

DATE 18 MARCH 2021

(1) JOHN KEVIN SMITH

to

(2) WEST SUFFOLK COUNCIL

and

(3) SUFFOLK COUNTY COUNCIL

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

relating to

Land at George Hill Nurseries Barningham Road Stanton Suffolk

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

DATE

18 MARCH

2021

FROM:

- (1) **JOHN KEVIN SMITH** of Beech Cottage Lopham Road East Harling Norwich NR16 2PX (hereinafter called the "**Owner**")

TO:

- (2) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")

AND

- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")

INTRODUCTION

- A The Owner is the freehold owner of the Site which is registered at HM Land Registry under title number SK152098
- B 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
- C The County Council is the local education authority the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- D The Owner has submitted the Application to the Council
- E The Owner is willing to give this undertaking to perform the obligations herein in order to facilitate the grant of planning permission by ensuring the Development meets the necessary policy requirements

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
"Affordable Housing Units"	two (2) Dwellings to be Affordable Rent and one (1) Dwelling to be Intermediate Housing
"Affordable Rent"	housing made available by a Registered Provider as low cost rental accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent local market rent PROVIDED THAT such rent in either case may be increased annually in accordance with the arrangements made for such rent increases established by Homes England
"Application"	the application for outline planning permission received by the Council on the 26 November 2020 for the Development and allocated the reference number DC/20/2065/OUT
"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
"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 9 of this Deed
"Chargee"	any mortgagee or chargee of the Registered Provider or the owner of the Affordable Housing Units (or any number of them) 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 (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 survey site clearance demolition and strip-out 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 or removal of services erection of any temporary means of enclosure or temporary site accommodation the temporary display of site notices or advertisements and "Commenced" and "Commence Development" shall be construed accordingly

"Development"

the development of the Site pursuant to the Application

"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 and "Dwelling" and "Dwellings" shall be construed accordingly

"Homes England"

the independent regulator for affordable housing in England (formerly known as Homes and Communities Agency) or such other organisation or body that replaces it

"Intermediate Housing"

means the Affordable Housing Unit for sale and rent provided at a cost above Social Rent but below market levels which meet the definition of Affordable Housing and may include Shared Ownership and shared equity products and other low cost homes for sale and intermediate rent but not Affordable Rent as more particularly defined in the NPPF

"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"	two thousand one hundred and sixty pounds (£2,160.00) BCIS Indexed
"Nomination Agreement"	a deed of agreement dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the related Affordable Housing Units substantially in the form of the draft in the Fourth Schedule
"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 Affordable Housing Units
"Planning Permission"	the outline planning permission subject to conditions as may be granted pursuant to the Application or a subsequent planning permission for the Development granted pursuant to Section 73 or the Act
"Pre School Contribution"	seventeen thousand two hundred and sixty-eight pounds (£17,268.00) BCIS Indexed
"Primary School Contribution"	twelve thousand nine hundred and forty-nine pounds (£12,949.00) BCIS Indexed
"Protected Occupier"	any Occupier or owner of any Affordable Housing Unit who has: (a) exercised the right to acquire pursuant to

the Housing Act 1996 the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Unit

(b) 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) 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 or equity so that the purchaser owns the entire 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 RSH under Chapter 3 of that Act and approved by the Council

"RSH"

Regulator of Social Housing whose registered office is Level 1A - City Tower, Piccadilly Plaza Manchester M1 4BT or any statutory successor thereof or other government body with the function of regulating social housing development

"Secondary School Contribution"

forty-seven thousand five hundred and fifty pounds (£47,550.00) BCIS Indexed

"Shared Ownership Unit"

means any Affordable Housing Units to be provided by a Registered Provider by way of a Shared Ownership Lease granted to eligible households whose needs are not met by the market and where the purchaser buys an initial share in the property from the Registered Provider who retains the remainder and may charge a rent on the remainder with the purchaser being able to purchase additional

shares up to 100% (staircasing)

