

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

relating to Land rear of Pine Tree Close Holton
Suffolk

Dated: 17th November 2021

EAST SUFFOLK COUNCIL (1)

AND

SUFFOLK COUNTY COUNCIL (2)

AND

ROBERT JOHN MATTHEW SURTEES STEPHENSON

MARGARET SYLVIA STEPHENSON (3)

AND

WELLINGTON CONSTRUCTION LIMITED (4)

REF JB/DC/20/3070/FUL

DATE 17th November

2021

PARTIES

- (1) **EAST SUFFOLK COUNCIL** of Riverside, 4 Canning Road, Lowestoft, Suffolk, NR33 0EQ ("the Council")
- (1) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP7 2BX ("the County Council")
- (2) **ROBERT JOHN MATTHEW SURTEES STEPHENSON** and **MARGARET SYLVIA STEPHENSON** of Woodside Farm, Lodge Road, Holton, Halesworth, IP19 8 NE ("the Owner")
- (3) **WELLINGTON CONSTRUCTION LIMITED** (Co. Regn. No. 02425925) of Wolseley House, 1 Quay View Business Park, Barnards Way, Lowestoft, Suffolk NR32 2 HD ("the Developer").

INTRODUCTION

1. The 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 in this Deed are enforceable.
2. The County Council is a local planning authority for the purposes of the Act and the Highway Authority for the area in which the Site is located and by whom the obligations in this Deed are enforceable.
3. The Owner is the freehold owner of the Site registered under title number SK326808.
4. The Developer is the beneficiary of a registered charge dated 5th August 2020 in relation to the Site registered under title number SK326808.
5. The Council's Planning Committee resolved to grant the Planning Permission subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed.
6. The Site lies within the area to which the Local Plan applies. The Council and the Owner and the Developer acknowledge that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to section 106 of the Act the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Third Schedule:

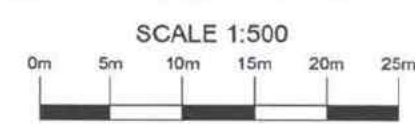
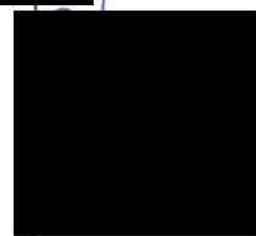
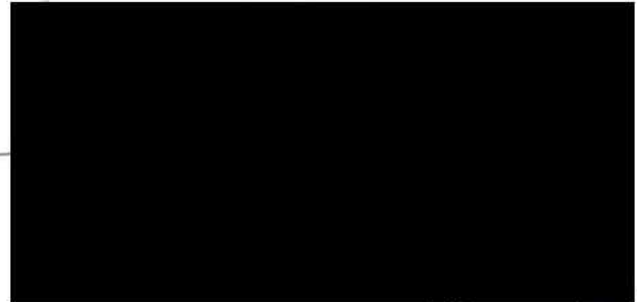
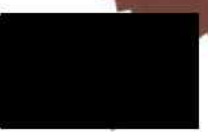
"Act"

the Town and Country Planning Act 1990
as amended;

“Application”	the application for full planning permission validated by the Council on 4 th September 2020 for the Development and allocated reference number DC/20/3070/FUL;
“Bus Stop Improvement Contribution”	means the sum of £6,000 (six thousand pounds) Index Linked for use towards the provision of improving the existing nearest bus stops on Bungay Road.
“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 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, site clearance, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly;
“Consumer Prices Index”	the consumer prices index published by the Central Government or any subsequent indices replacing the same;
“Development”	the development of the Site for construction of 15 new dwellings
“Dwelling”	any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission;
“Index”	All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or any subsequent indices of the same;
“Index Linked”	means the increase in any sum referred to in this Deed by an amount equivalent to

“Interest”	the increase in the Index to be calculated in accordance with Clause 11 of this Deed
“Local Plan”	Waveney Local Plan Adopted 20 March 2019;
“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;
“Plan”	the plan labelled “site plan” attached to this Deed;
“Planning Permission”	the full planning permission subject to conditions to be granted by the Council pursuant to the Application substantially as set out in the draft annexed to the Second Schedule;
“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 Council, the County Council and the Developer
“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 11 of this Deed
“Secondary School Transport Contribution”	means the sum of £18,075.00 (eighteen thousand and seventy-five pounds) RPI Indexed payable to the County Council for use towards the provision of secondary school transportation for children residing in the Development.

