

DATED

9<sup>th</sup> April

2021

---

**Deed pursuant to Section 106 of the Town and  
Country Planning Act 1990**

---

**SUFFOLK COUNTY COUNCIL (1)**

and

**MID SUFFOLK DISTRICT COUNCIL (2)**

and

**DAVID WARREN WILSON-YOUNG (3)**

and

**ST EDMUNDSBURY AND IPSWICH DIOCESAN BOARD OF FINANCE (4)**

---

Relating to

Land to the East of Ely Road Claydon, Suffolk

Shared Legal Service  
Mid Suffolk District Council  
Endeavour House  
8 Russell Road  
Ipswich  
Suffolk  
IP1 2BX

We hereby certify this to be a true copy of the original

Date 9/4/2021

Holmes & Hills LLP  
A12 Commercial Hub, 86 London Rd, Marks Tey, Essex, CO6 1EG

This Deed is made the 9<sup>th</sup> day of April 2021

**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 ("the County Council")
  - (3) **DAVID WARREN WILSON-YOUNG** of Ch Du Creux De Corsy 74, 1093 La Conversion Switzerland ("the First Owner")
  - (4) **ST EDMUNDSBURY AND IPSWICH DIOCESAN BOARD OF FINANCE** (Charity Registration No 248919 and Company Registration No 143034) of Diocesan office St Nicholas Centre 4 Cutler Street Ipswich IP1 1UQ ("the Second Owner")
- Together "the Parties"**

## **INTRODUCTION**

1. The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and is a competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010 and by whom the obligations contained in this Deed are enforceable
2. The County Council is the local education authority, the local highway 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.
3. The ownership and other interests in the Site are as set out in Schedule 1
4. The First Owner and the Second Owner are together "the Owners"

5. M Scott Properties Limited and the Owners submitted the Application to the District Council for the Development and the District Council has resolved to grant the Planning Permission for the Development pursuant to the Application subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed
6. The District Council enters into this Deed to the intent that the requirements of the District Council's 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
7. The District Council and the County Council consider and the Owners acknowledge that the Development should not proceed unless certain restrictions regulating the use of the Site are imposed in the manner hereinafter appearing and pursuant to section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed
8. The District Council and the County Council in resolving to approve the Application are satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PART**

**1. DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990 (as amended);
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market in accordance with Annexe 2 of the NPPF
"Affordable Housing Contribution"	the sum calculated in accordance with Schedule 7 and paid to the District Council to spend on Affordable Housing within the

administrative district of the District Council in the event that the Owner is unable to dispose of the Affordable Housing Units in accordance with Part 2 of Schedule 2

"Affordable Housing for Rent"

has the meaning ascribed to it in paragraph a) of the definition of affordable housing at Annex 2 of the NPPF with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable

"Affordable Housing Nomination Agreement"

an agreement substantially in the form set out in Schedule 6 (subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and "Nomination Agreement" shall have the same meaning

"Affordable Housing Scheme"

means a scheme and plan to identify the plots and the size and tenure of the Affordable Housing Units to be provided and agreed in writing by the District Council

"Affordable Housing Units"

means thirty five per cent (35%) of the Dwellings to be provided on the Site of which 70% shall be for Affordable Housing For 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 30% shall be for Other Affordable Routes to Home Ownership and shall be Occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme)

"Application"	the application for outline planning permission for the Development validated by the District Council on 28 February 2018 and allocated reference DC/18/00861
"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 1.8 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 or 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 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, construction of access

	road; construction of temporary site compound and temporary marketing suite; erection of any temporary means of enclosure and the temporary display of site notices or advertisements and "Commence" and "Commenced" shall be construed accordingly;
"Completion of the Development"	the date that the last Dwelling is first Occupied;
"Development"	the erection of up to 67 no. dwellings public open space and supporting site infrastructure including access as set out in the Application;
"Dwelling"	any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
"Education Build Contribution"	shall mean the sum of three hundred and seven thousand six hundred and twenty pounds (£307,620.00) Index Linked based on the calculation 15 (no) primary school pupils x £20,508.00
"Education Contribution"	shall mean the Education Build Contribution and the Education Land Contribution
"Education Land Contribution"	shall mean the sum of seventeen thousand six hundred and fifty five pounds (£17,655.00) Index Linked based on the calculation 15 (no) primary school pupils x £1177.00
"Habitat Mitigation Contribution"	shall mean the sum of one hundred and twenty one pounds and eighty nine pence (£121.89) per Dwelling Index Linked
"Highway Works Contribution"	shall mean the sum of fifteen thousand five hundred and forty two pounds and fifty pence (£15,542.50) Index Linked

