

DATED

11 MAY

2021

(1) BABERGH DISTRICT COUNCIL

AND

(2) SUFFOLK COUNTY COUNCIL

AND

(3) JOHN ANDERSON AND CHRISTINE
WEBSTER ANDERSON

AND

(4) CHARLES CLEAVER BAILEY AND
PENELOPE ANNE WOTTON

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

relating to
the development of Land lying to the
south east of Barrow Hill, Acton, CO10
0AP and Beaulieu, High Street, Acton,
Sudbury CO10 0AJ

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PARTIES:

- (1) **BABERGH DISTRICT COUNCIL** of Endeavour House 8 Russell Road, Ipswich IP1 2BX (“**District Council**”);
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX (“**County Council**”);
- (3) **JOHN ANDERSON** and **CHRISTINE WEBSTER ANDERSON** both of Beaulieu, High Street, Acton, Sudbury CO10 0AJ (“**First Owners**”);
- (4) **CHARLES CLEAVER BAILEY** care of Fieldfisher LLP, Riverbank House, 2 Swan Lane, London EC4R 3RR the trustees of the charity known as The Innominate Trust and **PENELOPE ANNE WOTTON** care of Fieldfisher LLP, Riverbank House, 2 Swan Lane, London EC4R 3RR the trustees of the charity known as The Innominate Trust (“**Second Owners**”).

BACKGROUND

- A The District Council is a local planning authority for the purposes of the Act for the area in which the Site is situated.
- B The County Council is the local highway authority (except for trunk roads) and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- C The ownership and other interests in the Site are as set out in the First Schedule.
- D The Second Owner and Leith Planning Investment (Suffolk) Ltd submitted the Application to the District Council for the Development and the District Council has resolved to grant 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.
- E 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.
- F The District Council and the County Council consider and the Owners acknowledge that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to section 106 of the Act the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- G The District Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSES as follows:

1 DEFINITIONS

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

“**Act**” means the Town and Country Planning Act 1990 (as amended);

“Affordable Housing Contribution” means a contribution to be paid to the District Council in accordance with paragraph 3.5 of Part 2 of Schedule 2;

“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 as defined in Annexe 2 of the National Planning Policy Framework;

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

“Affordable Housing Scheme” means a scheme showing the details of affordable housing to be provided on the Site as described in more detail in paragraph 1 of Part 2 of Schedule 2 to this Deed;

“Affordable Housing Units” means thirty-five percent (35%) of the Dwellings to be provided on the Site all of which shall be either Rental Dwellings or Shared Ownership dwellings with the mix of tenure being determined in the Affordable Housing Scheme;

“Affordable Rent” means 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 market rent including any service charges applicable;

“Application” means the application for planning permission to develop the Site in accordance with the application plans and other materials deposited with the District Council dated 25 November 2020 and bearing the District Council's reference number DC/20/05361;

“Approval of Reserved Matters” means the District Council's approval of the details set out in the reserved matters application to be submitted pursuant to the Planning Permission;

“BCIS Index” means the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the County Council and the Owners;

“BCIS Indexed” means the increase in any sum referred to in the Third Schedule as BCIS Indexed by an amount equivalent to the increase in the BCIS Index from the date hereof until the date on which such sum is payable to be calculated in accordance with clause 11 of this Deed;

“Chargee” means any mortgagee or chargee of the Registered Provider (or any receiver (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 (each a **“Receiver”**);

“Chargee's Duty” means the tasks and duties set out in paragraph 3 of Part 2 of Schedule 2;

“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;

“Commencement of Development” means 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 pursuant to the Planning Permission other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, construction of access to the Site and the temporary display of site notices or advertisements and "Commence" and "Commencement" and "Commence Development" shall be construed accordingly;

"Completion of Development" means the date that the last Dwelling is first Occupied;

"Community Orchard" means a collection of fruit and nut trees planted amongst grass and wild flowers in the Open Space Scheme;

"Contributions" means together the Public Rights of Way Contribution, the Public Transport Contribution and the Residential Travel Pack Contribution and "Contribution" means any one of the Contributions as the context requires;

"Creation Agreement" means an agreement pursuant to sections 25 and 38 of the Highways Act 1980 and any other powers pertaining to the construction and dedication of the New Footpath;

"Development" means the development of the Site for the erection of up to 100 residential dwellings, play space, scout hut, canoe storage and Community Orchard (all matters reserved except means of access) as set out in the Application and in accordance with the Planning Permission;

"Dwelling" means a dwelling (including a house flat or bungalow and including Affordable Housing, Shared Ownership Dwellings and Market Housing Units) to be constructed pursuant to the Planning Permission" and "Dwellings" shall be construed accordingly;

"Homes England" means Homes England or any successor government agency that funds and is responsible for the delivery of new Affordable Housing in England;

"Interest" means interest at four (4) per cent above the base lending rate of the Bank of England from time to time unless otherwise provided by this Deed;

"Market Housing Units" means those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units;

"New Footpath" means a footpath to be constructed two metres wide substantially in the position shown by blue dashes on the attached Public Rights of Way Plan;

"Occupation" means 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"**, **"Occupants"** and **"Occupy"** shall be construed accordingly;

"Open Space" means that part of the Site to be provided for use by the public in accordance with the Open Space Scheme;

"Open Space Scheme" means a scheme for the provision of on-site Open Space for use by members of the public and free for the public to enjoy at all times comprising details of the layout location and design of the Open Space including fully equipped play area;

"Owners" means together the First Owners and the Second Owners;

"Planning Permission" means the planning permission as may be granted by the District Council pursuant to the Application subject to such conditions as may be imposed on the grant of planning permission or on Appeal by the Planning Inspectorate;

“Practical Completion” means 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” means 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 £7,200 (seven thousand and two hundred pounds) to be paid to the County Council for legal and administrative work including all associated officer time in preparing and agreeing the Creation Agreement;

