

**Planning Obligation (Number 2) by Deed under Section 106 of the Town and  
Country Planning Act 1990**

relating to the development of land at Post Mill Lane, Fressingfield, Suffolk

Dated: 27 September 2021

**MID SUFFOLK DISTRICT COUNCIL (1)**

**SUFFOLK COUNTY COUNCIL (2)**

**C E DAVIDSON FARMS LIMITED (2)**

27 September

2021

## **PARTIES**

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House 8 Russell Road Ipswich IP1 2BX (“the District Council”)
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich IP1 2BX (“the County Council”)
- (3) **C E DAVIDSON FARMS LIMITED** (Co. Regn. No. 03369333) whose registered office is situated at South View, Fressingfield, Eye, Suffolk IP21 5PJ (“the Owner”)

## **INTRODUCTION**

1. The District Council is a local planning authority for the purposes of the Act for the area in which the Site is situated.
2. The County Council is the local education authority, 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 within this Deed may be enforced.
3. The ownership and other interests in the Site are as is set out in the First Schedule.
4. The Application made to the District Council by the Owner for planning permission for the Development has failed to be determined by the Council in the requisite time period and as such the Owner has submitted the Appeal to the Secretary of State for Housing, Communities and Local Government and the Appeal has been allocated reference APP/W3520/W/21/3266951.

5. The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed to the extent that is necessary to ensure that the Development is acceptable in planning terms in the event the Appeal is granted by the Inspector.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1 DEFINITIONS**

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

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market as defined in Annex 2 of the NPPF (as may amended and replaced from time to time)
"Affordable Housing Contribution"	means a sum to calculated in accordance with the District Council's affordable housing policies in place at the time to be paid by the Owner to the District Council to be spent on Affordable Housing within the administrative district of the District Council in the event the Owner is unable to dispose of the Affordable Housing in accordance with the Second Schedule
"Affordable Housing Nomination"	an agreement between the owner of the

Agreement”

Affordable Housing Units and the District Council regulating the occupancy of the Affordable Housing for first and subsequent occupation in substantially the same form as at the Sixth Schedule of this Deed including such amendments as are agreed between the owner of the Affordable Housing Units and the District Council and “Nomination Agreement” shall have the same meaning

“Affordable Housing Scheme”

a document detailing the location, proposed layout, specification, mix, size and tenure of the Affordable Housing Units (unless otherwise agreed in writing with the District Council)

“Affordable Housing Units”

35% of the Dwellings to be provided as Affordable Housing based on an indicative mix of 4 Affordable Rent Dwellings and 2 Shared Ownership Dwellings to be constructed in accordance with the Affordable Housing Scheme (unless otherwise agreed in writing with the District Council)

“Affordable Rent”

Affordable Housing Units which comply with the Government's rent policy for affordable rent and otherwise complies with the definition of “Affordable housing for rent” at part a) of the NPPF or as otherwise agreed with the District Council

in writing

“Appeal“

means the appeal to the Secretary of State for Housing, Communities and Local Government following the refusal of the Application by the District Council and given appeal reference APP/W3520/W/21/3266951

“Application“

the application for outline planning permission to develop the Site in accordance with the application plans and other materials deposited with the District Council and validated on 27 December 2019 and bearing the District Council's reference number DC/19/05956

“BCIS Index“

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

“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
“Chargee’s Duty”	the tasks and duties set out in paragraph 9 of Part 1 of the Second Schedule
“CIL”	the community infrastructure levy introduced by the Planning Act 2008 as amended or any successor levy or charge
“CIL Regulations”	the Community Infrastructure Regulations 2010 (as amended)
“CIL Tests“	means the tests set out in Regulation 122(2) of the CIL Regulations
“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 properties 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 unless otherwise agreed in writing with the District Council
“Commencement of Development“	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins

to be carried out on the Site 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"

the date that the last Dwelling is first Occupied

"Development"

the development of the Site in accordance with the Planning Permission

"Dwelling"

any dwelling (including a house flat maisonette or bungalow and including Affordable Housing Units and Market Housing Units) to be constructed pursuant to the Planning Permission" and "Dwellings" shall be construed

accordingly

“HE”	Homes England or its successor body or other appropriate body as the District Council may nominate
“Inspector”	means an inspector appointed by the Secretary of State for Housing, Communities and Local Government to determine the Appeal
“Interest”	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
“Intermediate Housing”	one or more of Shared Ownership Dwellings, Shared Equity Dwellings, or other low cost homes for sale (at a price equivalent to at least 20% below local market value) (or as otherwise agreed with the District Council in writing)
“Management Company”	a company or body who will take over responsibility for the future maintenance of the Open Space in perpetuity and which definition may include a resident’s association established for this purpose or a private limited company
“Market Housing Units”	those Dwellings which are not Affordable Housing Units