- "Shared Ownership Lease" means a lease to be granted for a term of not less than 99 years which shall substantially accord with the requirements of and be consistent with any model shared ownership lease as approved from time to time by Homes England (or any statutory successor) unless otherwise agreed by the Council
- "Site" the land shown edged red on the Site Plan
- "Site Plan" the plan marked "Site Plan" attached to the First Schedule of this Deed
- "Social Rent" social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008) for which guideline target rents are determined through the national rent regime and it may also be owned by other persons and provided under equivalent rental arrangements to the above as agreed with the Council or with the RSH
- "Working Days" Monday to Friday (inclusive) except Good Friday Christmas Day and public or bank holidays from time to time in England

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause 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 Where this Deed requires a plan or strategy or other document to be submitted to the Council or the County Council for approval or agreement then upon approval of the same 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 or strategy or other document
- 2.8 References to a "Site Plan" in this Deed shall be references to the plan attached to the First Schedule of this Deed bearing the relevant plan number
- 2.9 Subject to clause 2.10 the obligations in this Deed shall not be enforceable against:
- 2.9.1 any owner tenant or Occupier of an individual Dwelling nor against those deriving title from them nor any mortgagees chargees or receivers of such a Dwelling
- 2.9.2 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 Registered Provider acquiring Affordable Housing Units
- 2.9.4 the Mortgagees or any Chargee or other chargee or mortgagee from time to time who has the benefit of a charge or mortgage of or on any part or parts of the Site or any receiver until the Mortgagees or such Chargee or other chargee or mortgagee or receiver has entered into possession of the Site or the relevant part thereof or the

Development is continued by or at the instigation of a receiver liquidator or other agent appointed by or on behalf of the Mortgagees or any Chargee or other chargee or mortgagee in place of the Owner

2.10 The Affordable Housing obligations in the Second Schedule Clause one shall be enforceable against a Registered Provider and any owner tenant or Occupier of an Affordable Housing Unit and against those deriving title from them but shall not bind and be enforceable against:

2.10.1 a Protected Occupier

2.10.2 a Chargee of a Protected Occupier

2.10.3 a Chargee of a Shared Ownership Lease or shared equity lease lawfully exercising the mortgagee protection provision within that lease who shall be entitled to dispose of the relevant Affordable Housing Unit free from the Affordable Housing obligation in paragraph 1.5 in the Second Schedule

2.10.4 a Chargee of the whole or any part of the Affordable Housing Units or any persons deriving title through such mortgagee or Chargee or receiver (other than a Chargee referred to in clause 2.10.2 and 2.10.3) PROVIDED THAT:

2.10.4.1 such mortgagee or Chargee or receiver 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

2.10.4.2 if such disposal has not completed within the three-month period the mortgagee Chargee or receiver 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 in relation to the relevant Affordable Housing Units

2.10.4.2 any person or body deriving title through any of the parties referred to in clauses 2.10.1 to 2.10.4 above

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 and

4.1.3 a reserved matters approval pursuant to the Planning Permission has been granted by the Council for ten (10) Dwellings

SAVE FOR the provisions of this clause and clauses 6.3 6.4 6.5 6.6 6.10 8 12 13 14 and 15 (related to legal and monitoring costs change in ownership right of entry dispute resolution jurisdiction and delivery) which shall come into effect immediately upon completion of this Deed

FOR THE AVOIDANCE OF DOUBT if the reserved matters pursuant to the Planning Permission granted approval by the Council should be less than ten (10) Dwellings then the Owner shall have no liability under this Deed and the obligations herein shall cease to have effect

- 4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:
- 4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings
 - 4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed and is not superseded by a subsequent planning permission accepted by the Owner this Deed will cease to have any further effect and
 - 4.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full
- 4.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used) the following provisions will apply:
- 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 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
 - 4.3.2.2 when any appeal(s) is or are finally determined

5. THE OWNER`S COVENANTS

5.1 The Owner undertakes to the Council to comply with the obligations set out in the Second Schedule

5.2 The Owner undertakes to the County Council to comply with the obligations set out in the Third Schedule

6. MISCELLANEOUS

6.1 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 or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein

6.2 The Owner undertakes to both 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

6.3 The Owner undertakes 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

6.4 The Developer further covenants to pay to the Council within ten (10) Working Days of the grant of the Planning Permission five hundred pounds (£500.00) and to pay the County Council within ten (10) Working Days of the grant of the Planning Permission five hundred pounds (£500.00) towards the costs of reporting and monitoring the obligations contained in this Deed