“Public Rights of Way Plan” means the plan annexed to this Deed titled “Proposed Public Footpath Creation - Action”;

“Public Transport Contribution” means the sum of £50,000 (fifty thousand pounds) to be paid to the County Council for the enhancement of demand responsive services in the area including but not limited to:

- (a) Supporting local community transport providers to recruit paid drivers; and
- (b) Upgrading of existing bus stops including works to raised bus stop kerbs;

“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 under Chapter 3 of that Act;

“Rental Dwelling” means an Affordable Housing Unit which is to be let at an Affordable Rent or social rent and is let on the Registered Provider’s standard form of letting in accordance with the terms of this Deed by a Registered Provider;

“Resident Travel Pack” means a travel pack provided to each Dwelling that includes bus tickets or cycle voucher of equivalent value for every resident , current public transport information for bus and rail services provisions of maps of pedestrian and cycle routes car sharing information personalised travel plans and information to promote the benefits of sustainable travel in the local area to encourage sustainable travel;

“Resident Travel Pack Contribution” means the sum of £11,150 to be paid to the County Council for the provision of residential travel packs to the Occupants of the Dwellings;

“RPI Index” the Retail Price Index published by the United Kingdom’s Office for National Statistics or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the County Council and the Owners;

“RPI Indexed” means the increase in any sum referred to in the Third Schedule as RPI Indexed by an amount equivalent to the increase in the RPI Index from the date hereof until the date on which such sum is payable to be calculated in accordance with clause 11 of this Deed;

“Scout Hut and Canoe Storage Land” means an area of land at least one thousand five hundred (1,500) square metres in size the location and description of which will be described in the Scout Hut and Canoe Storage Area Scheme;

“Scout Hut and Canoe Storage Area Scheme” means a scheme providing for the free transfer of the Scout Hut and Canoe Storage Area Land to a local Scout Association or another body as specified in this scheme;

“Shared Ownership Dwellings” means 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 the Homes England’s capital funding guide;

“Shared Ownership Lease” means a lease in a form approved by the Homes England or where there is no such form in a form approved by the Council such lease to provide for the following:

- (a) not more than 70% and not less than 10% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider;
- (b) ability for the purchaser to increase their ownership up to 100% if they so wish; subject to the Registered Providers duty to retain and reinvest capital receipts between 81 % and 100% in accordance with clause 1.10 of Part 2 of Schedule 2 to this Deed

an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of the Homes England;

“Site” means the land described in Schedule 1 Part 2 against which this Deed may be enforced as shown edged red on the Site Plan;

“Site Plan” means the plan marked “Site Plan” attached to this Deed;

“Working Days” means 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 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 against each individually insofar as such obligation relates to land within such party’s ownership 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 and to any party deriving title through or under that party and in the case of the District Council and the County Council any successor to their respective statutory functions.

- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the District 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 None of the covenants contained in this Deed on the part of the Owners shall be enforceable against:
- 2.8.1 (save in respect of the obligations restricting occupation of the Dwellings in the Third Schedule and the Fourth Schedule insofar as they relate to Dwellings owned by the following persons and bodies) 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
- 2.8.2 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 headings are for reference only and shall not affect construction.
- 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 as local planning authority 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:
- 4.1.1 the grant of the Planning Permission; and
- 4.1.2 the Commencement of Development,
- save for the provisions of clauses 3.4, 7.3, 9, 10, 19, 20 , in Schedule 2 the provisions of, paragraph 1.3 of Part 2 and paragraph 1 of Part 3 and in Schedule 3 the provisions of Part 3 which shall come into effect immediately upon completion of this Deed.
- 4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:
- 4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain

without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the 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 the District Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed; 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 OWNERS' COVENANTS

- 5.1 The Owners covenant with the District Council as set out in the Second Schedule.
- 5.2 The Owners covenant with the County Council as set out in the Third Schedule.

6 THE COUNTY COUNCIL'S COVENANTS

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

7 MISCELLANEOUS

- 7.1 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 of the District Council and or to the County Council to have access to any part of the Site or any requests to provide documentation within the Owners' possession (at the Owners' expense) for the purposes of monitoring compliance with the obligations contained herein.

- 7.2 The Owners agree declare and covenant both with the District Council and County Council to observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this agreement and further shall indemnify the District Council and/or the County Council (as appropriate) 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.
- 7.3 The Owners covenant to pay to the District Council and the County Council on completion of this Deed the proper and reasonable legal costs incurred by each of them respectively in the negotiation preparation and execution and completion of this Deed and to pay the County Council a monitoring fee of £824 for the monitoring of the Owners' compliance with the covenants given in this Deed.
- 7.4 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.5 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owners from either the District Council or the County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the District Council by the Professional Lead or officer acting under his hand and on behalf of the County Council by the Director of Resource Management or officer acting under his hand.
- 7.6 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.7 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.
- 7.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owners) and the District Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed.
- 7.9 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 save for an interest arising only from the grant or reservation of an easement or similar right or the benefit of any restrictive covenant in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.10 No person shall be liable for any breach of any of the planning obligations or other obligations of this Deed which are referable to any part of the Site:
- 7.10.1 if it has no interest in that part of the Site; or
- 7.10.2 after it shall have parted with its entire interest (save for an interest arising only from the grant or reservation of an easement or similar right or the benefit of any restrictive covenant) in that part of the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

- 7.11 Subject to clause 7.12 nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.12 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.
- 7.12.1 the 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; and
- 7.12.2 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 shall fetter the discretion of the Council in determining any applications under section 73 of the Act and the appropriate nature and and/or quantum of section 106 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.
- 7.13 The Owners agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived.
- 7.14 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owners and at no cost to the District Council or the County Council.
- 7.15 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities.
- 7.16 The First Owners covenant and warrant to the District Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest over that part of the Site registered with the Land Registry under title number SK211252 other than the charge listed in Recital 5.
- 7.17 The Second Owners covenant and warrant to the District Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in that part of the Site registered with the Land Registry under title number SK265123, other than the charge listed in Recital 5.

