

DATED

2nd February

20 21

MID SUFFOLK DISTRICT COUNCIL (1)
SUFFOLK COUNTY COUNCIL (2)
BRIAN GEORGE SUTTON and JUNE MARGARET SUTTON (3)

**PLANNING OBLIGATION BY DEED PURSUANT TO SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

Relating to land to the West of Richer Road Badwell Ash Suffolk

Shared Legal Service
West Suffolk House
Western Way
Bury St Edmunds
Suffolk
IP33 3YE
BM31.266 DC/20/02989

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THIS DEED IS MADE THE 2nd DAY OF February 20 21

BETWEEN

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("The District Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX
- (3) **BRIAN GEORGE SUTTON** and **JUNE MARGARET SUTTON** both of Shackerland Hall Richer Road Badwell Ash Suffolk IP31 3EU ("The Owner")

Together "the Parties"

WHEREAS

- (1) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and by whom the obligations in this Deed are enforceable.
- (2) The County Council is the highway authority the education authority and is also a local planning authority for the purposes of the Act for the area in which the Land is situated and by whom the County Council obligations in this Deed are enforceable
- (3) The Owner is the freehold owner of the Land and details of ownership and other interests in the Land are provided in the First Schedule.
- (4) The District Council and the County Council enter into this Deed so that the requirements of their respective policies are met and that any objections by the District Council to the grant of planning permission on the basis of those policies are overcome 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.
- (5) The District Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests in Regulation 122 of the Regulations.

NOW THIS DEED WITNESSES AS FOLLOWS

1. Definitions

1.1 In this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990.
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market in accordance with Annexe 2 of the National Planning Policy Framework 2019
"Affordable Housing Nomination Agreement"	an agreement substantially in the form set out in the Fourth Schedule (subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and "Nomination Agreement" shall have the same meaning
"Affordable Housing Units"	Five (5) of the Dwellings to be provided on the Land pursuant to the Planning Permission to be Occupied as Affordable Housing in accordance with the Affordable Housing Scheme of which three (3) shall be provided for Affordable Rent and shall be Occupied by persons allocated in accordance with a Choice Based Letting Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to the deed of nomination rights as varied from time to time and the two(2) remaining shall be provided for Shared Ownership and shall be Occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme)
"Affordable Rent"	housing made available by a Registered Provider as low-cost rental accommodation (as defined by section 69 of the Housing and Regeneration Act 2000) with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable
"Application"	the application for outline planning permission to develop the Land in accordance with the application plans and other materials deposited with the District Council validated on 22 July 2020 and bearing the District Council's reference number DC/20/02989

"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.
"Chargee "	any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or housing administrator pursuant to section 101 of the Housing and Planning Act 2016
"Chargee's Duty"	The tasks and duties set out in paragraph 2.7 of Part 2 of Schedule 2
"Choice Based Lettings Scheme"	an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party
Commencement Date	the date on which Commencement of Development occurs.
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Completion of Development"	the date that the last Dwelling to be Occupied is first occupied

"Development"	the development of the Land by erecting fourteen (14) new dwellings and creating a new vehicular access as described in the Application.
"Drawing"	Drawing No. 19-173-200 D attached to this Deed as Annex B for the purpose of showing the location of the Affordable Housing Units and of the Public Open Space Land
"Dwelling"	a dwelling (including a house flat or bungalow (and including both Market Housing Units and Affordable Housing Units) to be constructed on the Land pursuant to the Planning Permission and "Dwellings" shall be construed accordingly.
"HE"	Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers
"Interest"	interest at four per cent (4%) above the base lending rate of the Bank of England from time to time
"Land"	the land described in the First Schedule and shown edged red for identification purposes only on the Plan against which this Deed may be enforced
"Management Company"	a company or body who will take over responsibility for the future maintenance of the Open Space in perpetuity and which definition may include a resident's association established for this purpose or a private limited company
"Market Housing Units"	those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units
' Nominated body "	means the District Council or a Parish Council or a Management Company or any other person or organisation approved by the District Council as transferee of the Open Space Land
"Occupation"	in relation to the Land as a whole means occupation of the Land for the purposes

	permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration, marketing, display, or security operations and in relation to individual Dwellings means the registration of a Dwelling as occupied with the District Council's Council Tax department. "Occupy" and "Occupied" shall be construed accordingly.
" Open Space Land "	the land identified in the Drawing to be used for the provision of public open space within the development
" Open Space Scheme"	A written scheme for the provision and future management of the Open Space Land
"Open Space Transfer"	<p>a transfer of the Open Space Land to be approved in writing by the District Council and to include inter alia shall contain the following provisions</p> <ul style="list-style-type: none"> a) the Owner shall transfer the free simple estate free from encumbrances save those set out in the title b) all easements and rights necessary in relation to access for the benefit of the Open Space Land c) any exceptions and reservations in relation to drainage and services support and access of light and air for the benefit of the development d) restrictive covenants by the nominated body or bodies <ul style="list-style-type: none"> (i) not to use or permit the Open Space Land to be used for any purpose other than for the provision of recreation facilities or amenity land for use by the general public or as open space as defined in this Deed and shown on the Drawing (ii) not to use or permit the Open Space Land to be used in a manner which is or may become a nuisance (whether or not a legal nuisance) annoyance disturbance or