6.5 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

6.6 This Deed may be registered as a local land charge by the Council

6.7 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

6.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is not

granted or the Planning Permission is 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)

- 6.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the 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
- 6.10 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 after the date of this Deed
- 6.11 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 Owners and at no cost to either the Council or the County Council
- 6.12 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
- 6.13 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 subject to the entries as set out in the Charges Register of Title Number SK152098 whose consent is necessary to make this Deed binding on the Site and all estates and interests therein

7. WAIVER

No waiver (whether expressed or implied) by 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

8. CHANGE IN OWNERSHIP

The Owner undertakes to 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 of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like

9. INDEXATION

All sums referred to in the Second Schedule and the Third Schedule 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:

- 9.1 A is the sum payable under this Deed
- 9.2 B is the original sum calculated as the sum payable
- 9.3 C is the BCIS Index for the month two (2) months before the date on which the sum is payable
- 9.4 D is the BCIS Index for the month two (2) months before the date of this Deed and
- 9.5 C/D is greater than 1

10. 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

11. VAT

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

12. NOTICES

- 12.1 Any notices or other written communication to be served 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 12.2

- 12.2 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
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
The Owner	Beech Cottage Lopham Road East Harling Norwich NR16 2PX

- 12.3 The Owner covenants to inform the Council and the County Council by way of written notice within seven (7) days following:

12.3.1 Commencement of Development

12.3.2 Occupation of the first (1st) Dwelling

13. DISPUTE RESOLUTION

- 13.1 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 arbitration before a single Expert (the "Expert")

- 13.2 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

- 13.3 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:

13.3.1 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

13.3.2 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

13.3.3 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

13.3.4 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

13.4 In the event of a reference to arbitration the Dispute Parties agree to:

13.4.1 prosecute any such reference expeditiously and

13.4.2 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

13.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award

13.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing

13.7 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

13.8 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

13.9 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

14. JURISDICTION

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

15. DELIVERY

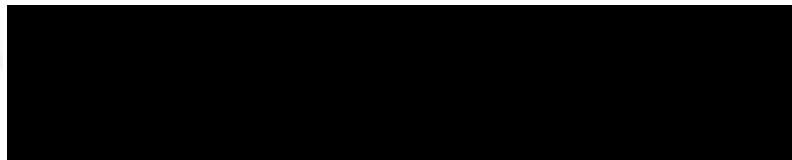
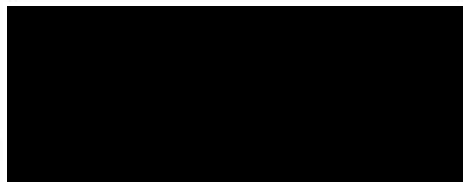
The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

IN WITNESS whereof this document has been executed as a Deed on the day and year first before written

**SIGNED AS A DEED BY
JOHN KEVIN SMITH**



in the presence of:
Signature of witness
Name of witness
Address



FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Owners land forming part of land registered with the Land Registry under title numbers SK152098

SITE PLAN



SECOND SCHEDULE

THE OWNER UNDERTAKES TO THE COUNCIL:

1. AFFORDABLE HOUSING UNITS

- 1.1 Not to Occupy or permit Occupation of more than three (3) of the Open Market Dwellings unless and until the Affordable Housing Units have been constructed and the Owner has transferred a freehold or leasehold interest in those Affordable Housing Units to a Registered Provider
- 1.2 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 those Affordable Housing Units prior to Occupation of those Affordable Housing Units
- 1.3 To ensure the conditions on which the Affordable Housing Units to be transferred to a Registered Provider shall be transferred shall include but not be limited to the following:
 - 1.3.1 to have good and marketable freehold title
 - 1.3.2 be remediated so that the land is fit for the proposed use
 - 1.3.3 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:
 - 1.3.3.1 an adoptable road constructed to base course and subject to an agreement under Section 38 of the Highways Act 1980
 - 1.3.3.2 adoptable public sewers and drains subject to an agreement under Section 104 of the Water Industry Act 1991
 - 1.3.3.3 water electricity telecommunications infrastructure with sufficient capacity to serve each Affordable Housing Unit and
 - 1.3.3.4 such necessary rights as the Owner may reasonably require to be reserved
- 1.4 Subject to clause 2.10 to ensure the Affordable Housing Units shall not be used for any purpose other than as Affordable Housing Units except in those cases where the owner tenant or lessee has exercise

a statutory right to acquire or acquired 100% ownership and is a Protected Occupier in which case those units shall no longer comprise Affordable Housing Units