"Homes England (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
"Index"	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
"Index Linked"	the increase in any sum referred to in this Deed by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 12 of this Deed
"Late Payment Interest"	interest at 4 per cent above the minimum lending rate of the Bank of England from time to time
"Market Housing Units"	those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units
"Notice of Actual Commencement"	notice in writing to advise of the actual date of Commencement
"Notice of Expected Commencement"	notice in writing to advise of the expected date of Commencement
"NPPF"	means the National Planning Policy Framework published in February 2019 (as may be amended from time to time or such other national policy that may from time to time replace or update this framework) or any successor policy thereto issued by HM Government

"Other Affordable Routes to Home Ownership"	has the meaning ascribed to it in paragraph d) of the definition of affordable housing at Annex 2 of the NPPF and includes Shared Ownership
"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
"Plan"	the plan attached to this Deed
"Planning Permission"	the full planning permission subject to conditions which may be granted by District Council pursuant to the Application
"Practical Completion"	issue of a certificate of practical completion by the Owners' architect or project manager or in the event that the Development is constructed by a party other than the Owners the issue of a certificate of practical completion by that other party's architect or project manager
"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
"Public Rights of Way Contribution"	means the sum of fifty-eight thousand one hundred and twenty-five pounds (£58,125.00) Index Linked
"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



registers kept by HE pursuant to Chapter 3 of that Act and for the avoidance of doubt this includes the District Council

“Shared Ownership”

dwellings 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”

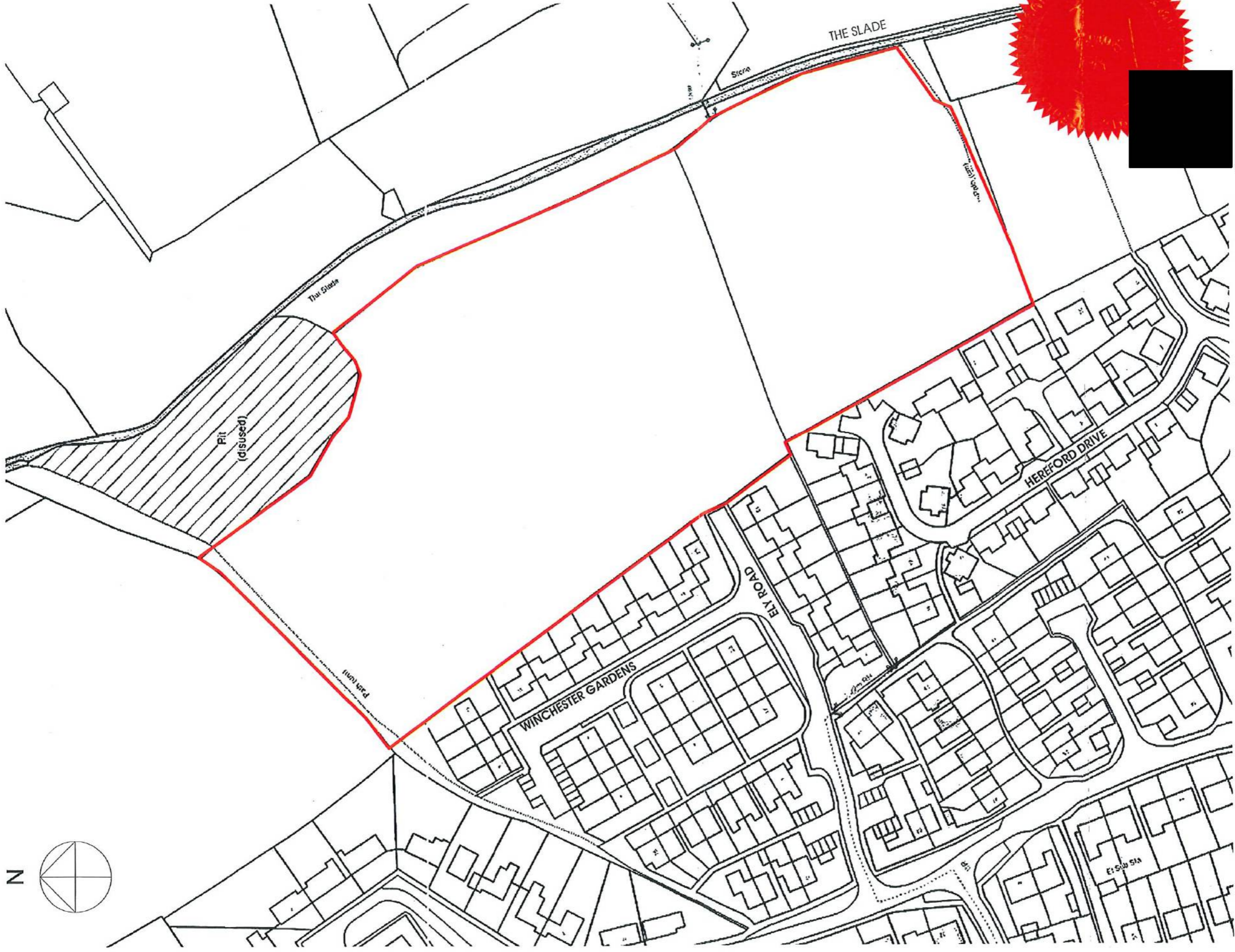
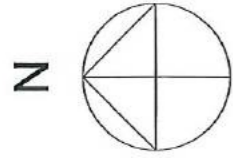
a long lease (over 99 years) of a dwelling granted at a premium whereby no less than twenty-five percent (25%) and no more than up to seventy percent (70%) on first purchase of the equitable interest in the Shared Ownership dwelling is paid by a lessee upon completion of such lease and/or raised by mortgage 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. Any capital receipt received from staircasing between 80% and 100% to be retained by the Registered Provider and re-invested in affordable housing within the Mid Suffolk District subject to any contrary requirements within the HE’s Capital Funding Guide