	cause damage to the rest of the development
"Plan"	means the plan attached as Annex A.
"Planning Permission"	means the outline planning permission subject to conditions which may be granted by the District Council or by the Planning Inspectorate upon appeal in respect of the Application and which for the avoidance of doubt encompasses any modification to a planning permission which is permitted upon the grant of an application for a Non Material Amendment pursuant to Section 96A of the Act.
Primary School Transport Contribution	The sum of thirty-three thousand seven hundred and forty pounds (£ 33,740) subject to indexation.
"Protected Tenant"	any tenant who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
"Registered Provider"	a registered provider of social housing as defined in section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by the Regulator of Social Housing pursuant to Chapter 3 of that Act and for the avoidance of doubt the District Council may be the Registered Provider and "Registered Providers" shall be construed accordingly
Secondary School Transport Contribution	the sum of eighteen thousand and seventy five pounds (£18,075) subject to indexation
"Shared Ownership"	dwelling to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand

	pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in HE's capital funding guide
"Shared Ownership Lease"	a long lease (over 99 years) of a dwelling granted at a premium whereby not less than twenty-five percent (25%) and no more than seventy percent (70%) on first purchase of the equitable interest in the Shared Ownership dwelling is paid by a lessee upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to acquire up to one hundred percent (100%) of the legal and equitable interest in the Shared Ownership dwelling at some future date or dates
"Working Days"	any day which is not a Saturday, a Sunday, a bank or public holiday in England.

2. Interpretation

- 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. Headings are for reference only and shall not affect the interpretation of this Deed.
- 2.3. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4. Words of the masculine gender include the feminine and neuter genders.
- 2.5. Words denoting actual persons include companies, corporations and firms and all such words shall be constructed as interchangeable in that manner. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 2.6. References to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the District Council and the County Council the successors to their respective statutory functions.
- 2.7. A reference to "writing" or "written" excludes fax and email.
- 2.8. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 2.9. An obligation on a party not to do something includes an obligation not to allow that thing to be done by another person.
- 2.10. Any reference to an Act of Parliament or Statutory Instrument shall include any modification, extension or re-enactment of that Act or Instrument 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 Instrument or deriving validity from it.
- 2.11. References to a "Plan" or "Drawing" in this Deed shall be reference to the plans attached to this Deed bearing the relevant plan number of any amended plans as shall be agreed in writing between the Owner the District Council and the County Council.
- 2.12. Where this Deed requires a plan, scheme, strategy or other document to be submitted to the District Council or the County Council for approval or agreement then upon written approval being given by the District Council or the County Council (as appropriate) it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan, scheme, strategy or other document.
- 2.13. None of the covenants contained in this Deed on the part of the Owner (save those obligations restricting occupation of the Dwellings in the Second Schedule) shall be enforceable against:
- 2.14. Those persons who purchase (including purchasers by way of a long lease) any Dwelling for occupation by themselves or their tenants or members of their household;
or

- 2.15. Any statutory undertaker who acquires any part of the Land or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.

3. Legal Basis

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

3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council (as appropriate) as local planning authorities against the Owner and the Owner's successors in title.

4. Consent to Enter Deed

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

5. Third Parties

No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 and any such rights that arise pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

6. Conditionality

- 6.1 This Deed shall take effect on the date that it is completed but performance of the planning obligations contained in this Deed at Clause 7 and the Schedules apart from the obligations to give notice prior the Commencement of Development are conditional upon the grant of the Planning Permission and the Commencement of Development.

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

6.2.1 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;

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

6.2.3 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.

6.3 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:

6.3.1 proceedings by way of judicial review are concluded:

(a) when permission to apply for judicial review has been refused and no further application can be made;

(b) when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or

(c) when any appeal(s) is or are finally determined.

6.3.2 proceedings under Section 288 of the Act are concluded:

(a) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

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

7. The Owner's Covenants

- 7.1. The Owner hereby covenants with the District Council as set out in the Schedule 2 and with the County Council as set out in Schedule 3 so as to bind the Land and each and every part thereof.

