

DATED 16 November

2021

MID SUFFOLK DISTRICT COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

**ERIC JOHN NOY AND ELIZABETH MARY STIFF AND
HELEN ALEXANDRA HALL AND JOHN EDWARD NOY (3)**

**MICHAEL HOWARD HOMES LIMITED
(COMPANY REGISTRATION NUMBER 10046756) (4)**

**Planning Obligation by Deed of Agreement under Section 106 of
the Town and Country Planning Act 1990 relating to land on the
North Side of Station Road, Haughley
(relating to outline planning application reference DC/19/03790)**

THIS AGREEMENT IS MADE this 16 day of November 2021

BETWEEN:

- (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) **ERIC JOHN NOY, ELIZABETH MARY STIFF, HELEN ALENXADRA HALL and JOHN EDWARD NOY** of Red House Farm, Station Road, Haughley, Stowmarket, Suffolk IP14 3QT (“the Owner”);
- (4) **MICHAEL HOWARD HOMES LIMITED** (Co. Reg. No10046756) whose registered office address is Poplar Cottage, Boulge, Woodbridge, Suffolk IP13 6BT and of (“the Developer”);

Together “the Parties”

INTRODUCTION

- (A) The District Council is the 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.
- (B) The County Council is the local highway authority (except for trunk roads) and the local education 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 in this Deed are enforceable
- (C) The Owner is the freehold owner of the Site which is registered at the Land Registry and forms part of the title number SK242261 as more fully described in the Schedule 1
- (D) The Developer has a legal interest in the Site by way of an option agreement dated 31 January 2019 varied and then assigned to the Developer by way of a deed of variation and a deed of assignment both dated 10 July 2020
- (E) The Owner 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 prior completion of this Deed to regulate the Development to secure the planning obligations contained in this Deed
- (F) The District Council and the County Council enter into this Deed so that the requirements of their respective policies are met and that any objections by the District

Council or the County Council to the grant of planning permission on the basis of those policies are overcome

- (G) The Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed
- (H) The District Council is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the CIL Regulations

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

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

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

Affordable Housing Nomination Agreement	an agreement substantially in the form set out in Schedule 6 (subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and "Nomination Agreement" shall have the same meaning
Affordable Housing Scheme	A document detailing the location proposed layout specification mix size and tenure of the Affordable Housing Units as detailed in the Affordable Housing Table (unless otherwise agreed with the District Council)
Affordable Housing Table	the table at Part 3 of Schedule 2 setting out the type and tenure mix of the Affordable Housing Units;
Affordable Housing Units	means the Dwellings identified in the Affordable Housing Table all of which shall be provided on the Site pursuant to the Planning Permission to be occupied as Affordable Housing in accordance with the Affordable Housing Scheme and Affordable Housing Unit shall be construed accordingly;
Affordable Rent	means Affordable Housing Units 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 or the local housing rate allowance;
Application	means the application for outline planning permission to develop the Site in accordance with the application plans any amendment and other materials submitted to the District Council for the Development bearing the District Council's reference number DC/19/03790;

Chargee of the Registered Provider

Any mortgagee or chargee of a Registered Provider's interest or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a receiver) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or receiver;

Chargee's Duty

the tasks and duties set out in Schedule 2, Part 2, Paragraph 6;

Choice Based Lettings Scheme

an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party unless otherwise agreed in writing by the District Council;

CIL Regulations

the Community Infrastructure Levy Regulations 2010 (as amended)

Commencement of Development	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site 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 and the temporary display of site notices or advertisements and "Commencement", "Commence Development" and "Commencement Date" shall be construed accordingly;
Completion of the 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 Rental Dwellings Shared Ownership Dwellings Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly;
Fields in Trust Guidelines	Guidance for Outdoor Sport and Play which includes recommendations on the provision of amenity and natural green space.
Homes England or "HE"	the non-departmental public body responsible for creating thriving communities and affordable homes in England or such other body that may replace it in either function;
Index	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation;