65164



Rev	Description	Dated
A	Revisions to LPA and consultee comments	06.10.20

Wellington
 Wolsley House, 1 Quay View Business Park
 Barnard Road, Lowestoft, Suffolk, NR32 2HD
 Tel: (01502) 587024 Fax: (01502) 589829

Client: Mr Stephenson

Project Title: Lodge Road, Holton

Drawing Title: Proposed Site Plan

Drawn by: MW Project Reference: -

Approved by:

Scale: 1:500@A3 Drawing Number: W505-PL01 Revision: A

Date: Jan' 2020

Stage: Preliminary Information For Approval Tender Construction As-Built
 This drawing is the copyright of Wellington Ltd and should not be reproduced without their consent. All agreed dimensions to be checked on site and Wellington notified of any variation.

SCHEME MIX

PRIVATE

- "Pine" 3 Bed Semi - 89 sq.m/ 957 sq.ft = 4 No.
- "Spruce" 4 Bedroom Detached - 126 sq.m/ 1356 sq.ft. = 3 No.
- "Evergreen" 2 Bedroom Bungalow - 110 sq.m/ 1184 sq.ft. = 2 no.
- "Nordmann" 3 Bedroom Bungalow - 129 sq.m/ 1388 sq.ft. = 1 No.
- "Fraser" 2 Bed Semi - 79 sq.m/ 856 sq.ft. = 1 No.

AFFORDABLE

- "Fraser" 2 Bed Semi - 79 sq.m/ 856 sq.ft. = 4 No.

15 Total

“Section 73 Consent”

means a planning permission granted pursuant to Section 73 of the TCPA 1990 which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the TCPA 1990 was granted

“Section 106 Officer”

the officer so designated by the Council and any notice required to be served on the Section 106 Officer must be sent or delivered to the Council at the address aforesaid marked for the attention of the Section 106 Officer;

“Site”

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

“Working Days”

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

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause or paragraph of or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed 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 severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or Directive or deriving validity from it.
- 2.6 Any references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory function.
- 2.7 The headings are for reference only and shall not affect construction.

2.8 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party as set out below:

- (i) Council: as given in this Deed; and
- (ii) County Council: as given in this Deed; and
- (iii) Owner: as given in this Deed; and
- (iv) Developer: as given in this Deed.

3. LEGAL BASIS

3.1 This Deed is made pursuant to section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.

3.2 The covenants, restrictions and requirements imposed upon the Developer under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council and the County Council as local planning authority against the Developer and its successors in title.

3.3 Insofar as any of the covenants contained in this Deed are not planning obligations within section 106 of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.

3.4 The covenants, restrictions and requirements contained in this Deed shall only be capable of being varied by a supplemental deed between the parties hereto or their respective successors in title or assigns made under section 106A of the Act.

4. CONDITIONALITY

4.1 The obligations set out within this Deed are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development of the Planning Permission.

4.2 The provisions set out in clauses 1, 2, 3, 4, 8, 9, 10, 14, **Error! Reference source not found.**, 15 and 16 of this Deed shall take effect immediately upon completion of this Deed.

5. THE OWNERS AND DEVELOPERS COVENANTS

5.1 The Developer hereby covenants with the Council as set out in the Third Schedule so as to bind the Site and each and every part thereof.

5.2 The Developer hereby covenants with the County Council as set out in the Fourth Schedule so as to bind the Site and each and every part thereof.