8. Mortgagee's Consent

8.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent to the intent that the planning obligations shall be binding on the Land and that the security of the Mortgagee over the Land shall take effect subject to this Deed provided that the Mortgagee shall only be liable for any breach whilst mortgagee in possession and shall not be liable for any pre-existing breach

9. Local Land Charge

- 9.1. This Deed is a local land charge and upon completion shall be registered by the District Council as such.
- 9.2. The District Council shall effect the cancellation of all entries made in the register of local land charges in respect of this Deed upon the written request of the Owner (a) following the performance and satisfaction of all the obligations contained in this Deed or (b) on the determination of this Deed in accordance with clause 6

10. Indexation

Any sum referred to in Schedule 3 (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

- 1.1.1 A is the sum payable under this Deed;
- 1.1.2 B is the original sum calculated as the sum payable;
- 1.1.3 C is the Index for the month 2 months before the date on which the sum is payable;

1.1.4 D is the Index for the month 2 months before the date of this Deed;
and

1.1.5 C/D is greater than 1

11. Interest

If any payment due from the Owner under this Deed is paid late, Interest will be payable on the sum due and shall accrue on a daily basis from the date the sum is due to the date of payment.

12. VAT

Each amount stated to be payable by any party to this Deed to another party to this Deed pursuant to this Deed is exclusive of any VAT properly payable.

13. Changes of Ownership

The Owner agrees with the District Council and the County Council to give written notice of any transfer in ownership of its freehold interest in the Land (save for disposals of individual Dwellings or to any statutory undertaker) occurring before all the obligations under this Deed have been discharged such notice to be served within twenty (20) Working Days' of such transfer quoting the District Council's reference DC/19/19/05915 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 Land purchased by reference to a plan and a copy of the registered title and plan thereto.

14. Approvals

Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council by the Professional Lead or officer acting under his hand or officer acting under his hand and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

15. Right of Entry

15.1. At all times on not less than twenty-four (24) hours' written notice (except in case of emergency) the Owner shall allow any employee or agent of the District Council entry to the Land for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

15.1.1. such employee or agent on arrival at the Land shall if requested by any person present who appears to be the Owner or manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Land);

15.1.2. such entry shall be effected between 08:00 and 18:00 on any Working Day;

15.1.3. such employee or agent may be accompanied by such other persons as may be reasonably necessary;

15.1.4. such employee or agent may take photographs, measurements and levels;

15.1.5. such employee or agent may not remain on the Land for longer than is reasonably necessary for carrying out a proper inspection;

15.1.6. such employee or agent and any accompanying persons shall comply with the Owner's or the Owner's representative's reasonable directions and precautions in the interests of health and safety;

15.2. For the avoidance of doubt the provisions of this Clause 15 shall be in addition to and does not prejudice the powers conferred on the District Council by Sections 196A, 196B and 196C of the Act.

16. No Waiver

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

17. Indemnity

The Owner hereby indemnifies the District Council and the County Council for any expenses or liability arising to the District Council and/or the County Council for any breach by the Owner of any obligation contained herein save the extent that any act or omission of the District Council the County Council their respective employees or agents has caused or contributed to such expenses or liability.

18. Confirmation of Discharge

Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the District Council or the County Council for a certificate to that effect and upon the District Council or the County Council (acting reasonably) being satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the District Council or the County Council shall forthwith issue a certificate to such effect.

19. Release

No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed occurring after it has parted with its entire interest in the Land or part of the Land to which the breach relates save for an interest arising only from the grant or reservation of an easement or similar right or the benefit of any restrictive covenant in the Land notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it

20. Determination

The obligations in this Deed except for Clause 26 shall cease to have effect insofar as it has not already been complied with if the Planning Permission:

- (a) expires;
- (b) is modified or revoked; or
- (c) is quashed following a successful legal challenge.

21. Severance

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.

22. Future Permissions

22.1. Subject to the remainder of this Clause 22 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

22.2. In the event that any new planning applications are made in respect of the Development pursuant to Section 73 of the Act then with effect from the date that the new planning permission is granted pursuant to Section 73 of the Act:

22.2.1. the planning obligations in this Deed shall in addition to binding the Land in respect of the Planning Permission shall also bind the Land in respect of any planning permission granted pursuant to Section 73 of the Act; and

22.2.2. the definitions of "Application", "Development" and "Planning Permission" shall be assumed to include references to any applications under Section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this Clause 22 shall fetter the discretion of the District Council in determining any applications under Section 73 of the Act and the appropriate nature and/or quantum of planning obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the Act (whether by way of a new Deed or supplemental Deed pursuant to Section 106 of the Act or a modification pursuant to Section 106A of the Act).

23. Miscellaneous

23.1. Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes, by-laws, statutory instruments, orders or regulations in the exercise of their function as local authorities.

24. DISPUTE RESOLUTION PROVISIONS

24.1. Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) shall be referred to an independent single Expert ("the Expert")

24.2. The Expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant under clause 24.1.

24.3. The Parties to the dispute shall jointly appoint the Expert not later than twenty (20) Working Days' after service of a request in writing by any Party to the dispute to do so

24.4. If the Parties to the dispute are unable to agree within twenty (20) Working Days' as to the appointment of such Expert then the Expert shall be appointed on the application of either of the Parties to the dispute as follows:

24.4.1. difference or question relates to the rights and liabilities of either Party to the dispute or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society; or

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

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

24.4.4. if such difference of question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.