Index Linked	the increase in any sum referred to in this Deed unless the context otherwise dictates by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 12 of this Deed;
Interest	interest at four (4) per cent above the minimum lending rate of the Bank of England from time to time;
Management Company	a limited company or body who will take over responsibility for the future maintenance and management of the Open Space in perpetuity and for the avoidance of doubt may include a resident's association established for this purpose, a private limited company or a community interest company or other organisation primarily for the benefit of the general public;
Market Housing Unit	any Dwelling which is for general market housing for sale or rent on the open market and which is not an Affordable Housing Unit and Market Housing Units shall be construed accordingly;
Notice of Actual Commencement	notice in writing to advise of the actual date of Commencement;
Notice of Expected Commencement	notice in writing to advise of the expected date of Commencement;
NPPF	the National Planning Policy Framework published in February 2019 or any subsequent revision or amendment of this document
Occupation and Occupied	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 "Occupy" shall be construed accordingly;

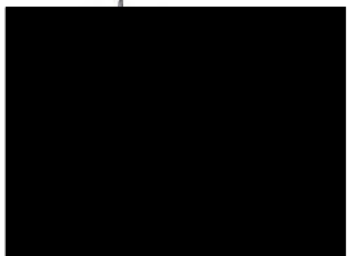
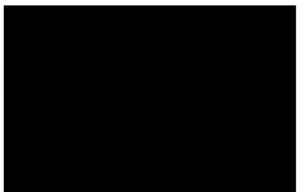
Open Space	the areas of open space on the Site which are for informal or (if laid out) formal recreational use by the public and shown on the approved Open Space Plan in accordance with the approved Open Space Specification; the total area of open space to accord with the minimum standards of the Fields in Trust Guidelines
Open Space Maintenance Contribution	The sum of £15.68 per square metre (index linked) for the management and maintenance of the open space for a period of ten (10) years
Open Space Nominated Body	Means the body responsible for the management and maintenance of the Open Space being either: <ul style="list-style-type: none"> a) a Management Company b) Haughley Parish Council or such other body as the District Council may elect and "Nominated Body" and "Nominated Bodies" shall be construed accordingly;
Open Space Plan	means the plan indicating the location of the Open Space to be included in the Open Space Specification;
Open Space Specification	means the specification for delivery of the Open Space including the Open Space Plan the specifications 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 proposed play areas and equipment landscaping, planting, paths and access arrangements, street furniture and fencing together with details of the proposed future management regime for the Open Space to be agreed in writing by the District Council in accordance with Part 4 of Schedule 2;
Open Space Transfer	a transfer of the Open Space to be agreed in writing by the District Council and the Owner and which inter alia shall contain the following provisions:

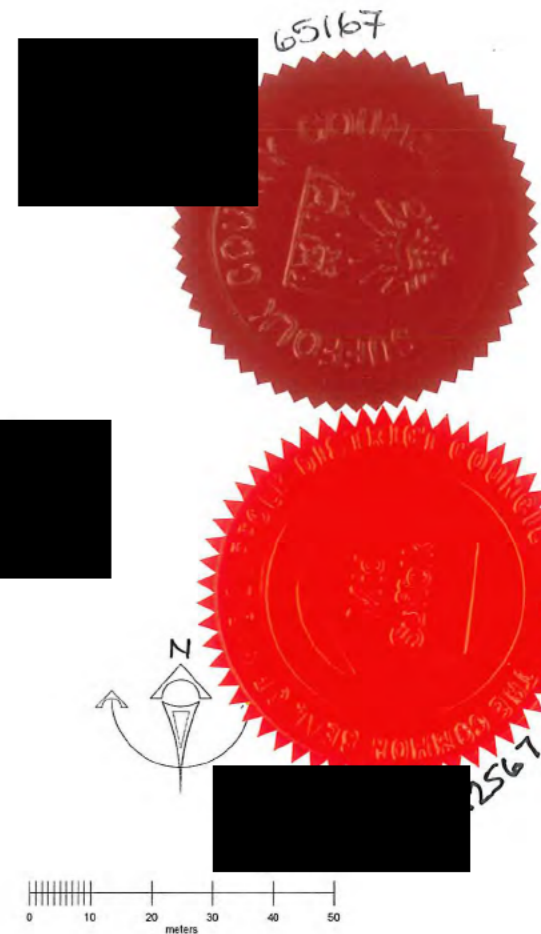
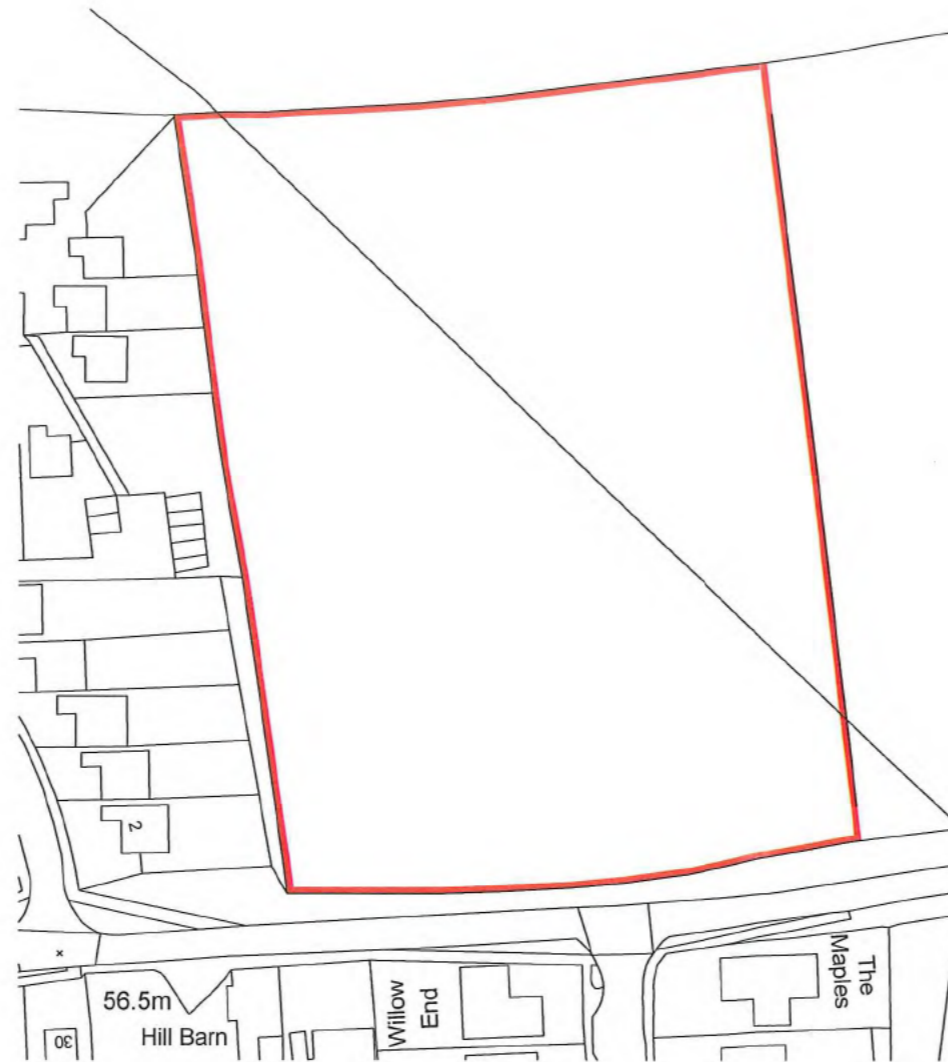


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Rev.	Date	Details	Drawn	Checked
Issued for:				

OUTLINE APPLICATION				
Project/Client:		Project No:		
Proposed Residential Development		0228		
Land off Station Road		Dwg No:	Rev:	
Haughley		OUT000	-	
Michael Howard Homes		Scale:		
		1:500 @ A3		
Drawing:		North:		
		○		
		Drawn By:	Date:	
		PJA	08/2019	
Site Location Plan		Checked By:	Date:	
		PJA	08/2019	





Rev.	Date	Details	Drawn	Checked
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Haughley	OUT000 -
Michael Howard Homes	Scale:
Drawing:	1:500 @ A3
	North:

Drawn By:	Date:
PJA	08/2019
Checked By:	Date:
PJA	08/2019

- (a) The Owner shall transfer the fee simple estate free from encumbrances save those set out in the title;
- (b) All easements and rights necessary in relation to access for the benefit of the Open Space;
- (c) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;
- (d) Restrictive covenants by the Management Company;
 - (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 and play space as defined in this Deed and shown on the approved 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;