5.3 The Owner covenants and warrants to the Council and the County Council it is the freehold owner of the Site and has the capacity to enter into this Deed.

6. THE COUNCIL'S COVENANTS

The Council hereby covenants with the Developer as set out in the **Error! Reference source not found.**

7. THE COUNTY COUNCIL COVENANTS

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

8. MISCELLANEOUS

8.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

8.2 This Deed shall be registrable as a local land charge by the Council.

8.3 Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the Council or the County Council under the terms of this Deed, such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services (or the officer of the Council fulfilling such functions) or officer acting under his hand and given on behalf of the County Council by the Executive Director of Growth, Highways and Infrastructure and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

8.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Developer mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.

8.5 Insofar as any clause or paragraph 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.

8.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Developer) it is modified by any statutory procedure or expires prior to the Commencement of Development.

8.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

8.8 This Deed shall not be enforceable against an individual purchaser or owner-occupier or tenant of a Dwelling constructed pursuant to the Planning Permission or any mortgagee or chargee of any individual purchaser, owner-occupier or tenant of a Dwelling or any person deriving title from any such person.

8.9 Nothing in this Deed shall be enforceable against 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 telecommunications or highways in connection with the Development of the Site

8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and the County Council under all

statutes by-laws statutory instruments orders and regulations in the exercise of its function as a local authority.

- 8.12 The Developer covenants from the date that this Deed takes effect to allow the Council or the County Council and its respectively duly authorised officers or agents at all reasonable times to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.
- 8.13 The Developer hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.
- 8.14 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 Developer and at no cost to the Council or the County Council.
- 8.15 The Developer covenants to pay the Council's and the County Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.
- 8.16 The Council confirms that there are three obligations within this Deed that it requires a monitoring fee for and the Developer covenants to pay the Council 3 monitoring fees each of £408 (Four Hundred and Eight Pounds) on completion of this Deed.
- 8.17 The Developer covenants to pay to the County Council on or before completion a contribution of £824.00 (eight hundred and twenty-four pounds) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Developer is required to observe and perform pursuant to the terms of this Deed.
- 8.18 Unless otherwise agreed between the Parties if a Section 73 Consent is granted by the Council (or the Secretary of State) in relation to the Development, then with effect from the date that each such Section 73 Consent is granted

(a) the obligation in this Deed shall (in addition to continuing to bind the Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Consents and the Site itself without any further act by the Parties;

(b) the definitions of Development, Application and Planning Permission in this Deed shall be constructed to include reference to any applications under Section 73 of the Act, the Section 73 Consent granted pursuant to any such application and the development permitted by such Section 73 Consents

PROVIDED THAT

- (i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act; and
- (ii) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 is granted they shall remain discharged for the purposes of the Section 73 Consent
- (iii) if the Council considers that the obligations contained in this Deed shall be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations

9. WAIVER

No waiver (whether expressed or implied) by the Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. CHANGE IN OWNERSHIP

The Developer agrees with the Council and the County Council to give each of them independently written notice within fourteen days (14) of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice quoting the Council's reference DC/20/3070/FUL giving 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 and the title number or numbers thereof.

11. INDEXATION

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

11.1 A is the sum payable under this Deed;

11.2 B is the original sum calculated as the sum payable;

11.3 C is the Index or RPI Index (as the context dictates) for the month two (2) months before the date on which the sum is payable;

11.4 D is the Index or RPI Index (as the context dictates) for the month two (2) months before the date of this Deed; and

11.5 C/D is greater than one.

12. INTEREST

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

13. VAT

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

14. DISPUTE PROVISIONS

14.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such

proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

- 14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his 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.
- 14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
- 14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him, within ten Working Days of notification of his appointment, written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
- 14.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

15. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

16. MORTGAGEE IN POSSESSION

- 16.1 The Affordable Housing provisions in this Deed shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or charge or Receiver PROVIDED THAT:
- 16.2 Such mortgagee or charge or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings ("the RP Notice"); and
- 16.3 If the Council provides written notice if the Chargee within four weeks of receipt of the RP Notice that acceptable arrangements can be made for the transfer of the Affordable Housing Dwellings to either the Council or another Registered Provider within three calendar months of the date of the RP Notice the Chargee shall use reasonable endeavours over that period to complete a disposal of the Affordable Housing Dwellings to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principle monies interest and costs and expenses.