“Nominated Body”

means one or any of the following as approved by the District Council having had regard to the views of the Owner:

- a) Fressingfield Parish Council;
- b) the Management Company; or
- c) such other body as the Owner may propose and the District Council or Fressingfield Parish Council may approve

and “Nominated Bodies” shall be construed accordingly

“NPPF”

the National Planning Policy Framework published in July 2021 or any subsequent revision or amendment of this document

“Occupation”

occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupied” and “Occupy” shall be construed accordingly

“Open Space”

an area(s) of space shown on the Open Space Plan which is for informal or (if laid out) formal recreational use by the public

“Open Space Plan”

a plan to be submitted to the District

Council for approval indicating the location of the Open Space

“Open Space Maintenance Contribution” a financial contribution to be used for the maintenance of the Open Space to be calculated at a rate of £15.68 per square metre for a period to cover 10 years (or such other sum as agreed between the Owner and the District Council (acting reasonably) pursuant to the Open Space Specification) PROVIDED THAT this shall not be payable in the event the Management Company are the Nominated Body or where maintenance of the Open Space is to be funded by way of CIL no Open Space Maintenance Contribution shall be payable under this Deed

“Open Space Specification” means the specification for the delivery of the Open Space including specifications plans and drawings showing but not limited to the layout and design of the Open Space, the phasing and timing of the delivery of the Open Space including details of any landscaping, paths and access arrangements together with details of the proposed future management regime for the Open Space (including the identity of the Nominated Body) to be agreed in writing with the District Council in accordance with the

District Council's current policies and requirements at the time and in accordance with Part 2 of the Second Schedule

"Open Space Transfer"

a transfer of the Open Space to be approved in writing by the District Council and which inter alia shall contain the following provisions:

- a) In the event that Fressingfield Parish Council or the District Council is the Nominated Body the Open Space Maintenance Contribution shall be paid to the Parish Council or District Council (as appropriate) on completion of the transfer AND FOR THE AVOIDANCE OF DOUBT there shall be no obligation to pay the Open Space Maintenance Contribution if the Nominated Body is the Management Company or such other body as may be approved or where maintenance of the Open Space is to be funded by way of CIL
- b) The Owner shall transfer the fee simple estate free from encumbrances save those set out

in the title;

- c) All easements and rights necessary in relation to access for the benefit of the Open Space
- d) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;
- e) Restrictive covenants by the Nominated Body or the Nominated Bodies;
  - (i) Not to use or permit the Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space as defined in this Deed and shown on the Open Space Plan;
  - (ii) Not to use or permit the Open Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of

the Development

"Parish Council"

Fressingfield Parish Council

"Planning Permission"

the planning permission as may be granted by the Secretary of State for Housing, Communities and Local Government or the Inspector pursuant to the Appeal

"Practical Completion"

issue of a certificate of practical completion by the Owner's architect or project manager or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect or project manager

"Protected Tenant"

any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- (c) has been granted a shared ownership lease by a Registered

Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns 100% of the Affordable Housing Unit

“Registered Provider”

a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by HE under Chapter 3 of that Act or such other body to which the Affordable Housing Units are to be transferred as agreed with the District Council pursuant to Paragraph 1 Part 1 of the Second Schedule which for the avoidance of doubt includes the District Council (unless otherwise agreed in writing with the District Council)

“Reserved Matters”

the appearance, landscaping, layout and scale of the Development in respect of which details have not been determined in the Planning Permission

“Reserved Matters Application”

the application(s) for the approval of Reserved Matters to be submitted to the

District Council pursuant to the Planning Permission

"School Transport Contribution"	the sum of Eighteen Thousand and Seventy Five Pounds (£18,075) payable by the Owner to the County Council towards providing transport for secondary school age pupils for a minimum of five years from first Occupation of the Development
"Shared Ownership Dwellings"	Affordable Housing Units 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 HE's capital funding guide unless otherwise agreed in writing with the District Council
"Shared Ownership Lease"	a lease or sub-lease of Shared Ownership Dwellings granted at a premium whereby a minimum of 10% and up to 70% (seventy percent) on first purchase of the equitable interest in the Shared Ownership Dwellings 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% (one hundred percent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and which lease shall be at an initial rent not exceeding 2.75% percent of the value of the equity retained by the Registered Provider subject to annual increases not exceeding the Retail Prices Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the District Council shall reasonably determine) plus 0.5 percent or such other rent as complies with the requirements from time to time of HE and contain a covenant requiring any capital receipt received by the Registered Provider of shares between 80 and 100% to be retained by the Registered Provider and recycled for affordable housing investment in Mid Suffolk

“Site”

the land against which this Deed may be enforced as shown edged red for identification purposes only on the Site Plan

“Site Plan”

the plan marked “Proposed Site Location Plan” attached to this Deed



# Proposed Development Post Mill Lane Fressingfield



**NOTES**

The design is based on the information provided by the client and is subject to change without notice. The design is based on the information provided by the client and is subject to change without notice. The design is based on the information provided by the client and is subject to change without notice.