Plan

the site location plan attached to this Deed;

Planning Permission

the outline planning permission to be granted by the District Council in relation to the Application subject to conditions or if the District Council agrees (in its absolute discretion) in writing to another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development;

Practical Completion means the completion of a Dwelling to a standard which is wind and watertight and fit for habitation in terms of heating, plumbing, electrics and sanitation and "Practically Complete" shall be construed accordingly;

Primary School Transport Contribution a contribution of £47,040.00 (forty-seven thousand and forty pounds) RPI Indexed payable to the County Council for use towards the provision of primary school transportation for children living in Haughley to schools serving the Development

Protected Person any person who:

- (a) 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;
- (b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (c) any person who has staircased the equity in their Shared Ownership Dwelling to 100%;
- (d) any successor in title to paragraph a-c above;

Registered Provider or "RP" an organisation which is a Registered Provider of social housing or other provider registered in accordance with the provisions of chapter 3 of the Housing and Regeneration Act 2008

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
RPI Index	the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time 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 reasonably agreed between the Parties
RPI Indexed	The increase in any sum referred to in this Deed as RPI Indexed by an amount equivalent to the increase in the RPI Index to be calculated in accordance with clause 12 of this Deed
Secondary School Transport Contribution	a contribution of £24,000.00 (twenty-four thousand pounds) RPI Indexed payable to the County Council for use towards the provision of secondary school transportation for children living in Haughley to schools serving the Development
Shared Ownership Dwellings	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 HE's capital funding guide;
Shared Ownership Lease	<p>a lease in a form approved by Homes England or where there is no such form in a form approved by the District Council such lease to provide for the following:</p> <ul style="list-style-type: none"> - not more than 70% and not less than 10% of the equity (or such other percentages the District Council may agree) shall be initially sold to the purchaser by the Registered Provider; - power to the purchaser to increase their ownership up to 100% if they so wish;

- 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 District Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of HE;

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

Working Days means any day Monday to Friday inclusive except bank or public holidays in England.

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause sub-clause paragraph sub-paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause paragraph sub-paragraph schedule or recital in this Deed;
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner;
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise;
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act of Parliament 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 person deriving title through or under that party and in the case of the District Council and the County Council their respective successor or successor in title to their relevant statutory functions;

- 2.7 Any covenant by the Owner or the Developer 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;
- 2.8 The headings are for reference only and shall not affect construction;
- 2.9 References to a "Plan" or "Drawing" in this Deed shall be reference to the plans attached to this Deed bearing the relevant plan number or any amended plans as shall be agreed in writing between the Owner the Developer the District Council and the County Council;
- 2.10 Save for the obligations contained in Part 2 of Schedule 2 which shall continue to be binding and enforceable against individual purchasers, owners, occupiers, lessees or their mortgagees of Affordable Housing Units subject to the provisions contained therein the covenants, restrictions and requirements contained in this Deed shall not be enforceable against:
- 2.10.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Planning Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease; and
- 2.10.2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water drainage telecommunications or highways or public transport services in connection with the Development;
- 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 agreement is a Deed made pursuant to section 106 of the Act section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other enabling powers;
- 3.2 The covenants, restrictions and requirements imposed upon the Owner and or the Developer under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the District Council in respect of the matters set out in the Second Schedule and by the County Council in respect of the matters set out in the Third Schedule as local planning authorities against the Owner and/or the Developer or their successor(s) 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 If the District Council agrees following an application under Section 73 of the Act to vary or to be released from any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the District Council in determining the application for the new planning permission indicate that consequential amendments are required to this Deed to reflect the impacts of the section 73 application, when a separate deed under section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.

4. CONDITIONALITY

4.1 The planning obligations contained in the Schedules to this Deed are conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development

the remainder of this Deed and paragraphs 1 and 2 of Part 1 Schedule 2 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 Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings;

4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed and is not superseded by a subsequent planning permission accepted by the Owner this Deed will cease to have any further effect; and

4.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full;