16.4 If the Council does not serve the notice referred to in paragraph 16.3 within the four week period referred to or if such disposal has not completed within the three month period, the mortgagee, charge, or Receiver shall be entitled to dispose of the Affordable Housing Dwellings free from Affordable Housing obligations within this Deed which provisions shall determine absolutely.

17. 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

Details of the Owner's Title, and Description of the Site

The freehold land shown edged red for indicative purposes only on the Plan and known as the land rear of Pine Tree Close Holton Halesworth Suffolk registered with the Land Registry under title number SK326808.

SECOND SCHEDULE
Details of the Application

Application Number	DC/20/3070/FUL
Application Type	Full
Date Validated	4 th September 2020
Location	Land rear of Pine Tree Close Holton Halesworth, Suffolk
Proposal	Full Application - Construction of 15 dwellings
Applicant	Wellington Construction Limited

THIRD SCHEDULE
The Developer Covenants with the Council

1. DEFINITIONS

“Affordable Dwellings”	Means 4 Dwellings to be made available as Affordable Housing comprising of 2 x Affordable Dwellings for Rent and 2 x Shared Ownership Dwellings the exact number, location, tenure and mix of Affordable Dwellings as set out in the Affordable Housing Table
“Affordable Dwellings for Rent”	Affordable Dwellings let at a monthly or weekly rental figure that does not exceed 80% of the market rent inclusive of service charges or the local housing allowance rate or at such other rent as may be agreed in writing by the Council with rent increases during the term of any individual tenancy being limited to increases in the Consumer Prices Index from the date of this Deed plus 1% or any subsequent limit placed upon Registered Providers by the HCA or Central Government;
“Affordable Housing”	housing that will be available to eligible households and as defined in Annex 2 of the National Planning Policy Framework (2019) (as amended) whose needs are not met by the market and eligibility is determined with regard to local incomes and local house prices (unless otherwise agreed in writing with the Council);
“Affordable Housing Contribution”	Means the sum of £13,425 (Thirteen Thousand Four Hundred and Twenty FivePounds) Index Linked to be used towards the provision of Affordable Housing through the acquisition of land or the construction or development of new properties or the purchase or refurbishment of existing properties within the district of East Suffolk
“Allocation Policy”	Means the policy and procedure adopted by the Council to determine the eligibility and priority for allocation of the Affordable Dwellings

“Bus Stop Improvement Contribution”	means the sum of £6,000.00 (six thousand pounds) Index Linked for use towards the provision of improving the existing nearest bus stops on Bungay Road.
“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;
“Eligible Person”	A person or person on the housing waiting list maintained by the Council or a person or persons who is otherwise approved by the Council as being in need of separate or alternative accommodation and unable to buy housing generally available on the open market who lives within the Housing Market Area
“Habitat Mitigation Contribution”	The sum of Three Hundred and Twenty One Pounds and Twenty Two Pence (£321.22) per Dwelling Index Linked payable to the Council to be used in accordance with the RAMS Strategy published evidence July 2019
“Homes England”	the non-departmental public body responsible for creating thriving communities and affordable homes in England and which is the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body that may replace it in either function
“Initial Sale”	the sale of the first share to each and any purchaser of a Shared Ownership Dwelling;
“Local Connection”	Means a connection to the local area as set out at clause 2.12 of this Schedule
“Management Company”	a company or body who will take over responsibility for the future maintenance of the Open Space and which definition may include a Parish Council, a Residents Association established for this purpose or a Private Limited Company