**DESIGNERS RESIDUAL HAZARDS**

THE FOLLOWING DESIGNERS RESIDUAL HAZARDS HAVE BEEN IDENTIFIED AND SHOULD BE AVOIDED/MANAGED BY THE CONTRACTOR AND HAZARD TAGS SHOULD BE DISPLAYED AND REMOVED SHALL BE CARRIED FORWARD AS PART OF THE HEALTH AND SAFETY HAZARD DOCUMENTATION.

HAZARD	DESCRIPTION




**LA RONDE WRIGHT**  
development & planning

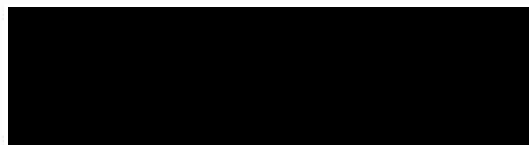
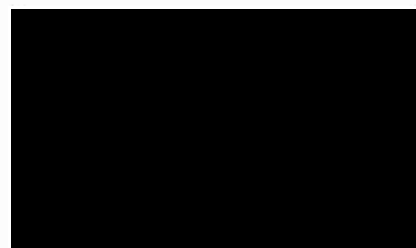


Proposed Development Post Mill Lane Fressingfield

Proposed Site Location Plan

DATE	SCALE

1325-TD-LW-RX-DRG-AR-1004-R



"TRO Contribution"	the sum of Ten Thousand Pounds (£10,000.00) payable by the Owner to the County Council to secure a 20mph speed limit on New Street Eye
"Working Days"	Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.
"Wildlife Area"	means the area shown on the Wildlife Area Masterplan or as otherwise may be agreed between the Owner and District Council from time to time
"Wildlife Area Masterplan"	means the plan attached to this Deed entitled "Wildlife Area Masterplan" and which shows the Wildlife Area
"Wildlife Areas Specification"	means the specification for the delivery of the Wildlife Area based on the Wildlife Area Masterplan which sets out, the phasing and timing of the delivery of the Wildlife Area including details of any landscaping, paths and access arrangements together with details of the proposed future management regime for the Wildlife Area to be agreed in writing with the District Council in accordance with the District Council's current policies and requirements at the time and in accordance with Part 3 of the Second Schedule

G4 G4

SWING GATE ENTRANCE TO WILDLIFE AREA

WILDLIFE AREA INFORMATION BOARD

RAISED BANK ISLAND WITH SOUTH FACING SCRUBS OR REPTILES

0.75m  
0.5m  
0.25m

HABITAT PILE/BANK

PEDESTRIAN BENCH

POST AND WIRE MESH FENCE AROUND POND

WILDLIFE POND APPROX 100CM<sup>2</sup>

RAISED DECK OVER DAMP MARGINAL ZONE TO PLATFORM









ACCESS PLATFORM FOR POND OFFING

LOCKABLE GATE FOR ACCESS

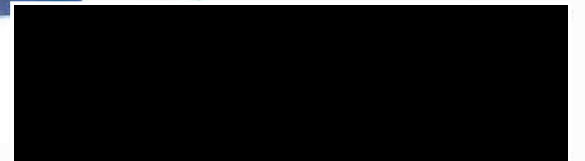
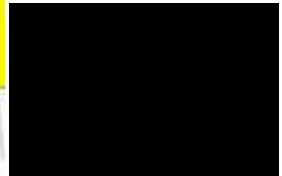
HABITAT PILE/BANK

PEDESTRIAN BENCH

T4 Field maple

-  EXISTING WOODLAND/SOIL
-  PROPOSED POND
-  MINIMAL INTERVENTION AREA FOR SOIL GENERATION
-  NATIVE TREE AND HEDGE PLANTING
-  ENHANCEMENT ONLY WILDLIFE/GRASS SEED MIX OR SIMILAR
-  MARGINAL AQUATICS CAREX/FENNELA/PHRAGMITES
-  MOWN POC PATH APPROX 5M WIDE
-  NATIVE TREES AND SHRUB PLANTING

EXISTING SOIL ON SLOPE AND WOODLAND REMAINS TO BE MAINTAINED ALONG SOUTH SIDE OF DRIVE



## **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 its statutory functions
- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the District Council and the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed

and the same shall apply to any provision requiring a review of any such plan or strategy or other document