8 WAIVER

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

9 CHANGE IN OWNERSHIP

The Owners agree with the District Council and the County Council to give each of them independently written notice of any transfer in ownership of any of its 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

10 RIGHT OF ENTRY

From Commencement of the Development until the final Occupation, 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 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:

- 10.1 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);
- 10.2 such entry shall be effected between 08.00 and 17.00 on any day;
- 10.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;
- 10.4 such employee or agent may take photographs measurements and levels;
- 10.5 such employee or agent may not remain on the Site for no longer than is reasonably necessary for carrying out a proper inspection;
- 10.6 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.

11 INDEXATION

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

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

12 **INTEREST** *from the Owners*

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

13 **VAT**

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

14 **SERVICE OF NOTICES**

14.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post 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 14.2.

14.2 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 Professional Lead, Growth and Sustainable Planning, Babergh District Council Endeavour House 8 Russell Road Ipswich IP1 2BX
The County Council	The Executive Director of Growth Highways and Infrastructure Constantine House 5 Constantine Road Ipswich Suffolk IP1 2DH
The First Owners	JOHN ANDERSON and CHRISTINE WEBSTER ANDERSON both of Beaulieu, High Street, Acton, Sudbury CO10 0AJ
The Second Owners	CHARLES CLEAVER BAILEY care of Fieldfisher LLP, Riverbank House, 2 Swan Lane, London EC4R 3RR the trustees of the charity known as The Innominate Trust and PENELOPE ANNE WOTTON care of Fieldfisher LLP, Riverbank House, 2 Swan Lane, London EC4R 3RR the trustees of the charity known as The Innominate Trust

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

15 **DISPUTE RESOLUTION**

15.1 Any dispute or difference of any kind whatsoever arising between the Owners the District Council and the County Council ("**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 ("**Expert**").

15.2 Parties to the dispute shall jointly appoint the Expert not later than twenty eight (28) days after service (on all other Parties to the dispute) of a request in writing by any Party to the dispute to do so.

- 15.3 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 any of the parties as follows:
- 15.3.1 difference or question relates to the rights and liabilities of either party or to the terms or conditions to be embodied in the Agreement or document appertaining to the Agreement 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
 - 15.3.2 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
 - 15.3.3 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 to the dispute but in default of agreement appointed at the request of a Party to the dispute by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
 - 15.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.
- 15.4 In the event of a reference to arbitration the Parties to that dispute agree to:
- 15.4.1 prosecute any such reference expeditiously; and
 - 15.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable.
- 15.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award.
- 15.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing.
- 15.7 Save in the event of manifest error or fraud 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 jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be.
- 15.8 Unless this Deed has already been terminated each of the parties 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 17 but without prejudice to the rights and obligations of the parties in relation to the termination of this Deed and other methods of enforcement.
- 15.9 The provisions of this clause shall not affect the ability of a party 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.

16 SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

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 the 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.

17 APPROVALS

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.

18 COMMUNITY INFRASTRUCTURE LEVY

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

19 JURISDICTION

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

20 COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original and all the counterparts shall constitute one and the same instrument.

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.

SCHEDULE 1

Part 1

Freehold Interests

- 1 The First Owners are freehold owners of part of the Site the title to which is registered at the Land Registry with Title Absolute under Title Number SK2111252.
- 2 B. The Second Owners are the freehold owner of part of the Site the title to which is registered at the Land Registry with Title Absolute under Title Number SK265123.

Part 2

Description of the Site

Freehold Land lying to the south east of Barrow Hill, Acton, CO10 0AP and Beaulieu, High Street, Acton, Sudbury CO10 0AJ within registered title numbers SK265123 and SK211252.

SCHEDULE 2

The Owners' Covenants with the District Council

Part 1

Giving of Notice

- 1 The Owners shall give the District Council written notice of all of the following events within seven (7) days of the event having occurred:
 - 1.1 commencement of the Development;
 - 1.2 first Occupation of the first Dwelling;
 - 1.3 first Occupation of the 30th Market Housing Unit;
 - 1.4 first Occupation of the 50th Market Housing Unit;
 - 1.5 completion and transfer to a Registered Provider of the 18th Affordable Housing Unit;
 - 1.6 completion and transfer to a Registered Provider of the final Affordable Housing Unit;
 - 1.7 Completion of Development.
- 2 The Owners shall also give the District Council no less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling.

Part 2

Affordable Housing

- 1 **OWNERS' OBLIGATION TO CONSTRUCT AFFORDABLE HOUSING UNITS**
 - 1.1 The Owner shall not make more than 10 Market Housing Units ready for Occupation until the Affordable Housing Scheme has been approved in writing by the District Council.
 - 1.2 Having given notice under paragraph 1 of Part 1 of this Schedule 2 above unless the District Council is the Registered Provider the Owner shall nominate a Registered Provider.
 - 1.3 Unless the District Council is the Registered Provider or otherwise agreed in writing the Owner shall endeavour to agree with the District Council on the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred prior to Occupation of the first Market Housing Unit.
 - 1.4 The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission.
 - 1.5 The Owner shall not Occupy or permit Occupation of more than fifty percent (50%) of the Market Housing Units unless and until fifty percent(50%) of the Affordable Housing Units have been made ready for residential occupation and have been transferred to the approved Registered Provider and written notification of such has been received by the District Council.
 - 1.6 The Owner shall not Occupy or permit Occupation of more than eighty percent (80%) of the Market Housing Units unless and all of the Affordable Housing Units have been made ready for residential Occupation and have been transferred to the approved

Registered Provider and written notification of such has been received by the District Council.