24.5. In the event of a reference to an Expert the Parties to the dispute agree to:

24.5.1. prosecute any such reference expeditiously; and

24.5.2. do all things or take all steps reasonably necessary in order to enable the Expert to make a final determination as soon as reasonably practicable and in any event within one (1) month of his appointment Provided That if the Expert fails to do so either Party to the dispute may apply to the President for the time being of the Institution

of Law Society, Civil Engineers, Royal Institute of Chartered Surveyors or Royal Town Planning Institute (as appropriate) for a substitute to be appointed in which case the same procedure shall be repeated.

24.6. The Expert shall invite written representations from each of the Parties.

24.6.1 The Expert will have the power to consolidate proceedings or hold concurrent proceedings.

24.7. The findings of the Expert shall be in writing signed by the Expert.

24.8. The findings of the Expert shall be final and binding both on the Parties to the dispute except in the case of manifest, material error.

24.9. The Expert shall act as an expert and not as an arbitrator.

24.10. The costs of the Expert shall be payable by the Parties in such proportion as may be determined by the Expert and failing such determination to be borne in equal shares by the Parties.

24.11. Unless this Deed has already been terminated each of the Parties to the dispute shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this clause 24 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed.

24.12. Nothing in the provisions of this clause 24 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

25. Notices

25.1. Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 25.2

25.2. The address for any notice or other written communication in the case of each party to this Deed shall be as follows:

The District Council	The Chief Planning Officer, Mid Suffolk District Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
The County Council	The Executive Director of Growth, Highways and Infrastructure, Suffolk County Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
The Owner	As detailed on the first page of this Deed

26. Legal Fees

- 26.1. The Owner shall on completion of this Deed pay to the District Council and the County Council their reasonable legal costs together with any disbursements incurred in the negotiation, preparation, execution and completion of this Deed.
- 26.2. The Owner shall on completion of this Deed pay to the County Council its monitoring fee to the value of £412.00.

27. Governing Law

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

28. Delivery

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

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

The Common Seal of)
Mid Suffolk District Council)
was hereunto affixed)
in the presence of)



The Common Seal of)
Suffolk County Council)
was hereunto affixed)
in the presence of)



.....
[redacted]
Authorised Signatory

Executed as a Deed by)
BRIAN GEORGE SUTTON)
in the presence of)



.....
[redacted]
[witness signature]

.....
GARY AYLING

.....
[witness full name]

.....
SHACKERLAND HALL COTTAGE, IPSWICH

.....
[witness address]

Executed as a Deed by)
JUNE MARGARET SUTTON)
in the presence of)



.....
[redacted]
[witness full name]



.....
GARY AYLING

.....
SHACKERLAND HALL COTTAGE, IPSWICH

.....
[witness address]

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SCHEDULE 1
LAND AND OWNERSHIP

1. Description of the Land

- 1.1. All that freehold land registered at HM Land Registry under Title Number SK245043 and known as land to the West of Richer Road Badwell Ash Bury St Edmunds Suffolk IP31 3EU

2. Interests

- 2.1. The Owner is the freehold owner of the land.
2.2 The land is not subject to any mortgage or other charge or encumbrance

SCHEDULE 2
COVENANTS BETWEEN THE OWNER AND THE DISTRICT COUNCIL

The Owner for themselves and their successors in title to the Land covenant as follows

Part 1 - Notices

- 1.1 To give to the District Council prior written notice of the Commencement Date
- 1.2 To give to the District Council not less than two (2) months written notice of the anticipated date for the first Occupation of the first Dwelling to be Occupied.

- 1.3 To give to the District Council not less than seven (7) days written notice following:
 - 1.3.1 the date the first Dwelling to be Occupied is Occupied for the first time;
 - 1.3.2 the date the fifth Market Housing Unit is first occupied
 - 1.3.3 the date the eighth dwelling (including both Market Housing Units and Affordable Housing Units) is occupied
 - 1.3.4 Completion of Development
- 1.4 To give to the County Council not less than seven (7) days written notice following the date of:
 - 1.4.1 Commencement of Development
 - 1.4.2 Occupation of the first (1st) Dwelling
 - 1.4.3 Occupation of the final Dwelling
 - 1.4.4 Completion of Development.

2. AFFORDABLE HOUSING

Owner's obligation to construct Affordable Housing Units

- 2.1 Having given notice under paragraph 1.1 of this Schedule 2 the Owner shall use its best endeavours to agree with the District Council on the identity of the Registered Provider. The Owner may Commence Development while this process is ongoing but if no agreement has been reached at the expiration of the period of four (4) months following the Commencement Date the District Council shall be entitled to nominate a

Registered Provider or another appropriate body for the purpose which for the avoidance of doubt shall include the District Council itself.