2.8 Save for the provisions of Paragraph 8 of Part 1 of the Second Schedule none of the covenants contained in this Deed on the part of the Owner shall be enforceable against owner-occupiers mortgagees or tenants of the Dwellings nor against those deriving title from them

2.9 None of the covenants in this Deed shall be enforceable against 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

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

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

### **3 LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers

3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council as local planning authority and by the County Council against the Owner and its 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 shall take effect on the date that it is completed but performance of the planning obligations contained in this Deed at Clause 5 and the Schedules are conditional upon:

(i) the grant of the Planning Permission; and

(ii) the Commencement of Development

#### **5. THE OWNER'S COVENANTS**

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

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

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

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

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

7.1 The County Council covenants with the Owner as set out in the Fifth Schedule

#### **8. MISCELLANEOUS**

8.1 The Owner shall act in good faith and shall co-operate with the District Council and the County Council to facilitate the discharge and performance of all obligations contained herein and following the Commencement of Development the Owner shall comply with any reasonable requests of the District Council and the County Council and their duly authorised officers or agents to have reasonable access to

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

- 8.2 The Owner agrees declares and covenants with the District Council and the 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 Deed
- 8.3 The Owner shall pay to the District Council and the County Council the completion of this Deed the proper and reasonable legal costs of the District Council and the County Council incurred in the negotiation preparation and execution and completion of this Deed
- 8.4 The Owner shall pay to the County Council on completion of this Deed its monitoring costs to the value of Eight Hundred and Twenty Four Pounds (£824.00)
- 8.5 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 8.6 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owner from either the District Council or the County Council under the terms of this Deed such approval or consent or expression of satisfaction or subsequent deed 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 – Growth and Sustainable Planning (or an officer fulfilling an equivalent function) or an officer acting under his authority and on behalf of the County Council by the Head of Planning or an officer acting under his authority

- 8.7 Following the performance and satisfaction of all the obligations contained in this Deed and on the written request of the Owner the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 8.8 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 8.9 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 expires by effluxion of time before the Commencement of the Development or is modified (without the consent of the Owner) and following any of those events 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 will be liable for any breach of any of the planning obligations or other provisions of this Deed if he no longer has an interest in the Site (or that part of the Site in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or any part or parts of the Site) shall constitute an interest for the purposes of this Clause
- 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 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where



expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the District Council

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

8.14 Any obligation contained in this Deed shall not apply and not have any force nor effect if the Secretary of State for Housing, Communities and Local Government or the Inspector finds in his/her decision that a particular obligation or part thereof is not in accordance with the CIL Tests or if the Secretary of State for Housing, Communities and Local Government or the Inspector finds in his/her decision that any obligations in this Deed are to be more appropriately secured by planning condition and the Planning Permission is granted subject to such conditions or should the Inspector find in his/her decision that a particular contribution as defined in this Deed or payment obligations should be amended so as to ensure compliance with the CIL Tests or to avoid duplication with planning conditions imposed on the grant of Planning Permission (whether in terms of amount, description, triggers or delivery) such contribution and obligation in this Deed shall be treated as amended in accordance with the Inspector's decision

## **9. WAIVER**

No waiver (whether expressed or implied) by the District Council the County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default. No single or partial exercise of any right or remedy on the part of any Party shall prevent or restrict the further exercise of that right or any other right of remedy

## **10. CHANGE IN OWNERSHIP**

The Owner agrees with the District Council and the County Council to give them 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

## **11. INTEREST AND INDEXATION**

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. The contributions specified in the Third Schedule shall be increased by an amount equivalent to the increase in the BCIS Index from the date of this Deed until the date on which such sum is payable using the application of the formula  $A = B \times C / D$  where:

- a) A is the sum payable under this Deed;
- b) B is the original sum calculated as the sum payable;
- c) C is the Index for the month two months before the date on which the sum is payable;
- d) D is the Index for the month two months before the date of this Deed; and
- e) C/D is greater than one.