- 1.7 Unless otherwise agreed in writing by the District Council as part of the Affordable Housing Scheme the size and description of Affordable Housing Units shall include:

Affordable Rent

- 9 x 1 bedroom 2 person houses of 58sqm
- 7 x 2 bedroom 4 person houses of 79sqm
- 3 x 2 bedroom 4 person bungalows of 63sqm
- 8 x 3 bedroom 5 person houses of 93sqm

Shared Ownership

- 4 x 2 bedroom 4 person houses of 79 sqm
- 4 x 3 bedroom 5 person houses of 93sqm

- 1.8 Unless the District Council is the Registered Provider to procure a covenant in the transfer(s) of the Affordable Housing Units that the Registered Provider(s) will enter into the Affordable Housing Nomination Agreement within one (1) month of the date of the transfer(s) to it of the Affordable Housing Units (or such other time period as is otherwise agreed in writing with the District Council).
- 1.9 The Owner covenants that the Shared Ownership Dwellings shall only be Occupied by persons allocated in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and the Rental Dwellings shall only be Occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or chosen pursuant to the Affordable Housing Nomination Agreement which confers nomination rights on the District Council unless otherwise agreed by the District Council in writing or in accordance with the Government's Help to Buy Agency requirements.
- 1.10 From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing as set out herein save that this obligation shall not be binding on:
- 1.10.1 any Protected Person or any mortgagee or chargee of the Protected Person exercising the mortgagee protection provision within the Shared Ownership Lease or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargees; or
 - 1.10.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty; or
 - 1.10.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor; or
 - 1.10.4 any mortgagee of the Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions in the Shared Ownership Lease or any person or body deriving title from any such person; or
 - 1.10.5 any successor in title of 1.10.1 to 1.10.4 above.

- 1.11 Unless the District Council is the Registered Provider, any capital receipt received from a lessee purchasing further shares in the Shared Ownership Dwelling between 81% and 100% is to be retained by the Registered Provider and re-invested in Affordable Housing within the administrative district of the District Council subject to any contrary requirements within the Capital Funding Guide published by Homes England and any other publication that supersedes it.
- 1.12 The Owner shall not Occupy or permit Occupation of any of the Affordable Housing Units for any purpose other than as Affordable Housing.

2 FUTURE USE OF AFFORDABLE HOUSING UNITS

- 2.1 the Owner covenants that any transfer of land on which any of the Affordable Housing Units has been constructed to a Registered Provider shall be:
- 2.1.1 with vacant possession;
 - 2.1.2 free from any incumbrance other than existing at the time of the disposition, (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker);
 - 2.1.3 Subject to a 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;
 - 2.1.4 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;
 - 2.1.5 subject to a covenant to enter into an Affordable Housing Nomination Agreement substantially in the form of the agreement contained in the Fourth Schedule with the District Council within three (3) months of the date the Land is transferred from the Owner to the Registered Provider;
 - 2.1.6 subject to a covenant that the Registered Provider shall include a pre-emption provision in its own favour in any transfer of an Affordable Housing Unit from the said Registered Provider to the owner or tenant of an Affordable Housing Unit; and
 - 2.1.7 subject to a covenant that the Registered Provider shall use all capital receipts from the sale of Affordable Housing Units only for the purpose of providing Affordable Housing within the district of Babergh.
- 2.2 The obligations and restrictions contained in paragraph 2 of this Schedule 2 shall not be binding on:
- 2.2.1 a Chargee who has complied with the provisions of paragraph 3 of this Schedule 2;
 - 2.2.2 Any Affordable Housing Unit purchased by a tenant through Social Homebuy funded pursuant to section 19(3) Housing and Regeneration Act 2008 or a voluntary grant scheme pursuant to section 21 Housing Act 1996 or any replacement of said schemes; or
 - 2.2.3 any person or body deriving title through or from any other parties mentioned in this paragraph 2.

3 CHARGEES DUTY IN RELATION TO AFFORDABLE HOUSING UNITS

- 3.1 Any Chargee of a Registered Provider shall prior to seeking to dispose of any Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge shall first give written notice to the District Council of its intention to dispose.
- 3.2 If notice is given pursuant to paragraph 3.1 of this Schedule the following provisions shall apply:
 - 3.2.1 such Chargee shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the District 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
 - 3.2.2 if such disposal has not completed within the three month period referred to in clause 3.2.1 above, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the restrictions set out in this deed regarding the provision of Affordable Housing on the Land restrictions in this Deed which provisions shall determine absolutely,

PROVIDED THAT at all times the rights and obligations in this paragraph 3 shall not require the Chargee to act contrary to its duties under its mortgage or charge and the District Council must give consideration to protecting the interests of the Chargee of a Registered Provider in respect of monies, interest and costs outstanding under its mortgage or charge.

- 3.3 In the event that the Registered Provider (within 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 Owner to transfer the Affordable Housing Units to the Registered Provider pursuant to paragraph 2 of this part of this Schedule the Owner shall:
 - 3.3.1 notify the District Council three (3) months' prior to the Practical Completion of the Affordable Housing Units;
 - 3.3.2 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 2 of this part of this Schedule;
 - 3.3.3 submit any other information reasonably requested by the District Council to satisfy why the Owner has not been able to enter into a transfer with the Registered Provider pursuant to paragraph 2 of this part of this Schedule;
 - 3.3.4 offer the Affordable Housing Units to the District Council to be purchased by the District Council as Affordable Housing.
- 3.4 In the event the District Council make an acceptable offer to the Owner (within two (2) months' of written invitation) for the Affordable Housing Units then the Owner shall not Occupy or permit Occupation of more than twenty one (21) of the Market Housing Units until the Owner has provided the District Council with a freehold transfer document unconditionally released for completion.
- 3.5 In the event the District Council does not make an acceptable offer to the Owner (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 Owner shall pay the Affordable Housing Contribution to the District

Council within two (2) months of receipt of that written confirmation (such sum to be calculated in accordance with the District Council's standard affordable housing calculation as in force at the time of calculation) in lieu of the provision of Affordable Housing on the Land and the Owner shall not Occupy or permit Occupation of more than 50 Market Housing Units until the Owner has paid the Affordable Housing Contribution to the District Council.