THIRD SCHEDULE

THE OWNER UNDERTAKES TO THE COUNTY COUNCIL

1. LIBRARY CONTRIBUTION

- 1.1 To pay to the County Council the Library Contribution prior to the first Occupation of the first (1st) Dwelling
- 1.2 Not to Occupy or permit Occupation of any Dwellings until the Library Contribution has been paid to the County Council

2. PRE SCHOOL CONTRIBUTION

- 2.1 To pay to the County Council the Pre School Contribution prior to the first Occupation of the first (1st) Dwelling
- 2.2 Not to Occupy or permit Occupation of any Dwellings until the Pre School Contribution has been paid to the County Council

3. PRIMARY SCHOOL CONTRIBUTION

- 3.1 To pay to the County Council the Primary School Contribution prior to the first Occupation of the first (1st) Dwelling
- 3.2 Not to Occupy or permit Occupation of any Dwellings until the Primary School Contribution has been paid to the County Council

4. SECONDARY SCHOOL CONTRIBUTION

- 4.1 To pay to the County Council the Secondary School Contribution prior to the first Occupation of the first (1st) Dwelling
- 4.2 Not to Occupy or permit Occupation of any Dwellings until the Secondary School Contribution has been paid to the County Council

FOURTH 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

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 comprising both the Rented Dwellings and the Shared Ownership Dwellings

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 Affordable Rent 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 Shared Ownership Dwellings : **XXXX (XX)** dwellings erected pursuant to the Scheme **(XX** x 2 bedroom house (Plots **XXXX**) X x 3 bedroom house (plots **XXXXX**)) which are to be provided for Shared Ownership tenure (unless otherwise agreed by the Council in accordance with the Section 106 Agreement) (and "Shared Ownership Dwelling" shall be construed accordingly)
- 1.7 Shared Ownership : Has the same meaning as Shared Ownersip Unit in the Section 106 Agreement
- 1.8 Initial Lets : means the first tenancy of each newly constructed Rented Dwelling
- 1.9 Initial Sale : Means the initial sale by the Registered Provider of each newly constructed Shared Ownership Dwelling
- 1.10 Subsequent Sales of : means the subsequent sale a Shared Ownership Dwelling following Initial Sale
- 1.11 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

1.12 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.

1.13 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.

1.14 Voids

: means a 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 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.

2.2.1 Shared Ownership Dwellings – West Suffolk Council Nomination Rights

- (a) In relation to Initial Sales of Shared Ownership Dwellings the Association shall upload details of the Shared Ownership Dwellings being offered for sale to the Help to Buy Agent’s website. Applicants who have been approved by the Help to Buy Agent shall then be assessed by the Association and provided they comply with specific criteria within the Section 106 Agreement the Association shall then offer for sale the Shared Ownership Dwelling to such applicant.
- (b) In the event the Help to Buy Agent is unable to provide applicants on the Initial Sales of Shared Ownership Dwellings within three months of practical completion notification given by the Association, then the Association may offer for sale the Shared Ownership Dwellings on the open market to any person the Association considers to be in need of such accommodation.
- (c) In relation to the Subsequent Sales of the Shared Ownership Dwellings the Association shall as soon as it receives notification from a shared ownership lessee that a Shared Ownership Dwelling is being offered for sale upload details of the Shared Ownership Dwelling being offered for sale to the Help to Buy Agent’s website. Applicants who have been approved by the Help to Buy Agent shall then be assessed by the Association and provided they comply with specific criteria within the Section 106 Agreement the Association shall then direct the shared ownership lessee to sell the Shared Ownership Dwelling to such applicant.
- (d) In the event that the Help to Buy Agent is unable to provide applicants on a Subsequent Sale of the Shared Ownership Dwelling within eight weeks then the shared ownership lessee may offer for sale the Shared Ownership Dwelling on

the open market to any person the Association considers to be in need of such accomodation.

- (e) On any disposal of the Shared Ownership 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.

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 the Rented 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