## **12. RIGHT OF ENTRY**

At all times on not less than forty-eight (48) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of

the District Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed only PROVIDED THAT:

- 12.1 such employee or agent on arrival at the Site shall if requested by any person present who appears to be the Owner 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);
- 12.2 such entry shall be effected between 08.00 and 17.00 on any day;
- 12.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;
- 12.4 such employee or agent may take photographs measurements and levels
- 12.5 such employee or agent may not remain on the Site for no longer than is reasonably necessary for carrying out a proper inspection;
- 12.6 such employee or agent and any other accompanying persons shall comply with the Owner's or the Owner's representative's reasonable directions and precautions in the interests of safety; and
- 12.7 such employee or agent may only enter onto the Site following the Commencement of Development.
- 12.8 For the avoidance of doubt the provisions of this Clause 12 shall be in addition to and does not prejudice the powers conferred on the District Council by Sections 169A, 169B and 169C of the Act

### **13. VAT**

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

#### 14. NOTICES

14.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post 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 Infrastructure Team Mid Suffolk District Council Endeavour House, 8 Russell Road Ipswich Suffolk 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 Owner	Howes Percival LLP, Flint Buildings, 1 Bedding Lane, Norwich, NR3 1RG (Ref: JZC/120625.8)

14.3 Any notice or other written communication to be given by the District Council or 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 (as appropriate) 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 Owner the District Council and/or the County Council ("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")
- 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 to the dispute as follows:
- 15.3.1 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
  - 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 to the dispute 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 The award shall be final and binding in the absence of manifest error 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 and the Expert's costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares

15.8 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 15 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 Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the District Council for a certificate to that effect and upon the District Council being reasonably satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the District 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 or the County 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 or the County Council shall replace those previously approved and shall be deemed to have been incorporated into this Deed

## **18. NOTIFICATION**

18.1 The Owner covenants to inform the District Council and the County Council by way of written notice within ten (10) Working Days following:

- a) Commencement of Development;
- b) Occupation of the first (1<sup>st</sup>) Dwelling;
- c) Occupation of the eighth (8<sup>th</sup>) Dwelling;
- d) Completion of the Development.

## **19. JURISDICTION**

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

## **20. DELIVERY**

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



## **FIRST SCHEDULE**

### **Part 1**

#### **FREEHOLD INTERESTS**

The Owner is the freehold owner of the Site shown edged red for identification purposes only on the Site Plan the title to which is part of the land registered at the Land Registry with Title Absolute under Title Numbers SK358961 and SK174018

**SECOND SCHEDULE**  
**THE OWNER'S COVENANTS WITH THE DISTRICT COUNCIL**

**PART 1**

**AFFORDABLE HOUSING**

- 1 The Owner shall endeavour to agree with the District Council 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 Owner may Commence the Development whilst that process is ongoing but shall not Occupy or permit Occupation of any Dwellings until the identity of the Registered Provider has been agreed with the District Council
  
- 2 Not to Commence the Development until an Affordable Housing Scheme has been submitted to and approved by the District Council in writing PROVIDED THAT a revised Affordable Housing Scheme may be submitted to and approved by the District Council following the Commencement of Development
  
- 3 Not to Occupy or permit Occupation of more than 50% of the Market Housing Units until written notice has been given to the District Council that 50% of the Affordable Housing Units to be located on the Development have been:
  - 3.1 constructed in accordance with the Planning Permission;
  - 3.2 made ready for residential occupation; and
  - 3.3 transferred to the Registered Provider (or where it is agreed in the Affordable Housing Scheme that no transfer is required their on-going provision has been secured)
  
- 4 Not to Occupy or permit Occupation of more than 80% of the Market Housing Units until written notice has been given to the District Council that all of the Affordable Housing Units to be located on the Development have been:

- 4.1 constructed in accordance with the Planning Permission;
  - 4.2 made ready for residential occupation; and
  - 4.3 transferred to the Registered Provider (or where it is agreed in the Affordable Housing Scheme that no transfer is required their on-going provision has been secured)
  - 4.4 or the Affordable Housing Contribution has been paid in lieu of the onsite provision
- 5 To construct the Affordable Housing Units in accordance with the Affordable Housing Scheme in the positions agreed in writing by the District Council
- 6 In the event that the approved Affordable Housing Scheme requires the Affordable Housing Units to be transferred to a Registered Provider to procure a covenant in the transfer(s) of these Affordable Housing Units that the Registered Provider will enter into an Affordable Housing Nomination Agreement with the District Council and for this document to be completed between the District Council and the Registered Provider within three (3) months of the date of the transfer(s) to it of the Affordable Housing Units and covenants from the Registered Provider substantially in the form set out in the remainder of this Part 1 of the Second Schedule. Those covenants bind the Registered Provider, not the Owner (save that Paragraph 8 of this Part 1 of the Second Schedule binds the Owner until they dispose of the Affordable Housing to the Registered Provider). The Affordable Housing Nomination Agreement and the covenants in this Part 1 Second Schedule shall be subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of this Deed are met
- 7 The Affordable Housing Units which are 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 District Council is a party or chosen pursuant to the Affordable Housing Nomination Agreement made pursuant to this Part 1 to the Second Schedule which confers nomination rights on the District Council unless otherwise agreed by the District Council in writing