- 3.6 Upon the payment of the Affordable Housing Contribution to the District Council in accordance with paragraph 3.5 above the provisions detailed in Part 2 of Schedule 2 regarding the provision of Affordable Housing Units shall no longer be applicable and the Owner shall be free to dispose of the said Affordable Housing Units as Market Housing Units.

Part 3

On-Site Open Space Provision

- 1 The Owners covenant to provide the Open Space Scheme to the District Council for its written approval on a date no later than the date when the first application for Approval of Reserved Matters is submitted to the District Council.
- 2 The Owners covenant not to allow Occupation of the first Dwelling until the Open Space Scheme has been approved by the District Council in writing.
- 3 The Owners covenant not to allow Occupation of more than thirty (30) Market Housing Units on the Site until the Open Space has been provided laid out and made available for public use in accordance with the approved Open Space Scheme.
- 4 The Owners covenant at their own cost to maintain and manage the Open Space strictly in accordance with the Open Space Scheme and the Planning Permission.

Part 4

Scout Hut and Canoe Storage Provision

- 1 To provide the Scout Hut and Canoe Storage Scheme to the District Council for its written approval on a date no later than the date when the first application for Approval of Reserved Matters is submitted to the District Council.
- 2 The Owners covenant not to allow occupation of the first dwelling until the Scout Hut and Canoe Storage Scheme has been approved by the District Council in writing.
- 3 The Owners covenant not to allow Occupation of more than thirty (30) market housing units on the Site until the Scout Hut and Canoe Storage Land has been transferred to an appropriate person in accordance with the Scout Hut and Canoe Storage Scheme.

SCHEDULE 3

The Owners Covenants with the County Council

Part 1

Giving of Notice

The Owners shall give to the County Council written notice of all of the following events within seven (7) days of the event having occurred:

- 1 Commencement of Development;
- 2 First Occupation of the first Dwelling.

Part 2

Public Rights of Way Contribution

- 1 The Owners covenant to pay to the County Council the Public Rights of Way Contribution (RPI Indexed) prior to the first Occupation of the first (1st) Dwelling.
- 2 The Owners hereby covenant not to Occupy or permit or allow Occupation of any Dwellings until the Public Rights of Way Contribution has been paid in full to the County Council.

Part 3

Resident Travel Pack Contribution

- 1 The Owners covenant to pay to the County Council the Resident Travel Pack Contribution (RPI Indexed) prior to the Commencement of Development.
- 2 The Owners hereby covenant not to Commence Development until the Resident Travel Pack Contribution has been paid in full to the County Council.

Part 4

Public Transport Contribution

- 1 The Owners covenant to pay to the County Council the Public Transport Contribution (BCIS Indexed) prior to the first Occupation of the first Dwelling.
- 2 The Owners hereby covenant not to Occupy or permit or allow Occupation of any Dwellings until the Public Transport Contribution has been paid in full to the County Council.

Part 5

Public Rights of Way Creation and Works

- 1 The Owners covenant to enter into the Creation Agreement with the County Council on the following terms prior to the first Occupation of the first Dwelling:
 - 1.1 that the Creation Agreement is at no cost to the County Council;
 - 1.2 that the Owners construct at their own expense and within such reasonable timescales as may be specified in the Creation Agreement the New Footpath to a specification to be reasonably determined by the County Council;

- 1.3 that the Owners dedicate at no cost to the County Council the New Footpath to the public as a public footpath once it has been constructed to the County Council's reasonable satisfaction;
 - 1.4 that upon dedication by the Owners the County Council immediately adopts and thereafter maintains the New Footpath as highway maintainable at the public expense; and
 - 1.5 such other terms that appear reasonably necessary to facilitate the construction and dedication of the New Footpath and that may be agreed between the two parties acting reasonably.
- 2 The Owners covenant not to Occupy or permit or allow Occupation of any Dwellings before the Creation Agreement has been entered into with the County Council.

SCHEDULE 4

County Council's Covenants

The County Council hereby covenants with the Owners:

- 1 To use the Contributions for the purpose for which they are paid.
- 2 The County Council shall if requested to do so in writing after the expiry of ten (10) years of the date that payment of any Contribution was paid by that person in accordance with the provisions of this Deed, repay to that person any sums which have not been committed or expended by the County Council in respect of that Contribution in accordance with the provisions together with any interest accrued at the Bank of England Base Rate minus two basis points compounding annually at financial year end. If for any period the Bank of England base Rate is at or below 0.02 percent (0.02%) then no interest shall be payable for that period by any party to that agreement.
- 3 When any Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten years of the payment of that Contribution within a further period of one (1) year notify the owners that such monies have been spent or committed such notice to include full details of what the said monies were spent or committed to.

DRAFT

THIS DEED OF NOMINATION RIGHTS is made on

20

BETWEEN:

- (1) [•][] whose registered address is [•][] (“**RP**”) and
- (2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 1 Russell Road Ipswich Suffolk, IP1 2BX (“**Council**”).