“Site”

the land described in Schedule 1 against which this Deed may be enforced as shown edged red for identification purposes only on the Plan

“Working Days”

Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England



1:1250 @ A3  
metres

**PENTAR DESIGN**

PARTNERSHIP  
CHEQUERS BARN  
CHEQUERS HILL  
EDENBRIDGE  
KENT TN8 7PD

LOCATION PLAN 1:1250 A3

**PROPOSED RESIDENTIAL DEVELOPMENT ON LAND TO EAST OF  
ELY ROAD, CLAYDON, SUFFOLK**

3484.01



T. 0044 (0) 1732 865865  
E. info@pentardesign.co.uk  
www.pentardesign.co.uk

## 2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that act or Directive 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 Directive or deriving validity from it
- 2.6 Any references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the District Council and the County Council the successors to its statutory functions
- 2.7 The headings and contents list are for reference only and shall not affect construction
- 2.8 Except as provided in clause 2.9, none of the covenants contained in this Deed on the part of the Owners shall be enforceable against:
- (a) those persons who purchase (including purchasers by way of long lease) any Dwelling for occupation by themselves or their lessees tenants or individuals of the Dwellings or
  - (b) any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services
- 2.9 The obligation contained in paragraph 1.6 of Part 2 of Schedule 3 shall remain against Occupiers of the Affordable Housing Units

2.10 Any covenant by the Owners 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 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 Owners 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 local planning authorities against the Owners or their successors in title

3.3 This Deed is a Deed and may be modified or discharged in part or in total at any time after the date of this Deed by Deed between the Parties in the form of a Deed

3.4 This Deed is a local land charge and upon completion shall be registered by the District Council as such

### 4. **CONDITIONALITY**

4.1 This Deed is conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of the Development

save for the provisions of Clauses 3.4, 8.3, 8.4, 8.5, 8.8, 8.13, 8.14, 10, 11, 16, 19, 20 and 21 and any other relevant provisions which shall come into effect immediately upon completion of this Deed

4.2 Where the 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 Owners 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 Owners 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:

(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

4.3.2 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

## 5. **THE OWNERS' COVENANTS**

5.1 The Owners hereby covenant with the District Council as set out in Schedule 2 and Schedule 7 so as to bind the Site and each and every part thereof

5.2 The Owners hereby covenant with the County Council as set out in Schedule 3 so as to bind the Site and each and every part thereof

## 6. **THE DISTRICT COUNCIL'S COVENANTS**

6.1 The District Council hereby covenants with the Owners as set out in Schedule 4

7. **THE COUNTY COUNCIL'S COVENANTS**

7.1 The County Council hereby covenants with the Owners as set out in Schedule 5

8. **MISCELLANEOUS**

- 8.1 The Owners shall act in good faith and shall co-operate both with the District Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owners shall comply with any reasonable requests either of the District 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 reasonable requests to provide documentation within the Owners' possession (at the Owners' expense) for the purposes of monitoring compliance with the obligations contained herein
- 8.2 The Owners agree declare and covenant both with the District 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 Deed and further shall indemnify the District Council and the County Council for any expenses or liability arising to the District Council and the County Council in respect of breach by the Owners or any obligation contained herein save to the extent that any act or omission of the District Council and the County Council its employees or agents has caused or contributed to such expenses or liability
- 8.3 The Owners agree to pay to the District Council on completion of this Deed the proper and reasonable legal costs of the District Council incurred in the negotiation preparation and execution and completion of this Deed
- 8.4 The Owners agree to pay to the County Council on completion the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed and a monitoring fee of one thousand two hundred and thirty six pounds (£1236.00)
- 8.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 8.6 Where the agreement, approval, consent or expression of satisfaction is required by the Owners from the District Council and/or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council by the Chief