- 8 From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
- a) 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;
  - b) any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty;
  - c) any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor;
  - d) a person acquiring an interest in an Affordable Housing Unit under a statutory right to buy or acquire;
  - e) an owner-occupier of an Affordable Housing Unit who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest by or a person who has acquired 100% of a Shared Equity Dwelling or other Intermediate Housing tenure; or
  - f) all persons or bodies deriving title under or through any persons or bodies referred to in this paragraph 8 (including their successors in title)
- 9 The Chargee shall prior to seeking to dispose of any of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge comply

with the requirements under Part 2 of Chapter 4 of the Housing and  
Regeneration Act 2008

## PART 2

### OPEN SPACE

- 1.1 The Owner hereby covenants with the District Council that prior to Commencement of Development and in parallel with the relevant reserved matter application or discharge of condition application for the Planning Permission to submit the Open Space Plan and the Open Space Specification to the District Council for approval.
- 1.2 The Owner covenants not to Commence the Development unless and until the Open Space Plan and the Open Space Specification have been approved by the District Council in writing such approval not to be unreasonably withheld or delayed.
- 1.3 If the District Council fails within twenty (20) Working Days' of submission of the Open Space Plan and Open Space Specification to notify the Owner of its approval of the Open Space Plan and the Open Space Specification the Owner shall be entitled to assume deemed approval of the Open Space Plan and Open Space Specification.
- 1.4 Unless otherwise agreed in Writing with the District Council (in the Open Space Specification or otherwise) the Owner hereby covenants with the District Council not to permit the Occupation of any more than eight (8) of the Dwellings until the Open Space has been provided in accordance with the approved Open Space Plan and the Open Space Specification.
- 1.5 The Owner further covenants with the District Council at their own cost to maintain and manage the Open Space strictly in accordance with the Open Space Plan the Open Space Specification and the Planning Permission until the date of the Open Space Transfer described in paragraphs 1.7 and 1.8 of this Part 2 of this Second Schedule has been completed and for the avoidance of doubt

the Open Space can be transferred in full to the Nominated Body or if the Parties (acting reasonably) so agree in part to different Nominated Bodies.

- 1.6 The Owner covenants that following the District Council's written confirmation that the Open Space has been laid out in accordance with the Open Space Plan and Open Space Specification to transfer the freehold or part thereof of the Open Space as agreed in writing by the District Council to the appropriate Nominated Body and such transfer to include such items as necessary and outlined in the Open Space Transfer and shall for the avoidance of doubt include a covenant that the Open Space shall thereafter be retained and maintained in accordance with the Open Space Plan the Open Space Specification and the Planning Permission.
- 1.7 Subject to the requirements of paragraph 1.6 of this Part 2 of the Second Schedule the Owner shall transfer the Open Space to the Nominated Body in full or Nominated Bodies in part within eighteen (18) months of Occupation of the last Dwelling in accordance with the Open Space Transfer.
- 1.8 The Open Space is to be transferred to the Nominated Body in full or Nominated Bodies in part for the sum of one pound (£1) within eighteen months (18 months) of Occupation of the last Dwelling in accordance with the Open Space Transfer.

## **PART3**

### **WILDLIFE AREA**

- 1.1 The Owner hereby covenants with the District Council that prior to Commencement of Development and in parallel with the relevant reserved matter application or discharge of condition application for the Planning Permission to submit the Wildlife Area Specification to the District Council for approval.
- 1.2 The Owner covenants not to Commence the Development unless and until the Wildlife Area Specification has been approved by the District Council in writing such approval not to be unreasonably withheld or delayed.
- 1.3 If the District Council fails within twenty (20) Working Days' of submission of the Wildlife Area Specification to notify the Owner of its approval of the Wildlife Area Specification the Owner shall be entitled to assume deemed approval of the Wildlife Area Specification.
- 1.4 Unless otherwise agreed in writing with the District Council (in the Wildlife Area Specification or otherwise) the Owner hereby covenants with the District Council not to permit the Occupation of any more than nine (9) of the Dwellings until the Wildlife Area has been provided in accordance with the approved Wildlife Area Specification.
- 1.5 The Owner further covenants with the District Council at their own cost to maintain and manage the Wildlife Area strictly in accordance with the Wildlife Area Specification and the Planning Permission in perpetuity



**THIRD SCHEDULE**  
**THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL**

**PART 1**

**SCHOOL TRAVEL CONTRIBUTION**

- 1 The Owner covenants to pay to the County Council the School Travel Contribution prior to first Occupation of the 9<sup>th</sup> Dwelling.
- 2 The Owner hereby covenants not to Occupy or permit first Occupation of the 9<sup>th</sup> Dwelling until the School Travel Contribution has been paid to the County Council.