2.2 The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission in the locations shown on the Drawing to a standard of construction which meets the Nationally Described Space Standard from time to time in place and to the specifications detailed in the table

<i>Type of dwelling</i>	<i>Size and description</i>	<i>Number of Bedrooms per house</i>	<i>Number of persons per house</i>	<i>Tenure</i>	<i>Number of dwellings</i>
House	79 square metres	2	4	Shared Ownership	2
House	79 square metres	2	4	Affordable Rent	1
Bungalow	70 square metres Code 2 Level access shower	2	4	Affordable Rent	2

2.3 The Owner shall not Occupy or permit Occupation of more than four (4) of the Market Housing Units until at least two (2) of the Affordable Housing Units have been constructed and are ready for Occupation and have been transferred to the Registered Provider.

2.4 The Owner shall not occupy or permit occupation of more than eight (8) of the Market Housing Units until all five (5) of the Affordable Housing Units have been constructed and are ready for Occupation and have been transferred to the Registered Provider

Future use of Affordable Housing Units

2.5 The Owner covenants that any transfer of land on which any of the Affordable Housing Units has been constructed to a Registered Provider shall be:

2.5.1 with vacant possession;

2.5.2 free from any encumbrance other than existing at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker);

2.5.3 subject to a grant by the Owner to the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units;

2.5.3 subject to a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the construction, operation use, maintenance and management of the Development;

2.5.4 subject to a covenant to enter into a nomination agreement substantially in the form of the draft Nomination agreement at Schedule 6 of this Deed within three (3) months the date of the land is transferred from the Owner to the Registered Provider;

2.5.5 subject to a covenant that the Registered Provider shall include a pre-emption provision in its own favour in any transfer of an Affordable Housing Unit from the said Registered Provider to the owner or tenant of an Affordable Housing Unit; and

2.5.6 subject to a covenant that the Registered Provider shall use all capital receipts from the sale of Affordable Housing Units [and from the purchase by a tenant of shares in a Shared Ownership Unit between eighty (80) and one hundred (100) per cent of the equity in the property] only for the purpose of providing Affordable Housing.

2.6 The obligations and restrictions contained in paragraph 2.5 of this Schedule 2 shall not bind:

2.6.1 a Chargee who has complied with the provisions of paragraph 2.7 of this Schedule 2;

2.6.2 any purchaser of an Affordable Housing Unit under the Right to Acquire or Right to Buy schemes;

2.6.3 any Affordable Housing Unit purchased by a tenant through Social Homebuy funded pursuant to Section 19(3) Housing and Regeneration Act 2008 or a voluntary grant scheme pursuant to Section 21 Housing Act 1996 or any replacement of said schemes;

2.6.4 a leaseholder of a Shared Ownership Unit who has exercised their right under a Shared Ownership Lease to acquire 100% of the equity in their property; or

2.6.5 any person or body deriving title through or from any other parties mentioned in this paragraph 2.6.

Chargee's Duty in relation to Affordable Housing Units

2.7 Any Chargee shall prior to seeking to dispose of any Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge give prior written notice to the District Council of its intention to dispose.

2.7.1 If notice is given pursuant to paragraph 2.7 of this Schedule the following provisions shall apply:

2.7.2 In the event that the District Council responds within one (1) month from receipt of a notice given pursuant to this paragraph 2.7 and indicates that (a) arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard it/them as Affordable Housing Unit(s) and (b) that such a transfer would take place within two (2) months from the District Council's response under this sub-paragraph then the Chargee shall co-operate with the District Council and shall make reasonable arrangements and use reasonable endeavours to secure such a transfer.

2.7.3. If the District Council does not respond to a notice given pursuant to paragraph 2.7 within one (1) month then the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) free from the restrictions set out in paragraph 2.5 of this Schedule 2 which shall cease to apply to the Affordable Housing Unit(s) concerned from the time the disposal completes.

2.7.4 If the District Council has responded in accordance with paragraph 2.7.2 but cannot secure the transfer therein described within two (2) months of its response then provided the Chargee has complied with its obligations in this Schedule the Chargee shall be entitled to dispose of the Affordable Housing Unit(s) free of the restrictions set

out in paragraphs 2.5 which shall cease to apply to the Affordable Housing Unit(s) from the time the disposal completes.

2.7.5 For the avoidance of doubt the rights and obligations in paragraphs 2.6 and 2.7 shall not require a Chargee to act contrary to its duties and rights under the charge or mortgage and the District Council must give reasonable consideration to protecting the interests of the Chargee in respect of monies outstanding under the charge or mortgage.