Planning Officer for Growth and Sustainable (or a duly appointed successor) or officer acting under his hand and on behalf of the County Council by the Interim Director of Growth and Highway Infrastructure (or a duly appointed successor) 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

- 8.7 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith on the written request of the Owners mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed
- 8.8 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 8.9 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of the Development and the District Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed
- 8.10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it
- 8.11 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 8.12 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council and/or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority

8.13 The Owners hereby agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived

8.14 The Owners covenant and warrant to the District Council and/or the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site, whose consent is necessary to make this Deed binding on the Site and all estates and interests therein

**9. WAIVER**

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

**10. CHANGE IN OWNERSHIP**

The Owners agree with the District Council and the County Council to give immediate written notice of any transfer in ownership of any of their interests in the Site (save for disposals of individual Dwellings) 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/18/00861 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 purchased by reference to a plan and a copy of the registered title and plan thereto

**11. RIGHTS OF ENTRY**

11.1 At all times on not less than twenty-four (24) hours written notice except in case of emergency with or without notice the Owners shall allow any employee or agent of either or both of the District Council or the County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

11.1.1 such employee or agent on arrival at the Site shall if requested by any person present who appears to be the Owners the 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 Site);



- 11.1.2 such entry shall be effected between 08:00 and 17:00 on any day;
- 11.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;
- 11.1.4 such employee or agent may take photographs measurements and levels;
- 11.1.5 such employee or agent may not remain on the Site for no longer than is reasonably necessary for carrying out a proper inspection;
- 11.1.6 such employee or agent and any other accompanying persons shall comply with the Owners or the Owners representative's reasonable directions and precautions in the interests of safety.

## 12. INDEXATION

Any sum referred to in this Deed (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the 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:

- 12.1 A is the sum payable under this Deed;
- 12.2 B is the original sum calculated as the sum payable;
- 12.3 C is the Index for the month 2 months before the date on which the sum is payable;
- 12.4 D is the Index for the month 2 months before the date of this Deed; and
- 12.5 C/D is greater than 1

## 13. INTEREST

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

## 14. VAT

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

15. **NOTICES**

15.1 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 15.2

15.2 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 – Growth and Sustainable Planning (or a duly appointed successor) Mid Suffolk District Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
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 First Owner	As detailed on the first page of this Deed
The Second Owner	As detailed on the first page of this Deed

16. **DISPUTE PROVISIONS**

16.1 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 arbitration before a single Expert ("the Expert")

16.2 The Parties to the dispute shall jointly appoint the Expert not later than twenty-eight (28) days after service of a request in writing by any Party to the dispute to do so

- 16.3 If the Parties to the dispute 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 either of the Parties to the dispute as follows:
- 16.3.1 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
  - 16.3.2 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
  - 16.3.3 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
  - 16.3.4 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
- 16.4 In the event of a reference to arbitration the Parties to the dispute agree to:
- 16.4.1 prosecute any such reference expeditiously; and
  - 16.4.2 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
- 16.5 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
- 16.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing
- 16.7 The award shall be final and binding both on the Parties to the dispute and on any persons claiming through or under them and judgment upon the award may be

entered in any court having judicial acceptance of the award and an order of enforcement as the case may be

16.8 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 16 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed

16.9 The provisions of this clause 16 shall not affect the ability of the District Council or County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief

17. **SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT**

17.1 Where in the opinion of the Owners any of the provisions of this Deed have been satisfied the Owners 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 County Council 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

18. **APPROVALS**

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

19. **COMMUNITY INFRASTRUCTURE LEVY**

19.1 The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 (as amended) the obligations imposed in this Deed are

19.1.1 necessary to make the Development permitted pursuant to the Application acceptable in planning terms;

19.1.2 directly relate to the Development permitted pursuant to the Application;  
and

19.1.3 fairly and reasonably relate in scale and kind to the Development permitted pursuant to the Application.