“Nomination Agreement”	Means an agreement in a form provided by the Council entered into by the Council and the Registered Provider in respect of rights for the Council to nominate persons for the Affordable Dwellings in accordance with the Allocation Policy
“Open Amenity Space ”	the areas of open amenity space and onsite playing areas within the Development Land shown on the Open Amenity Space Plan.
“Open Amenity Space Plan”	Means a plan to be submitted to the Council as part of the reserved matters application showing the Open Amenity Space
“Open Amenity Space Specification”	a scheme including plans drawings and specifications showing but not limited to the layout and design of the Open Amenity Space Land which may be provided in phases if the Developer so agrees with the Council including details of any proposed play areas and equipment landscaping paths and access arrangements, street furniture and fencing together with details of proposed future management regime for the Open Amenity Space to be agreed in writing by the Council in accordance with Paragraph 4 of the Third Schedule 4
“Protected Person”	means any person who: <ul style="list-style-type: none"> 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) a 100% Staircaser;

d) any successor in title to a chargee or mortgagee of the persons named in a) – c) above;

e) any mortgagee of a Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions within that Shared Ownership Lease;

“Registered Provider”

or **“RP”**

either-

a body registered as a social landlord pursuant to the provisions of the Housing Act 1996 or a housing association within the meaning of the Housing Associations Act 1985 or;

any person or body or entity which is registered as a provider of social housing in accordance with Section 80(2) and Chapter 3 of the Housing and Regeneration Act 2008

to be approved in writing by the Council

“Secondary School Transport Contribution”

means the sum of £18,075.00 (eighteen thousand and seventy-five pounds) RPI Indexed payable to the County Council for use towards the provision of secondary school transportation for children residing in the Development.

“Shared Ownership Dwellings”

means those Dwellings purchased on a Shared Ownership Lease;

“Shared Ownership Lease”

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

- not more than 75% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider;

- power to the purchaser to increase their ownership up to 100%;

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

2. AFFORDABLE HOUSING

- 2.1 The Developer covenants that none of the Market Housing Units shall be Occupied until the Affordable Housing Contribution has been paid to the Council.
- 2.2 The Developer covenants that no more than 6 of the Market Housing Units shall be Occupied until a contract is in place with a Registered Provider for the transfer of Affordable Housing to be provided on the Site.
- 2.3 The Developer covenants that no more than 7 of the Market Housing Units shall be Occupied until all of the Affordable Dwellings have been constructed in accordance with the Planning Permission made ready for residential Occupation and transferred to the Registered Provider and written notification of such has been received by the Council.
- 2.4 The Registered Provider shall enter into a Nominations Agreement with the Council and shall not let dispose or otherwise permit the Occupation of any of the Affordable Dwellings until such Nominations Agreement has been entered into.
- 2.5 Subject to the provisions of this paragraph 2 from the date of Practical Completion of the Affordable Housing Units they shall not be used other than for the purposes of Affordable Housing in accordance with the tenure and mix set out Affordable Housing Scheme and thereafter let or sold to an Eligible Person in accordance with the Nomination Agreement(s) unless otherwise agreed in writing with the Council;
- 2.6 The Council will (unless otherwise agreed in writing) consider only eligible applicants in accordance with the Allocation Policy and Nomination Agreements. Priority will go to applicants who have a Local Connection in accordance with the Local Connection Cascade provided at Schedule 7 and who have accessed as being housing priority in line with the Council's Allocation Policy
- 2.7 In the event that a Registered Provider cannot be found for any of the Affordable Dwellings despite the Developer's reasonable endeavours to do so the Developer will be required to prove to the Council's satisfaction (the Council at all times acting reasonably) that demand from Registered Providers has not been forthcoming for Reasonable Consideration.
- 2.8 If the Council is satisfied that demand from Registered Providers has not been forthcoming for Reasonable Consideration the Council will enter into written negotiations with the Developer to seek an agreed way forward that does not disadvantage the Developer whilst maximising the provision of Affordable Housing.
- 2.9 Nothing in this paragraph 2 shall be binding on a Protected Person or any mortgagee or chargee of a Protected Person or any receiver appointed by such mortgagee or chargee or any person deriving title from any such person.