3. OPEN SPACE

4.1 To submit the Open Space Scheme to the District Council before the commencement of development

4.2 Not to commence development until the Open Space Scheme has been approved in writing by the District Council

4.3 To prepare and lay out the Open Space Land in accordance with the Planning Permission and the Public Open Space Scheme and the Drawing

4.4 Not occupy or permit occupation of more than seven (7) dwellings (market and affordable housing units) before the District Council has confirmed in writing that it is satisfied that the Open Space Land has been provided in accordance with the planning permission the Open Space Scheme and the Drawing

4.5 To keep the Open Space Land open to the public at all times

4.6 At their own cost to maintain the Open Space Land strictly in accordance with the Open Space Scheme and the Planning Permission until the date of the Open Space Transfer as described in clause 4.7 below

4.7 Having received the District Council's written confirmation under clause 4.4 above of its satisfaction with the provision of the Open Space Land to transfer the freehold of the Open Space Land to the appropriate Nominated Body by means of the Open Space Transfer no later than twelve months after the completion of development

4.8 For the avoidance of doubt the Open Space can be transferred in full to the Nominated Body or if the Parties (acting reasonably) so agree in part to different Nominated Bodies and

the consideration payable by the transferee shall be one pound (£1) for each deed of transfer that is required

SCHEDULE 3
COVENANTS BETWEEN THE OWNER AND THE COUNTY COUNCIL

The Owner for themselves and their successors in title to the Land covenant as follows

1. To pay the Primary School Transport Contribution and the Secondary School Transport Contribution to the County Council before Occupation of the first (1st) Market dwelling
2. Not to cause or permit Occupation of the first (1st) Market Dwelling until both the Primary School Transport Contribution and the Secondary School Transport Contribution have first been paid to the County Council

Government's Help to Buy Scheme (or any subsequent scheme) and three (3) Dwellings shall be Rental Dwellings to be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to this deed of nomination rights as varied from time to time and Affordable Housing Units shall be construed accordingly

1.3 **'Affordable Rent'** means housing made available by a Registered Provider as low cost rent accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent inclusive of service charges or the local housing allowance rate

1.4 **'Chargee'** for the purposes of this Nominations Agreement means any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or housing administrator pursuant to section 101 of the Housing and Planning Act 2016

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

1.6 **'Gateway to Homechoice'** means the Greater Haven Gateway sub-regional Choice Based Lettings system (or any replacement or similar system in place at the time)

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

1.8 **'Local Connection Criteria'** means an individual who immediately before taking up occupation of an Affordable Housing Unit:

1.8.1 had his only or principal home in the district of Mid Suffolk for a continuous period of not less than 2 years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall

default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.8.2 to 1.8.4 inclusive

- 1.8.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than 2 years in the district of Mid Suffolk and wishes to be near that relative or
- 1.8.3 is employed in the district of Mid Suffolk on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for 2 years
- 1.8.4 who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called the "Availability Date") can provide satisfactory written evidence to the District Council of his or her former residency in the district of Mid Suffolk for either (i) six (6) months out of the preceding twelve months or (ii) three years out of the preceding five (5) years and in either case such period of former residency shall end with the Availability Date
- 1.9 **'Nomination List'** means the Gateway to Homechoice Short List produced in accordance with the Service Level Agreement
- 1.10 **'Nominee'** means a person named on the Nomination List who satisfies the Local Connection Criteria and is verified by the District Council as best meeting the criteria for the category of Affordable Housing Unit in respect of which the Registered Provider is to select a person from the Nomination List and offer a Tenancy Agreement
- 1.11 **'Practical Completion'** means issue of a certificate of practical completion by the Registered Provider's surveyor or in the event that the Affordable Housing Units are

constructed by a party other than the Registered Provider the issue of a certificate of practical completion by that other party's surveyor

- 1.12 **'Property'** means the land and dwellings at land to the West of Richer Road Badwell Ash Suffolk shown edged red on the Site Plan annexed
- 1.13 **'Protected Tenant'** means any Nominee who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- 1.14 **'Registered Provider'** means a registered provider of social housing as defined in section 80(2) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator of Social Housing pursuant to Chapter III of that Act and for the avoidance of doubt the District Council may be the Registered Provider and "Registered Providers" shall be construed accordingly
- 1.15 **"the Service Level Agreement"** means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the Registered Provider and Others (1) and the District Council and Others
- 1.16 **'Shared Ownership Dwelling'** means an Affordable Dwelling to be let on a Shared Ownership Lease in accordance with the terms as set out in Homes England's capital funding guide or any other such guidance as shall replace it
- 1.17 **'Shared Ownership Lease'** means a lease or sub-lease of an Affordable Dwelling granted at a premium whereby not less than twenty-five percent (25%) and no more than up to seventy percent (70%) of the Open Market Value on first purchase of the legal and equitable interest in the Affordable Dwelling is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% of the legal and equitable interest in the Affordable Dwelling at some future date or dates and which lease shall allow a rent to be charged on the

remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease or such other figure permitted by Homes England from time to time and any capital receipt received by the Registered Provider in excess of 80% as a result of the tenant exercising their right to staircase out to 100% shall be retained by the Registered Provider for re-investment in Affordable Housing within the district of Babergh for a period of five years from the date of receipt and if not spent within 5 years the Registered Provider will be able to expend such sums for Affordable Housing elsewhere