20. **JURISDICTION**

This Deed is governed by and interpreted in accordance with English law and shall be determined in the courts of England.

21. **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.

22. See \*



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 affixed in the presence of )



Authorised Signatory

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

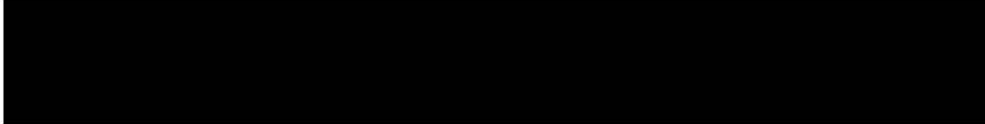


Authorised Signatory

Executed as a DEED )  
by **DAVID WARREN WILSON-YOUNG** )  
in the presence of )




Signature of witness: 

Full Name: 

Address: 

Executed as a DEED )  
by **ST EDMUNDSBURY AND IPSWICH** )  
**DIOCESAN BOARD OF FINANCE** )  
acting by )

Director 

-Director/Secretary 

\*

## **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 Site 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 Site in respect of the Planning Permission shall also bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act unless the LPA requires otherwise; 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).

## SCHEDULE 1

### Details of the Owners' Title, and description of the Site

1. The Freehold land shown edged red on the Plan consisting of the following parcels of land:
  - 1.1 the Land at Barham, Ipswich being part of the land registered with the Land Registry under Title Number SK372990
  - 1.2 the Land lying to the South East of Ely Road, Barham, Ipswich registered with the Land Registry under Title Number SK190591
2. The Owners are the freehold owners of the Site



## **SCHEDULE 2**

### **OWNERS COVEVANTS WITH THE DISTRICT COUNCIL**

#### **PART 1**

##### **NOTICES**

- 1 The Owners shall give the District Council (i) Notice of Expected Commencement not less than seven (7) days before the date that the Owners expect Commencement of the Development to occur and (ii) within twenty-one (21) days of Commencement of Development Notice of Actual Commencement in order to confirm Commencement has occurred
- 2 The Owners shall give the District Council no less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling
- 3 The Owners shall within seven (7) days' give written notice to the District Council following
  - 3.1 the date of Occupation of the first Dwelling
  - 3.2 the date of Occupation of the final Dwelling
  - 3.3 Completion of the Development

#### **PART 2**

##### **AFFORDABLE HOUSING**

- 1.1 The Owners covenant not to Commence the Development until the Affordable Housing Scheme has been submitted to and approved by the District Council in writing PROVIDED THAT an amended, revised or substituted Affordable Housing Scheme may be approved by the District Council and such scheme will form part of this Deed as if the same had been fully set out herein
- 1.2 Having given notice under paragraph 1 of the Schedule 2 Part 1 above the Owners shall endeavour to agree with the District Council on the identity of the Registered Provider to which the Affordable Housing Units are to be transferred such agreement not to be unreasonably withheld or delayed. The Owners may Commence the Development whilst that process is ongoing but if no agreement has been reached at

the expiration of the period of three (3) months following the Commencement of the Development the District Council shall be entitled to nominate a Registered Provider for the purpose

- 1.3 The Owners shall construct the Affordable Housing Units in accordance with the Planning Permission and the approved Affordable Housing Scheme
- 1.4 Subject to paragraph 1.11 and 1.12 below the Owners shall not Occupy or permit Occupation of more than 50% of the Market Housing Units until 50% of the Affordable Housing Units have been constructed and are ready for Occupation and in the case of the Affordable Housing Units that are either Affordable Housing For Rent or Shared Ownership Dwellings that those units have been transferred to the Registered Provider
- 1.5 Subject to paragraph 1.11 and 1.12 below the Owners shall not Occupy or permit Occupation of more than 80% of the Market Housing Units until all of the Affordable Housing Units have been constructed and are ready for Occupation and in the case of the Affordable Housing Units that are either Affordable Housing For Rent or Shared Ownership Dwellings that those units have been transferred to the Registered Provider
- 1.6 Any transfer to a Registered Provider of the land on which the Affordable Housing Units will be constructed shall be
  - 1.6.1 with vacant possession;
  - 1.6.2 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 Owners to any statutory undertaker);
  - 1.6.3 subject to grant by the Owners 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; and
  - 1.6.4 subject to a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the construction, operation, use, maintenance and management of the Development
  - 1.6.5 a requirement to enter into the Affordable Housing Nomination Agreement with the District Council
- 1.7 The Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing save where provided otherwise in paragraphs 1.9 and 1.10 below