1 DEFINITIONS

In this Deed:

“**Affordable Housing**” has the meaning given to it in Annex 2 of 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;

“**Affordable Housing Unit**” means at least 35 dwellings (35% of the consented Dwellings) all of which shall be Affordable Housing to be provided on the Property of which (number to be agreed as part of the Affordable Housing Scheme) Dwellings shall be Affordable Rent Dwellings which shall be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or otherwise nominated by the Council pursuant to this Deed as varied from time to time and (number to be agreed as part of the Affordable Housing Scheme) Dwellings shall be Shared Ownership Dwellings and shall be occupied by persons in accordance with the Government’s Help to Buy Scheme (or other subsequent scheme) and Affordable Housing Units shall be construed accordingly;

“**Affordable Housing Scheme**” means the affordable housing scheme to be submitted to the District Council for its written approval for the provision of Affordable Housing as part of the Development detailing:

- (a) the plots and location;
- (b) bedroom numbers per Dwelling;
- (c) Dwelling size; and
- (d) tenure;

“**Affordable Rent**” means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable;

“**Affordable Rent Dwelling**” means an Affordable Housing Unit 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) for a dwelling of comparable size in the same location;

“**Chargee**” means any mortgagee or chargee of the RP who is in possession or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator;

“**Chargee’s Duties**” means the tasks and duties set out in clause 12.4 of this deed;

“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 Lettings Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the Council is a party;

“Dwelling” means a dwelling (including a house flat or bungalow and including both Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly;

“Gateway to Homechoice” means the Greater Haven Gateway sub-regional Choice Based Lettings Scheme (or any replacement or similar system in place at the time);

“Homes England” means 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;

“Initial Let” means the first tenancy of such newly constructed and previously unoccupied Affordable Rent dwelling;

“Initial Purchase” means the first purchase of such newly constructed and previously unoccupied Shared Ownership Dwelling;

“Local Connection Criteria” means an individual who immediately before taking up occupation of an Affordable Housing Unit:

- (a) had his only or principal home in the district of Babergh 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 (a) to (d) inclusive;
- (b) 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 Babergh and wishes to be near that relative; or
- (c) is employed in the district of Babergh 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;
- (d) 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 Council of his or her former residency in the district of Babergh for either (i) six (6) months out of the preceding twelve (12) months or (ii) three (3) years out of the preceding five years and in either case such period of former residency shall end with the Availability Date;

“Mutual Exchange” means the procedure by which a tenant may exchange their house with another council or housing association tenant;

“Nomination List” means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA;

“Nominee” means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the RP as best meeting the criteria for the category of Affordable Rent Dwelling in respect of which the RP is to select a person from the Nomination List and offer a Tenancy Agreement;

“Practical Completion” means issue of a certificate of practical completion by the RP’s surveyor or in the event that the Affordable Housing Units are constructed by a party other than the RP the issue of a certificate of practical completion by that other party’s surveyor;

“Property” means the land and dwellings at Barrow Hill Acton Suffolk shown edged red on the plan annexed;

“Protected Tenant” means any Nominee who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;

“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 and for the avoidance of doubt this could include the Council;

“Shared Ownership Dwelling” means an Affordable Housing Unit to be let on a Shared Ownership Lease in accordance with the terms as set out in the Capital Funding Guide the Capital Funding Guide published by Homes England and any other publication that supersedes it;

“Shared Ownership Lease” means a lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following:

- (a) not more than 70% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider;
- (b) power to the purchaser to increase their ownership up to 100% if they so wish;
- (c) an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England;

“Service Level Agreement” or **“SLA”** means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between (1) the Registered Provider and (2) the Council;

“Staircasing” means the acquisition after the date of the Initial Purchase of additional tranches of equity in the Shared Ownership Dwelling as set out in the Shared Ownership Lease for that Affordable Housing Unit and as detailed in the Capital Funding Guide published by Homes England and any other publication that supersedes it;

“Tenancy Agreement” means an assured tenancy agreement in a form prepared by the RP and containing terms which accord with the form of tenancy agreement being used by the RP from time to time for its general lettings;

“Vacancy Notice” means a written notice (in a form to be agreed between the RP and given by the RP to the Council within five (5) weeks from the date of this Deed) the function of such notice being the notification to the Council by the RP of the expected date on which the construction and fitting out of the Affordable Rented Dwellings will be complete;

“Void” means an Affordable Rent Dwelling which is vacant otherwise than as a result of the tenant having:

- (a) moved to other accommodation either by transfer or decant provided by the RP;

- (b) moved to other accommodation under a reciprocal arrangement provided by another Registered Provider;
- (c) vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere;

“Void Notice” means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the Council of a void in respect of an Affordable Rent Dwelling.

2 ENABLING PROVISIONS

This Deed is made pursuant to the Local Government Act 1972 section 111, section 1 of the Localism Act 2011 as amended 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.

4 INITIAL LETS/INITIAL PURCHASE

In relation to the Initial Lets and Initial Sale of any Affordable Housing Units the following provisions shall apply:

- 4.1 the RP shall give the Council not less than four (4) months' written notice of the date when all the Affordable Housing Units will be ready for occupation;
- 4.2 the RP shall serve a Vacancy Notice upon the Council in respect of an Affordable Rent Dwelling not earlier than ten (10) weeks prior to an Affordable Rent Dwelling becoming available for occupation.

5 VOIDS

Should any Affordable Rent Dwelling become a Void after the Initial Let or the RP has reasonable cause to believe it will become a Void then the Gateway to Homechoice SLA procedure shall apply in each case.

6 SUPPLEMENTAL PROVISIONS RELATING TO ALLOCATING INITIAL LETS AND VOIDS

- 6.1 Where there are two or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in the definition of Local Connection Criteria in clause 1 of this Deed and thereafter subject to clause 6.2 and 6.3 of this Deed, preference must be given to the applicant/s who have the highest housing need according to the Council's current allocations policy.
- 6.2 In a case where a Nominee is fleeing domestic violence and has been accepted as homeless by the Council in accordance with the Homeless Reduction Act 2018 the Local Connection Criteria set out in the definition of Local Connection Criteria in clause 1 of this Deed will not be applied. For the avoidance of doubt the remainder of the Council's allocation policy will continue to apply in determining the applicant with the highest housing need.
- 6.3 If any of the Affordable Housing Units are designed or adapted for people with disabilities or in need of level access then any such dwelling may be first offered to a person or persons with disabilities or level access needs who require such

accommodation even where such person(s) have a lesser local connection under the definition of Local Connection Criteria in clause 1 of this deed than someone who does not have disabilities or level access need.