1.18 **'Tenancy Agreement'** means an assured tenancy agreement in a form prepared by the Registered Provider and containing terms which accord with the form of tenancy agreement being used by the Registered Provider from time to time for its general lettings

1.19 **'Vacancy Notice'** means a written notice (in a form to be agreed between the Registered Provider and given by the Registered Provider to the District Council within one month from the date of this Deed) the function of such notice being the notification to the District Council by the Registered Provider of the expected date on which the construction and fitting out of the Affordable Housing Units will be complete

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

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

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

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

1.21 **'Void Notice'** means a written notice given by the Registered Provider to the District Council (in a form to be agreed between the Registered Provider and the District Council within one month from the date of this Deed) the function of such a notice being the notification to the District Council of a Void

1.22 **'Working Day'** means Monday to Friday (inclusive) except Good Friday, Christmas Day and any public or bank holidays from time to time in England

2 Enabling Provisions

This Deed is made pursuant to the Local Government Act 1972 Section 111 and all other enabling powers

3 Procedure

The parties agree that the Service Level Agreement procedure to which they are signatories and the Local Connection Criteria shall apply to the nomination of persons in respect of the Affordable Housing Units

3.1 Initial lets

In relation to the Initial Lets of the Affordable Housing Units the following provisions shall apply

3.1.1 The Registered Provider shall give the District Council not less than three (3) months' written notice of the date when all the Affordable Housing Units will be ready for occupation

3.1.2 The Registered Provider shall serve a Vacancy Notice upon the District Council in respect of an Affordable Housing Unit not earlier than two (2) months prior to an Affordable Housing Unit becoming available for occupation

3.2 Voids

Should any Affordable Housing Unit become a Void after the Initial Let or the Registered Provider has reasonable cause to believe it will become a Void then and in each case the Gateway to Homechoice Service Level Agreement procedure shall apply

4. Supplemental provisions relating to allocating Initial Lets and Voids

4.1 Where there are two or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.8.1 to 1.8.5 of this Schedule and subject to clause 4.2 of this Schedule preference must be given to the applicant/s who have the highest housing need according to the District Council's current allocations policy

4.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities then any such Dwelling may be first offered to a person or persons with disabilities who require such accommodation even where such person(s) have a lesser Local Connection under clauses 1.8.1 to 1.8.5 of this Schedule than someone who does not have disabilities

5. Registered Provider covenants

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

- 5.1 To ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units
- 5.2 To ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or as Low-Cost Home Ownership and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider
- 5.3 the Affordable Housing Units are constructed in accordance with current Homes England design and space standard requirements

6. Alteration of lists

- 6.1 The District Council and the Registered Provider agree that the nomination rights contained in this Deed may be varied from time to time by agreement in writing by the parties

7. Notices

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served two (2) Working Days' after posting or in the case of electronic mailing the day such notice was transmitted by the party serving the notice

8 Transfer to other Registered Provider

The Registered Provider shall use reasonable endeavours to ensure that any Registered Provider to which the Property and Affordable Housing Units erected thereon are transferred otherwise than by direction of Homes England under its statutory powers shall enter into a similar Deed mutatis mutandis with the District Council and Gateway to Homechoice simultaneously on completing the transfer of the Property

9 Disputes

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party

10 Agreements and declarations

The parties agree:

- 10.1 Nothing in this Deed fetters or restricts the exercise by the District Council of any of its powers
- 10.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33
- 10.3 From the date of Practical Completion the Affordable Housing Units shall be let in accordance with the terms of this deed save that the obligations and restrictions contained in this deed shall not be binding on:
 - 10.3.1 any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or

- 10.3.2 any Chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or
- 10.3.3 any mortgagee and any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title to either of them
- 10.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge give not less than two (2) months' prior notice to the District Council of its intention to dispose and:
- 10.4.1 in the event that the District Council responds within one month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee
- 10.4.2 if the District Council does not serve its response to the notice within the said period of one month contained in clause 10.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this deed.
- 10.4.3 if the District Council or any other person cannot within two (2) months' of the date of service of its response under clause 10.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 10.4 the Chargee shall be entitled to dispose free of the restrictions set out in this deed

PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

AS WITNESS whereof the parties have executed this Instrument as a Deed hereto the day
and year first above written