- 1.8 The District Council and the Owners agree that the obligations and restrictions contained in this Schedule 2 Part 2 shall not bind:
- 1.8.1 a mortgagee, Chargee or receiver who has complied with the provisions of paragraph 1.9 of this part of this Schedule;
  - 1.8.2 any Protected Tenant;
  - 1.8.3 any Affordable Housing Unit where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, a voluntary grant scheme under section 21 of the Housing Act 1996 or any amendment or replacement thereof;
  - 1.8.4 a leaseholder of a Shared Ownership Dwelling who is entitled to exercise their right under a shared ownership lease to acquire 100% of the equity of their property; or
  - 1.8.5 any person or body deriving title through or from any of the parties mentioned in this paragraph 1.8
- 1.9 Any 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 prior written notice to the District Council of its intention to dispose:
- 1.9.1 in the event that the District Council responds within one (1) month from receipt of a notice indicating that
    - (a) reasonable arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard it/them as Affordable Housing Unit(s); and
    - (b) that such a transfer would take place within two (2) months from receipt of the notice
- then the Chargee shall cooperate with such reasonable arrangements and use reasonable endeavours to secure such transfer
- 1.9.2 if the District Council does not serve its response to the notice served under paragraph 1.9 within one (1) month then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule 2 Part 2 which shall from the time of the completion of the disposal cease to apply
  - 1.9.3 if the District Council cannot within two (2) months of the date of service of its response under paragraph 1.9.1 secure such transfer then provided that the Chargee shall have

complied with its obligations under paragraph 1.9 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule 2 Part 2 which shall from the time of the completion of the disposal cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph 1.9 shall not require the Chargee to act contrary to its duties and rights under the charge or mortgage and that the District Council must give consideration to protect the interest of the Chargee in respect of monies outstanding under the charge or mortgage

- 1.10 In the event that the Registered Provider two (2) months of written invitation) is unable to make an acceptable offer to purchase the Affordable Housing Units or no longer wants to purchase the Affordable Housing Units to enable the Owners to transfer the Affordable Housing Units to the Registered Provider pursuant to paragraph 1.4 and/or 1.5 of this part of this Schedule the Owners shall:
- 1.10.1 notify the District Council three (3) months prior to the Practical Completion of the Affordable Housing Units;
  - 1.10.2 set out the reasons (together with any supporting evidence) in writing why a transfer to the Registered Provider has not been entered into pursuant to paragraph 1.4 and/or 1.5 of this part of this Schedule
  - 1.10.3 submit any other information reasonably requested by the District Council to satisfy why the Owners have not been able to enter into a transfer with the Registered Provider pursuant to paragraph 1.4 and/or 1.5 of this part of this Schedule
  - 1.10.4 offer the Affordable Housing Units to the District Council to be purchased by the District Council as Affordable Housing
- 1.11.1 In the event the District Council make an acceptable offer to the Owners (within two (2) months of written invitation) for the Affordable Housing Units then the Owners shall not Occupy or permit Occupation of more than 85% of the Market Housing Units until the Owners have provided the District Council with a freehold transfer document unconditionally released for completion
- 1.11.2 In the event the District Council does not make an acceptable offer to the Owners (within two (2) months of written invitation) to purchase the Affordable Housing Units or the District Council indicates that they do not want to purchase the Affordable Housing Units the Owners shall pay the Affordable Housing Contribution to the District Council in respect of the number of Affordable Housing Units which have not been transferred to a Registered Provider in accordance with the commuted sum calculation set out at

Schedule 7 and the Owners shall not Occupy or permit Occupation of more than 85% of the Market Housing Units until the Owners have paid the Affordable Housing Contribution to the District Council and for the avoidance of doubt the Affordable Housing Units which are not transferred then become free from the restrictions set out in this Schedule and are available to be sold as Market Housing Units

### **PART 3**

#### **HABITAT MITIGATION CONTRIBUTION**

- 1.1 The Owners covenant to pay to the District Council the Habitat Mitigation Contribution prior to Commencement of Development.
- 1.2 The Owners hereby covenant not to Commence or permit or allow Commencement of the Development until the Habitat Mitigation Contribution has been paid to the District Council.

