIBUTION

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

3. SECONDARY SCHOOL CONTRIBUTION

- 3.1 To pay to the County Council the Secondary School Contribution prior to Occupation of thirty (30) Dwellings
- 3.2 Not to Occupy or permit Occupation of more than twenty-nine (29) Dwellings until the Secondary School Contribution has been paid to the County Council

4. SIXTH FORM CONTRIBUTION

- 4.1 To pay to the County Council the Sixth Form School Contribution prior to Occupation of thirty (30) Dwellings
- 4.2 Not to Occupy or permit Occupation of more than twenty-nine (29) Dwellings until the Sixth Form Contribution has been paid to the County Council

5. TRO CONTRIBUTION

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

FOURTH SCHEDULE

THE COUNCIL COVENANTS TO THE OWNER:

1. AFFORDABLE HOUSING CONTRIBUTION

- 1.1 To use the Affordable Housing Contribution to generally assist the provision of Affordable Housing within the district of West Suffolk Council
- 1.2 After the expiry of ten (10) years from the date that the Affordable Housing Contribution was received in full the Council covenants to pay to the Payee such amount of the Affordable Housing Contribution which has not been committed or expended by the Council with interest accrued thereon in accordance with the provisions of this Deed such payment to be made within twenty eight (28) Working Days of such request

2. PUBLIC OPEN SPACE

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

FIFTH SCHEDULE

THE COUNTY COUNCIL COVENANTS WITH THE OWNER:

1. LIBRARY CONTRIBUTION

- 1.1 To use the Library Contribution towards the provision of lending stock to enhance and improve IT equipment and associated materials for a library service serving the Bury St Edmunds area
- 1.2 If requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year to pay to the Payee such amount of the Library Contribution which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period
- 1.3 When the Library Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner or Payee after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year notify the Owner and/or Payee that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

2. PRIMARY SCHOOL CONTRIBUTIONS

- 2.1 To use the Primary School Contribution for the improvement and enhancement (including increasing the pupil admission number) of primary school provision at the catchment primary schools serving the Development
- 2.2 If requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year to pay to the Payee such amount of the Primary School Contribution which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period
- 2.3 When the Primary School Contribution paid to the County Council pursuant to this Deed has been spent or committed the County

Council shall upon written request by the Owner or Payee after the expiry of ten (10) years of the Completion of Development of that sum within a further period of one (1) year notify the Owner and/or Payee that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

3. SECONDARY SCHOOL CONTRIBUTIONS

- 3.1 To use the Secondary School Contribution for the improvement and enhancement (including increasing the pupil admission number) of secondary school provision at the catchment secondary schools serving the Development
- 3.2 If requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year to pay to the Payee such amount of the Secondary School Contribution which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period
- 3.3 When the Secondary School Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner or Payee after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year notify the Owner and/or Payee that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

4. SIXTH FORM CONTRIBUTION

- 4.1 To use the Sixth Form Contribution for the improvement and enhancement (including increasing the pupil admission number) of sixth form provision at the catchment secondary schools serving the Development
- 4.2 If requested to do so in writing after the expiry of ten (10) years of the Completion of Development within a further period of one (1) year to pay to the Payee such amount of the Sixth Form Contribution which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period

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

5. TRO CONTRIBUTION

- 5.1 To use the TRO Contribution for the legal procedure and officer time and formal consultation and updating GIS mapping and the installation of the relevant signs and lines required by a Traffic Regulation Order to prevent obstructive parking on Abbots Gate
- 5.2 If requested to do so in writing after the expiry of ten (10) years of the date that the TRO Contribution was paid within a further period of one (1) year to pay to any person such amount of the TRO Contribution paid by the Payee which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period
- 5.3 When the TRO Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner or Payee after the expiry of ten (10) years of the payment of that sum within a further period of one (1) year notify the Owner and/or Payee that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

SIXTH SCHEDULE
DRAFT NOMINATION AGREEMENT

DATED _____ 2021

(1) WEST SUFFOLK COUNCIL

And

(2) XXXXXX

NOMINATION AGREEMENT

Relating to Land at XXXX

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

THIS AGREEMENT MADE

2020

BETWEEN

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

(2) XXXXX of ("the Association")

WHEREBY IT IS AGREED as follows:-

1. Particulars

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

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

- 1.6 Initial Lets : means the first tenancy of each newly constructed Rented Dwelling
- 1.7 Initial Sale Means the initial sale by the Registered Provider of each newly constructed Shared Ownership Dwelling
- 1.8 Subsequent Sales of : means the subsequent sale a Shared Ownership Dwelling following Initial Sale
- 1.9 Help to Buy Agent : BPHA Limited, Bedford Heights, Manton Lane, Bedford. MK41 7BJ or any other Help To Buy Agent party to and acting in accordance with the Service Level Agreement
- 1.10 Service Level Agreement : An agreement made between the Association and the Help to Buy Agent dated 19/12/2014 for the governance of procedures and performance standards of the Help to Buy Agent and the Registered Provider in their roles in enabling any affordable housing scheme or any subsequent service level agreement made between the Registered Provider and the Help to Buy Agent for the same provision.
- 1.11 Chargee : means any mortgagee or chargee of the Association

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

1.12 Voids

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

2. Agreement

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

PROVIDED THAT

2.1.1 Rented Dwellings – West Suffolk Council Nomination Rights

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

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

3 General

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

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

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

)
)
)
)

.....
Authorised Officer

.....
Authorised Officer

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

)
)

.....
Authorised Signatory

.....
Authorised Signatory