**PART2**

**TRO CONTRIBUTION**

- 1 The Owner covenants to pay to the County Council the TRO Contribution prior to the Commencement of the Development.
- 2 The Owner hereby covenants not to Commence or permit the Commencement of the Development until the TRO Contribution has been paid to the County Council.

## FOURTH SCHEDULE

### DISTRICT COUNCIL'S COVENANTS

1. The District Council covenants with the Owner:
  - 1.1 To use all the contributions it received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
  - 1.2 To account for interest at the base rate of the Bank of England from time to time on all the contributions it receives under the terms of this Deed as if such contributions were held in an interest bearing account.
  - 1.3 In the event that any of the contributions or any part of them have not been committed (by an unconditional contract or by the expenditure of the monies) for the purposes for which they were paid under the terms of this Deed within 10 years from payment the District Council shall repay any unspent balance to the person who made such payments together with a sum equivalent to the interest accrued thereon.
  - 1.4 At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.

## FIFTH SCHEDULE

### COUNTY COUNCIL'S COVENANTS

1. The County Council covenants with the Owner:
  - 1.1 To use all the contributions it received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
  - 1.2 To account for interest at the base rate of the Bank of England from time to time on all the contributions it receives under the terms of this Deed as if such contributions were held in an interest bearing account.
  - 1.3 In the event that any of the contributions or any part of them have not been committed (by an unconditional contract or by the expenditure of the monies) for the purposes for which they were paid under the terms of this Deed within 5 years from payment the County Council shall repay any unspent balance to the person who made such payments together with a sum equivalent to the interest accrued thereon.
  - 1.4 At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.



- chargee to realise its security or any administrator (howsoever appointed) including a housing administrator)
- 1.5 'Chargee's Duties' means the tasks and duties set out in Clause 12.4 of this deed.
- 1.6 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings system
- 1.7 "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)
- 1.8 'Help to Buy' means the system operated by the regional Help to Buy Agent responsible for advertising and finding purchasers for Shared Ownership Dwellings
- 1.9 'Help to Buy Agent' means the Help to Buy Agent 3 (Radian Housing) or such other agent that may be appointed by the Homes England from time to time
- 1.10 "Initial Sale" means the first sale of the newly constructed and previously unoccupied Affordable Housing Unit by the Registered Provider by way of a Shared Ownership Lease
- 1.11 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit
- 1.12 'Local Connection Criteria' means an individual who immediately before taking up occupation of an Affordable Housing Unit
- 1.12.1 had his only or principal home in the district of Mid Suffolk for a continuous period of not less than 2 years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.12.2 to 1.12.4 inclusive
- 1.12.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than 2 years in the district of Mid Suffolk and wishes to be near that relative or
- 1.12.3 is employed in the district of Mid Suffolk on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for 2 years

- 1.12.4 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 months out of the preceding twelve months or (ii) three years out of the preceding five years and in either case such period of former residency shall end with the Availability Date
- 1.13 'Mutual Exchange' means the procedure by which a tenant may exchange their house with another council or housing association tenant
- 1.14 'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Service Level Agreement
- 1.15 'Nominee' means a person named on the Nomination List who satisfies the Local Connection Criteria and is verified by the District Council as best meeting the criteria for the category of Affordable Housing Unit in respect of which the Registered Provider is to select a person from the Nomination List and offer a Tenancy Agreement
- 1.16 '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
- 1.17 'Property' means the land and dwellings off Postmill Lane, Fressingfield, Suffolk shown edged red on the plan annexed
- 1.18 'Protected Tenant' means any Nominee who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- 1.19 'Rented Dwelling' means an Affordable Housing Unit which is to be let at an Affordable 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

- 1.20 'Shared Ownership Dwelling' means an Affordable Dwelling to be let on a Shared Ownership Lease in accordance with the terms as set out in Homes England's capital funding guide or any other such guidance as shall replace it
- 1.21 'Shared Ownership Lease' means a lease or sub-lease of an Affordable Dwelling granted at a premium whereby not less than 10% and up to 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.
- 1.23 "Shared Ownership lessee" means the lessee for the time being of a Shared Ownership Lease
- 1.24 '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
- 1.25 '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
- 1.26 'Void' means an Affordable Housing Unit which is vacant otherwise than as a result of the tenant having:
- 1.26.1 moved to other accommodation either by transfer or decant provided by the Registered Provider
  - 1.26.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider

- 1.26.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere
- 1.27 '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 Rented Dwellings and Shared Ownership Dwellings