**SCHEDULE 3**  
**OWNERS' COVENANTS WITH THE COUNTY COUNCIL**

**PART 1**

**NOTICES**

- 1 The Owners shall give the County Council (i) Notice of Expected Commencement not less than seven (7) days before the date that the Owners expect Commencement of the Development to occur and (ii) within twenty-one (21) days of Commencement of Development Notice of Actual Commencement in order to confirm Commencement has occurred
- 2 The Owners shall give the County Council no less than two (2) months' written notice of the anticipated date for the first Occupation of the first (1<sup>st</sup>) Dwelling
- 3 The Owners shall give the County Council no less than two (2) months' written notice of the anticipated date for the first Occupation of the thirty fifth (35<sup>th</sup>) Dwelling
- 4 The Owners shall within seven (7) days' give written notice to the County Council following
  - 4.1 the date of first Occupation of the first (1<sup>st</sup>) Dwelling
  - 4.2 the date of first Occupation of the thirty fifth (35<sup>th</sup>) Dwelling
  - 4.3 the date of first Occupation of the final Dwelling
  - 4.4 Completion of the Development

**PART 2**

**CONTRIBUTIONS**

- 1.1 The Owners covenant to pay to the County Council the Public Rights of Way Contribution prior to first Occupation of the first (1<sup>st</sup>) Dwelling
- 1.2 The Owners hereby covenant not to Occupy permit or allow first Occupation of the first (1<sup>st</sup>) Dwelling until the Public Right of Way Contribution has been paid to the County Council

- 1.3 The Owners covenant to pay to the County Council the Education Contribution prior to first Occupation of the thirty fifth (35<sup>th</sup>) Dwelling
- 1.4 The Owners hereby covenant not to Occupy permit or allow first Occupation of the thirty fifth (35<sup>th</sup>) Dwelling until the Education Contribution has been paid to the County Council.
- 1.5 The Owners covenant to pay to the County Council the Highway Works Contribution prior to Commencement of Development
- 1.6 The Owners hereby covenant not to Commence or permit or allow Commencement of the Development until the Highway Works Contribution has been paid to the County Council.

## SCHEDULE 4

### DISTRICT COUNCIL'S COVENANTS

The District Council covenants with the Owners:

1. To issue the completed Planning Permission on or within seven (7) days of the date of this Deed.
2. To use the Habitat Mitigation Contribution towards the impact of development on the Stour and Orwell Estuaries Special Protection Area
3. The District Council shall if requested to do so in writing after the expiry of five (5) years of the date that the Habitat Mitigation Contribution was paid within a further period of one (1) year pay to any person such amount of the Habitat Mitigation Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the District Council in accordance with the provisions of this Deed together with interest from the date of payment to the District Council until the date of repayment by the District Council on any amount to be repaid applied at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end SAVE THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period,
4. When the Habitat Mitigation Contribution paid to the District Council has been spent or committed the District Council shall upon written request by the Owners after the expiry of five (5) years of the payment of that sum within a further period of three (3) months notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.
5. At the written request of the Owners the District Council shall provide written confirmation of the discharge of the obligations in this Deed when satisfied that such obligations have been performed.
6. At the written request of the Owners the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed that are enforceable by the District Council when satisfied that such obligations have been performed.



## SCHEDULE 5

### COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owners:

1. To use the Public Rights of Way Contribution for costs associated with improvements and widening Barham Bridleway 009 and Claydon Footpaths 13 and 14
2. The County Council shall if requested to do so in writing after the expiry of five (5) years of the date that the Public Rights of Way Contribution was paid within a further period of one (1) year pay to any person such amount of the Public Rights of Way Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with interest from the date of payment to the County Council until the date of repayment by the County Council on any amount to be repaid applied at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end SAVE THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period
3. When the Public Rights of Way Contribution paid to the County Council has been spent or committed the County Council shall upon written request by the Owners after the expiry of five (5) years of the payment of that sum within a further period of three (3) months notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to
4. To use the Education Build Contribution towards the build costs of a new primary school serving the Development
5. The County Council shall if requested to do so in writing after the expiry of ten (10) years of the date of Completion of the Development within a further period of one (1) year pay to any person such amount of the Education Build Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with interest from the date of payment to the County Council until the date of repayment by the County Council on any amount to be repaid applied at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end SAVE THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period

6. When the Education Build Contribution paid to the County Council has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten (10) years of the date of Completion of the Development within a further period of three (3) months notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to
7. To use the Education Land Contribution towards the land acquisition costs for delivering a new primary school serving the Development
8. The County Council shall if requested to do so in writing after the expiry of ten (10) years of the date of Completion of the Development within a further period of one (1) year pay to any person such amount of the Education Land Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with interest from the date of payment to the County Council until the date of repayment by the County Council on any amount to be repaid applied at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end SAVE THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period
9. When the Education Land Contribution paid to the County Council has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten (10) years of the date of Completion of the Development within a further period of three (3) months notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to
10. To use the Highway Works Contribution for costs associated with
  - 10.1 Station Road/ Norwich Road junction and footway improvements and/or
  - 10.2 Church Lane/ Norwich Road junction and footway improvements and/or
  - 10.3 Cycle infrastructure improvement works in the village of Claydon and/or
  - 10.4 Works in connection with the extension of the speed limit on Norwich Road and/or
  - 10.5 any other highway schemes that the County Council considers to be necessary and appropriate in the vicinity of the Site