2.10 In the event that 100% of the Shared Ownership Dwelling is purchased the proceeds from the final sale of the Shared Ownership Dwelling are to be ringfenced by the RP and used for the provision of Affordable Housing within the East Suffolk District

2.11 Affordable Housing Table

<u>TENURE</u>	<u>SIZE</u>	<u>NUMBER</u>	<u>PLOT NO.</u>
<u>AFFORDABLE RENT</u>	<u>2B4PH</u>	<u>2</u>	<u>11, 12</u>
<u>SHARED OWNERSHIP</u>	<u>2B4PH</u>	<u>2</u>	<u>10,13</u>

2.12 Local Connections Cascade

(i) The Affordable Rental Dwellings are to be allocated to a person nominated by the Council in line with its Allocation Policy who is considered by them or it to be in need of such accommodation and unable to compete in the normal open market for property. Before nominating an applicant the council will be satisfied that the applicant

- (a) Has continuously lived within 10 miles of Holton for the preceding 5 years, OR
- (b) Has continuously had a place of work within 10 miles of Holton for the preceding 5 years OR
- (c) Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within 10 miles of Holton for the preceding 5 years, OR
- (d) Due to a lack of suitable accommodation was forced within the preceding 5 years to move away from within 10 miles of Holton

(ii) If there are no persons who qualify under paragraph 1 above the Affordable Dwelling shall be re-advertised to the district of East Suffolk and where after re-advertising there are no persons who qualify under the paragraphs above the Affordable Dwelling shall be allocated to a person nominated by the Council who is considered by it to be in need of such accommodation and who is unable to compete in the normal open market for property in East Suffolk

(iii) Where there is a mutual exchange the RP may let the Affordable Dwelling to any incoming tenant who satisfies the local connection criteria at paragraph 1 or who satisfy the local connection criteria in paragraphs 1 and 2 above in relation to the district of East Suffolk

3. HABITAT MITIGATION CONTRIBUTION

3.1 The Developer covenants with the Council that it shall not Commence the Development until the Habitat Mitigation Contribution has been paid to the Council.

4. ON SITE OPEN AMENITY SPACE PROVISION AND MAINTENANCE

4.1 Prior to the Commencement of the Development the Developer shall submit to the Council the Open Amenity Space Specification and details of the Management Company for approval.

- 4.2 The Developer covenants not to Occupy or permit the Occupation of the first Dwelling to be Occupied on the Development unless and until the Council has approved the Open Amenity Space Specification and the Management Company.
- 4.3 The Developer covenants to lay-out and complete the Open Amenity Space in accordance with the Open Amenity Space Specification as approved by the Council but in any event prior to the Occupation of the last Dwelling.
- 4.4 Following the laying out and landscaping of the Open Amenity Space in accordance with the approved Open Amenity Space Specification it shall be properly maintained and managed in accordance with the principles of good estate management and in accordance with the approved Open Amenity Space Specification until such time as it has been transferred to the approved Management Company
- 4.5 Following completion of the Open Amenity Space it shall (in perpetuity):
- (i) Not be used for any purpose other than for the provision of public open space for the benefit of the members of the public;
 - (ii) Be maintained and managed in a clean and tidy condition and free of defects and in accordance with the Open Amenity Space Specification;
 - (iii) Not be built on or allowed to be built on any buildings on the Open Amenity Space, subject to any reasonable restrictions imposed in the interest of public safety or for the ancillary use of the public Open Amenity Space.