THE COMMON SEAL OF

MID SUFFOLK DISTRICT COUNCIL

was hereunto affixed in the presence of

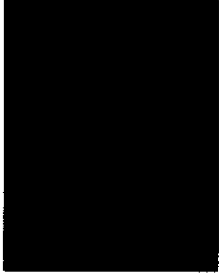
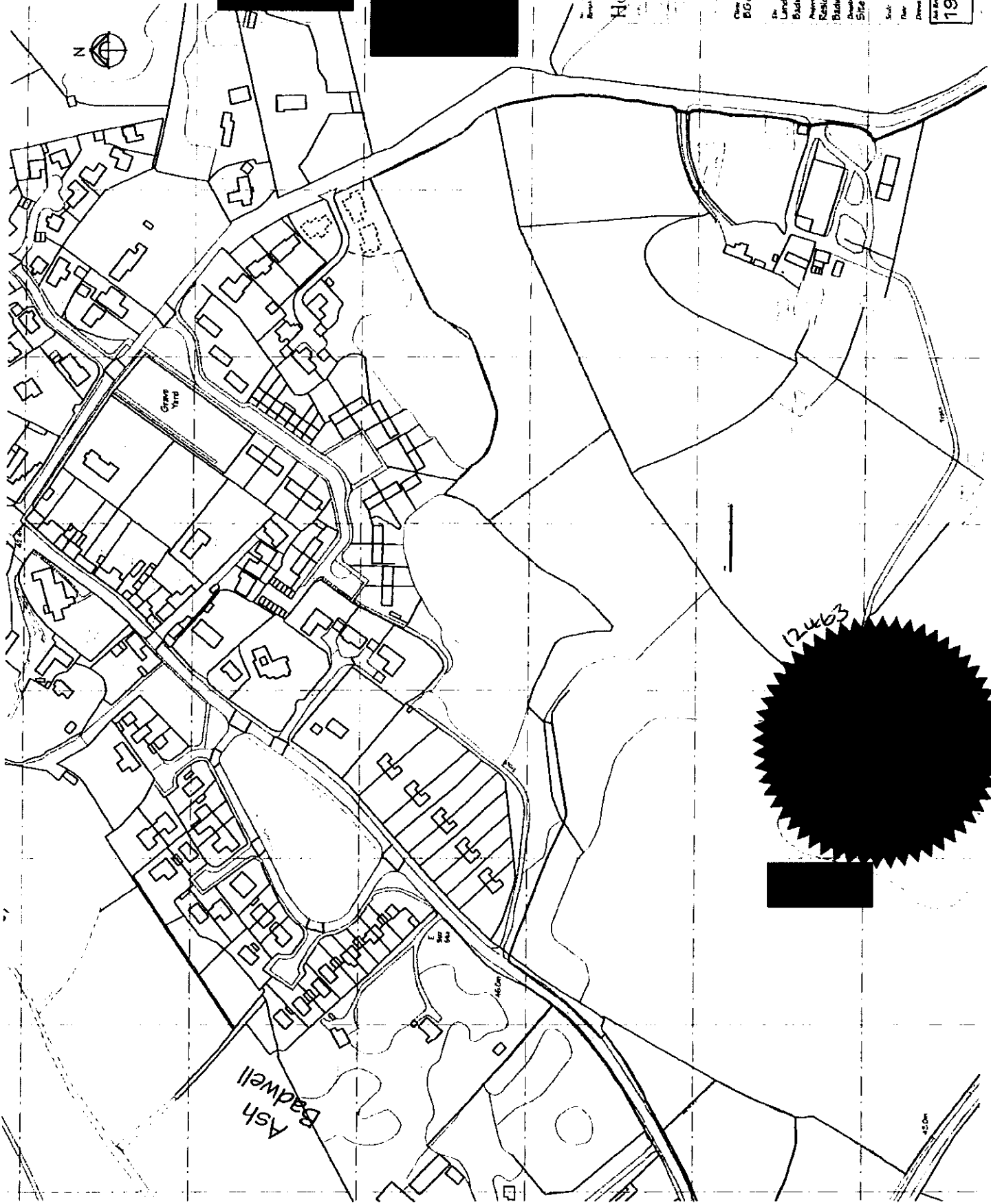
Authorised signatory

THE COMMON SEAL OF

was hereunto affixed in the presence of

Authorised signatory

ANNEX A
PLAN



HOLLINS
 1000 Ash Hill Road
 Suite 100
 Ash Hill, VA 22811

Client: BGS & JJA Sutton
 Site: Land off Richer Road
 Badwell Ash
 Nature: Residential Development
 District: Ash
 Drawn: [Redacted]
 Site Location

Scale: 1" = 100' @ A1 (1:2000 @ A1)
 Date: Sept 2019
 Drawn By: [Redacted]

Job Reference: 19-173-001-A
 Drawing: [Redacted]

**ANNEX B
DRAWING**