11. The County Council shall if requested to do so in writing after the expiry of ten (10) years of the date that the Highway Works Contribution was paid within a further period of one (1) year pay to any person such amount of the Highway Works Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with interest from the date of payment to the County Council until the date of repayment by the County Council on any amount to be repaid applied at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end SAVE THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period.
12. When the Highway Works Contribution paid to the County Council has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten (10) years of the payment of that sum within a further period of three (3) months notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to
13. To provide written confirmation of the discharge of the obligations contained in this Deed that are enforceable by the County Council when satisfied that such obligations have been performed

## SCHEDULE 6

### DRAFT NOMINATION AGREEMENT

THIS DEED OF NOMINATION RIGHTS is made the \_\_\_\_\_ day of \_\_\_\_\_ 202X

#### BETWEEN:

- (1) [ \_\_\_\_\_ ] whose registered address is at [ \_\_\_\_\_ ] ('the Registered Provider') and
- (2) **Mid Suffolk District Council** of Council Offices Endeavour House, 8 Russell Road Ipswich Suffolk IP1 2BX ('the District Council')

#### 1. Definitions

In this Deed:

- 1.1 'Affordable Housing' means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market
- 1.2 'Affordable Housing Units' means the Dwellings which shall be Affordable Housing to be provided on the Property of which 30% of the affordable dwellings shall be Shared Ownership and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and 70% of the affordable 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 any service charges applicable
- 1.4 'Chargee' 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
- 1.5 'Chargee's Duties' means the tasks and duties set out in Clause 10.4 of this Deed

- 1.6 'Choice Based Lettings Scheme' means 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 or 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
- 1.6 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings system
- 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 two (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 two (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 two (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 (12) months or (ii) three (3) 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 Gateway to Homechoice SLA
- 1.10 'Nominee' means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the District Council as best meeting the criteria for the category of Affordable Housing Unit in respect of which the

- Registered Provider is to select a person from the Nomination List and offer a Tenancy Agreement
- 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 lying to the East of Ely Road, Claydon within registered title numbers SK372990 (part of) and SK190591 shown edged red on the plan annexed
- 1.13 'Protected Person' 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 Homes England under Chapter III of that Act
- 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 (2)
- 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 the Homes England 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 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. Any capital receipt received from staircasing between 80% and 100% to be retained by the Registered Provider and re-invested in affordable housing within Mid Suffolk District subject to any contrary requirements within the HE's Capital Funding Guide
- 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 five (5) weeks from the date of this Deed) the function of such notice being the notification to the District Council by the Registered Provider of the expected date on which the construction and fitting out of the Affordable Housing Units will be complete
- 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 five (5) weeks from the date of this Deed) the function of such a notice being the notification to the District Council of a Void

## **2 Enabling Provisions**

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

## **3 Procedure**

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

### **3.1 Initial lets**

The Association hereby grants the District Council Nomination rights for 100% of the initial lets and thereafter 100% for voids in relation to the Affordable Rented Dwellings. 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 four (4) 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 ten (10) weeks 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 SLA 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 1.8.4 of this Deed and subject to clause 4.2 of this Deed 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 1.8.4 of this Deed 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 occupied on the basis of a Tenancy Agreement at an Affordable Rent or as Shared Ownership Dwellings and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider



**6. Alteration of lists**

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

**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 to this 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 Person or any mortgagee or chargee of the Protected Person or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargees; or
  - 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 four (4) weeks from receipt of the notice indicating that:

(a) arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing; and

(b) that such a transfer would take place within eight (8) weeks from receipt of the notice 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 four (4) weeks 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

*ATTESTATION CLAUSE*

## SCHEDULE 7

### CALCULATION OF AFFORDABLE HOUSING CONTRIBUTION

Category of dwelling	Based on a GIFA sqm	Amount per dwelling not transferred to a Registered Provider
1 bed 2-person flats	50 sqm	£49,125
2 bed 4-person flats	70 sqm	£69,195
2 bed 4-person houses	79 sqm	£75,936
3 bed 5person houses	93 sqm	£90,013