Fourth Schedule
The Developer Covenants with the County Council

PART 1
NOTIFICATION

The Developer covenants with the County Council as follows:

1. The Developer shall within fifteen (15) Working Days' give written notice to the County Council following:
 - 1.1 Commencement of Development
 - 1.2 first Occupation of the first (1st) Dwelling
 - 1.3 first Occupation of the fourth (4th) Dwelling
 - 1.4 first Occupation of the final Dwelling

PART 2

BUS STOP IMPROVEMENT CONTRIBUTION

1. The Developer covenants with the County Council as follows:
 - 1.1 to pay the Bus Stop Improvement Contribution to the County Council prior to first Occupation of the fifth (5th) Dwelling; and
 - 1.2 not to first Occupy or permit first Occupation of any more than four (4) Dwellings unless and until the Bus Stop Improvement Contribution has been paid in full to the County Council

PART 3

SECONDARY SCHOOL TRANSPORT CONTRIBUTION

2. The Developer covenants with the County Council as follows:
 - 1.3 to pay the Secondary School Transport Contribution to the County Council prior to first Occupation of the first (1st) Dwelling; and
 - 1.4 not to first Occupy or permit first Occupation of any Dwellings unless and until the Secondary School Transport Contribution has been paid in full to the County Council

FIFTH SCHEDULE

COUNCIL COVENANTS

1. At the written request of the Developer the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. The Council covenants that it shall apply the Affordable Housing Contribution and Habitat Mitigation Contribution solely towards the purposes specified in this Deed.
3. The Council shall ensure that any monies paid to them under this Deed are paid into an interest bearing account or accounts and at the end of 10 (ten) years from the date of receiving the final payment of a contribution the Council shall return or procure the return to the party who made the payment all money in that account which has not been spent or committed to be spent on the intended purposes as specified in this Deed.

SIXTH SCHEDULE

COUNTY COUNCIL COVENANTS

1. BUS STOP IMPROVEMENT CONTRIBUTION

- 1.1 The County Council shall use the Bus Stop Improvement Contribution it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed.
- 1.2 If requested to do so in writing after the expiry of ten (10) years of the from the first (1st) Occupation of the final Dwelling within a further period of one (1) year to pay to any person such amount of the Bus Stop Improvement Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable.
- 1.3 When the Bus Stop Improvement Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Developer after the expiry of ten (10) years from the first (1st) Occupation of the final Dwelling within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.

2. SECONDARY SCHOOL TRANSPORT CONTRIBUTION

- 2.1 The County Council shall use the Secondary School Transport Contribution it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed.
- 2.2 If requested to do so in writing after the expiry of ten (10) years of the from the first (1st) Occupation of the final Dwelling within a further period of one (1) year to pay to any person such amount of the Secondary School Transport Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable.
- 2.3 When the Secondary School Transport Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Developer after the expiry of ten (10) years from the first (1st) Occupation of the final Dwelling within a further period of one (1) year notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

THE COMMON SEAL of

EAST SUFFOLK COUNCIL

was affixed in the presence of:



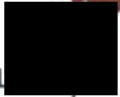
.....Authorised Officer

632



.....Authorised Officer

THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL



65164

Was affixed in the presence of:



.....Authorised Officer

Executed as a Deed by
**ROBERT JOHN MATTHEW
SURTEES STEPHENSON**



Signature

in the presence of:



Signature of Witness

Name of Witness in Block Capitals



Address of Witness



Occupation of Witness

LEGAL PA

Executed as a Deed by
MARGARET SYLVIA STEPHENSON

[Redacted] - Signature

in the presence of:

[Redacted]
Signature of Witness

Name of Witness in Block Capitals [Redacted]

Address of Witness [Redacted]

Occupation of Witness *LEAD PA*

Executed as a Deed by [Redacted]
WELLINGTON CONSTRUCTION LIMITED
acting by a Director in the presence of:

[Redacted]
Signature of Witness

Name of Witness in Block Capitals [Redacted]

Address of Witness [Redacted]

Occupation of Witness *PA TO DIRECTORS*