7 RP COVENANTS

The RP covenants with the Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies:

- 7.1 to ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units;
- 7.2 to ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or as low-cost home ownership and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider; and
- 7.3 to construct the Affordable Housing Units in accordance with Homes England requirements.

8 ALTERATION OF LISTS

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

9 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.

10 TRANSFER TO OTHER REGISTERED PROVIDER

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

11 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

12 AGREEMENTS AND DECLARATIONS

The parties agree:

- 12.1 nothing in this Deed fetters or restricts the exercise by the Council of any of its powers;
- 12.2 the obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 section 33;

- 12.3 from the date of Practical Completion the Affordable Housing Units shall be let or purchased in accordance with the terms of this Deed save that the obligations and restrictions contained in this Deed shall not be binding on:
- 12.3.1 any Protected Tenant or any mortgagee or Chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and Chargees; or
 - 12.3.2 any chargee and any successor in title to the Chargee provided that the Chargee shall have first complied with the Chargee's Duties; or
 - 12.3.3 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;
- 12.4 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 Council of its intention to dispose and:
- 12.4.1 in the event that the Council responds within one (1) month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee;
 - 12.4.2 if the Council does not serve its response to the notice within the said period of one (1) month contained in clause 12.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this Deed;
 - 12.4.3 if the Council or any other person cannot within two (2) months of the date of service of its response under clause 12.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 12.4 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 Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

13 MUTUAL EXCHANGES

The requirements of this Deed shall apply to all requests for Mutual Exchanges .

14 SHARED OWNERSHIP DWELLINGS - CAPITAL RECEIPTS FROM STAIRCASING

Capital receipts received by the RP for shares sold between 81% and 100% must be recycled and reinvested in new Affordable Housing within the District of Babergh.

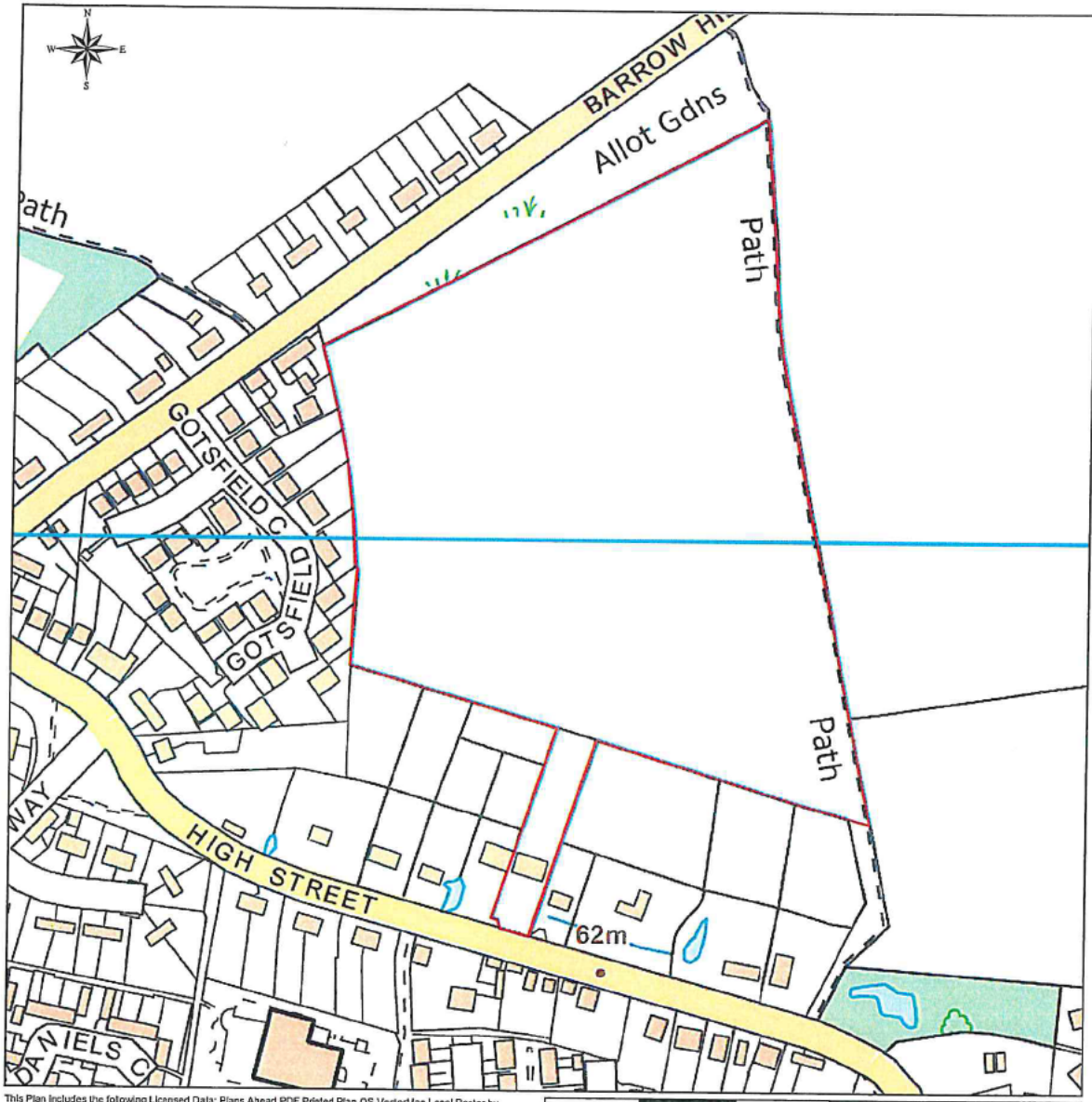
AS WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS INSTRUMENT AS A DEED
hereto the day and year first above written

Signatories:

District Council

Registered Provider

Location Plan #1119889



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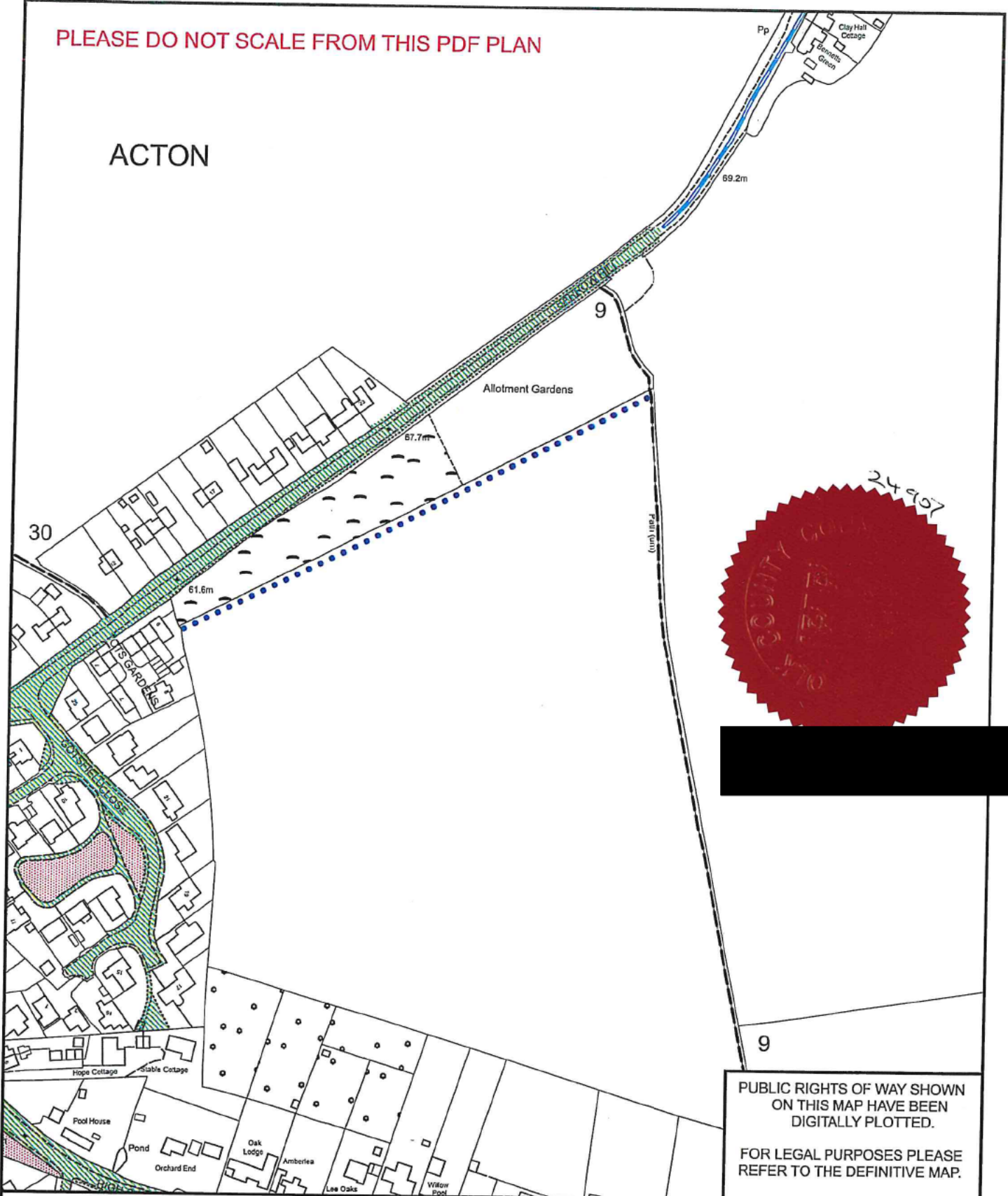
0m 50m 100m 150m 200m 250m

Scale: 1:2500, paper size: A3



PLEASE DO NOT SCALE FROM THIS PDF PLAN

ACTON



PUBLIC RIGHTS OF WAY SHOWN ON THIS MAP HAVE BEEN DIGITALLY PLOTTED.

FOR LEGAL PURPOSES PLEASE REFER TO THE DEFINITIVE MAP.

DC/20/05361 S106 - Land South East Of Barrow Hill, Acton, Suffolk
 PROPOSED PUBLIC FOOTPATH CREATION - ACTON



Executive Director of Growth, Highways and Infrastructure
 Endeavour House, 8 Russell Road, Ipswich, Suffolk. IP1 2BX

- Public Footpath
- Proposed public footpath

Scale 1:2500



Ordnance Survey MasterMap

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Filed at:

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THIS DEED on the day and year first before written

EXECUTED as a DEED by affixing)
the COMMON SEAL of.....)
BABERGH DISTRICT COUNCIL)
in the presence of:.....)

.....
Authorised Signatory

EXECUTED as a DEED by affixing)
the COMMON SEAL of.....)
SUFFOLK COUNTY COUNCIL)
in the presence of:.....)



Authorised Signatory

EXECUTED as a DEED by.....)
JOHN ANDERSON.....)
in the presence of:.....)

.....

Witness Signature.....

Witness Name.....

Witness Address.....

.....

.....

Witness Occupation.....

EXECUTED as a DEED by.....)
CHRISTINE WEBSTER ANDERSON)
in the presence of:.....)

.....

Witness Signature.....

Witness Name.....

Witness Address.....

.....

.....

Witness Occupation.....

EXECUTED as a DEED by.....)
CHARLES CLEAVER BAILEY)
in the presence of:.....)

.....

Witness Signature.....

Witness Name.....

Witness Address.....

.....

.....

Witness Occupation.....

EXECUTED as a DEED by.....)
PENELOPE ANNE WOTTON)
in the presence of:.....)

.....

Witness Signature.....

Witness Name.....

Witness Address.....

.....

.....

Witness Occupation.....