### **3.1 Initial Lets**

The Association hereby grants the Council nomination rights for 100% of the Initial Lets and 75% thereafter for all Voids in relation to the Rented Dwellings to be let through the Choice Based Lettings scheme in operation. In relation to the Initial Lets of the Rented Dwellings 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 a Rented Dwelling will be ready for occupation

3.1.2 The Registered Provider shall serve a Vacancy Notice upon the District Council in respect of a Rented Dwelling not earlier than ten (10) weeks prior to a Rented Dwelling becoming available for occupation

### **3.2 Voids**

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



#### **4. Supplemental provisions relating to allocating Initial Lets and Voids**

- 4.1 Where there are two or more applicants applying to occupy one of the Rented Dwellings the Local Connection Criteria set out in clause of this Schedule 1.12.2 to 1.12.4 and subject to clause 4.2 of this Schedule preference must be given to the applicant/s who have the highest housing need according to Mid Suffolk 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 1.12.1 to 1.12.4 of this Schedule than someone who does not have disabilities

#### **5 Initial Sale**

- 5.1 In relation to the Initial Sales of the Shared Ownership Dwellings the following provisions shall apply: -

5.1.1 The Registered Provider shall give the Council no less than four (4) months' written notice of the date when all the Affordable Housing Units will be ready for occupation

5.1.2 The Registered Provider shall serve a notice upon the Council in respect of an Affordable Housing Unit not earlier than four (4) months prior to a Shared Ownership Dwelling becoming available for occupation

5.1.3 The Registered Provider will upload onto the Help to Buy Agent's website details of the Shared Ownership Dwelling and advertise that the Shared Ownership Dwelling is for sale on the basis of a Shared Ownership Lease.

#### **6.3 Re-Sales**

- 6.3.1 Should any Shared Ownership Dwellings become available for re-sale after the Initial Sale the Registered Provider agrees that when the Shared Ownership Lessee approaches the Registered Provider for a request to nominate a purchaser pursuant to the Shared Ownership Lease then the Registered Provider will follow the re-sale procedure as set out by Homes England and the Help to Buy agent or any subsequent regulatory body

#### **7. Registered Provider covenants**

The Registered Provider covenants with the District 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 Rented Units are let on the basis of a Tenancy Agreement at an Affordable Rent and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider and
- 7.3 in accordance with current Homes England requirements

#### **8. 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

#### **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 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 the Homes England under its statutory powers shall enter into a similar Deed mutatis mutandis with the District Council (and Gateway to Homechoice in respect of Rented Dwellings) 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 District 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 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 Duty; or
  - 12.3.3 any mortgagee and any purchaser from a mortgagee of an individual Shared Ownership 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 Units pursuant to any default under the terms of its mortgage or charge or other powers give not less than two (2) months' prior notice to the District Council of its intention to dispose and:
  - 12.4.1 in the event that the District Council responds within two (2) months 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 being an amount sufficient to repay the amount outstanding under the mortgage plus all interest and reasonable costs
  - 12.4.2 if the District 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 District Council or any other person cannot within three (3) 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 District 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 Mid Suffolk

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

THE COMMON SEAL OF  
MID SUFFOLK DISTRICT COUNCIL  
was affixed in the presence of:

)  
)  
)



Authorised Officer

EXECUTED AS A DEED by  
affixing the Common Seal of  
REGISTERED PROVIDER XXXXX  
in the presence of: -

.....  
**Authorised Signatory**

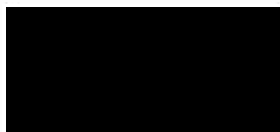
.....  
**Authorised Signatory**

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

THE COMMON SEAL OF )

MID SUFFOLK DISTRICT COUNCIL )

was affixed in the presence of: )



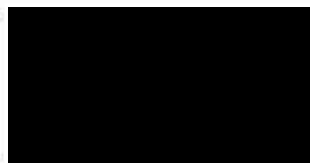
Authorised Officer



THE COMMON SEAL OF )

SUFFOLK COUNTY COUNCIL )

was affixed in the presence of: )



Authorised Officer



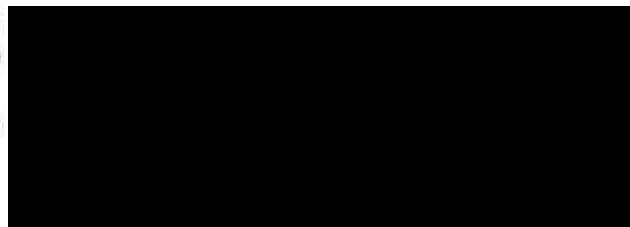
Executed as a deed by C E DAVIDSON

FARMS LIMITED

acting by a director In the presence of:

Director: )

Signature of Director: )



Name of Witness (in BLOCK CAPITALS):

Signature of witness

Address of Witness:

