

DATE *7th December* 2021

- (1) WEST SUFFOLK COUNCIL
- (2) SUFFOLK COUNTY COUNCIL
- (3) JAMES EDWARD WATERS
- (4) STEPHEN JOHN BURRELL AND PAMELA JEAN COBBOLD
- (5) MARK ANDREW COBBOLD
- (6) EVERA HOMES LLP

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

relating to

Land at Rabbithill Covert Station Road Lakenheath Suffolk

West Suffolk Council
West Suffolk House
Western Way
Bury St. Edmunds
Suffolk

THIS DEED OF VARIATION is made the Ten day of December 2021

PARTIES:

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **JAMES EDWARD WATERS** of The Manor Lee Farm Isleham Road Freckenham Suffolk IP28 8HR (hereinafter called the "**First Owner**")
- (4) **STEPHEN JOHN BURRELL AND PAMELA JEAN COBBOLD** of Freedom Farm Cowles Drove Hockwold Thetford Norfolk IP26 4JQ (hereinafter collectively called the "**Second Owners**")
- (5) **MARK ANDREW COBBOLD** of Winchester House The Drift Fornham St. Martin Suffolk IP31 1SU (hereinafter called the "**Third Owner**")
- (6) **EVERA HOMES LLP** (company number OC423288) of 31 King Street Norwich NR1 1PD (hereinafter called the "**the Owner**")

RECITALS

- A The Council (formally known as Forest Heath District Council) is a local planning authority for the purposes of the Act for the area in which the site (for the purposes of this Deed the site area shown edged red in the Plan One attached to this Deed and hereinafter called 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) the local education authority the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- C The First Owner is the freehold owner of that part of the Off-Site Landscape Buffer Land which is registered at HM Land Registry under title number SK298015 and the Second Owners are the freehold owners of that part of the Off-Site Landscape Buffer Land which is registered at HM Land Registry under title number SK344143 and the Third Owner is the freehold owner of that part of the Off-Site Landscape Buffer Land which is registered at HM Land Registry under title number SK366224

(hereinafter collectively called the "**Off-Site Landscape Buffer Land Owners**")

- D The Owner is entitled to be registered as the freehold proprietor of the Site pursuant to a transfer dated 24 August 2021 made between the Off-Site Landscape Buffer Land Owners and the Owner
- E On 13 September 2018 a deed pursuant to Section 106 of the Town and Country Planning Act was entered into by (1) Forest Heath District Council (2) Suffolk County Council (3) James Edward Waters (4) Stephen John Burrell and Pamela Jean Cobbold and (5) Mark Andrew Cobbold which was secured by planning permission and given the reference F/2013/0345/OUT (hereinafter called the "**Principal Deed**")
- F On 25 November 2020 the Owner submitted reserved matters pursuant to planning permission F/2013/0345/OUT and the council is resolved to approve the reserved matters under the reference DC/20/2066/RM subject to completion of this Deed
- G Without prejudice to the terms of the other covenants contained in the Principal Deed the Parties hereto agree to vary the Principal Deed on such terms as set out herein

1. DEFINITIONS

For the purposes of this Deed the words and expressions defined in the Recitals shall have the meanings given to them respectively by the Recitals

2. INTERPRETATION

- 2.1 Words and expressions defined in the Principal Deed shall have the same meanings in this Deed except to the extent that they are expressly varied by this Deed
- 2.2 Any reference to the "Parties" is a reference to the parties to this Deed
- 2.3 The Parties do not intend that any of this Deed's terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it

3. VARIATIONS TO THE PRINCIPAL DEED

- 3.1 The Parties agree that the Principal Deed shall be varied and supplemented as set out in the Variation Schedule but otherwise the Principal Deed shall remain in full force and effect

3.2 The Off-Site Landscape Buffer Land Owners hereby agree that the Off-Site Landscape Buffer Land shall be bound by the Principal Deed (as varied and supplemented by this Deed) but only in respect of the obligations set out at Paragraph 4 of the Principal Deed (as varied and supplemented by this Deed) and the following clause 3.3 of this Deed

3.3 The Off-Site Landscape Buffer Land Owners hereby agree to allow the Owner access and unfettered use of the Off-Site Landscape Buffer Land for the Owner to perform obligations within paragraphs 4.3 and 4.4 and 4.5 of the Principal Deed (as varied and supplemented by this Deed)

4. EFFECTIVE DATE

The amendments to the Principal Deed made by this Deed shall come into effect on the date of this Deed

5. CONTINUATION OF THE PRINCIPAL DEED

This Deed does not release any party to it from any breaches of the Principal Deed existing at the date of this Deed save where variations contained in this Deed remove the obligation of which the party is in breach

6. AGREEMENTS AND DECLARATIONS

6.1 This Deed is made pursuant to sections 106 and 106A of the Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers

6.2 The covenants restrictions and requirements imposed by this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council and the County Council as the local planning authorities against the Off-Site Landscape Buffer Land Owners and the Owner and their respective successors in title

6.3 This Deed will be registered as a local land charge by the Council

6.4 No person or body will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Site or the Off-Site Landscape Buffer Land or the part of the Site or Off-Site Landscape Buffer Land in respect of which such breach occurs but they will remain liable for any breaches of this Deed occurring before that date

7. MISCELLANEOUS

- 7.1 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.2 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities
- 7.3 The provisions in the main body of the Principal Deed shall be deemed to be incorporated into this Deed

8. FEES

- 8.1 The Owner covenants to pay to the Council on or before completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed
- 8.2 The Owner covenants to pay to the County Council on or before completion of this Deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed
- 8.3 The Owner further covenants to pay to the Council one thousand five hundred pounds (£1,500) on or before completion of this Deed towards the costs of reporting and monitoring the obligations contained in this Deed

9. JURISDICTION

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

10. 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

11. EXECUTION

The Parties have executed this Deed as a deed and it is delivered on the date set out in this Deed

In witness whereof the Parties hereto have executed this Deed on the day and year first before written

**THE COMMON SEAL OF
WEST SUFFOLK COUNCIL**

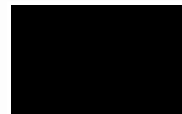
was affixed in the presence of:



Authorised Officer

**THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:



ed Officer

SIGNED AS A DEED BY

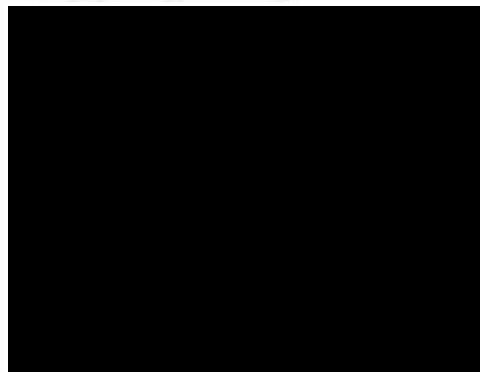


JAMES EDWARD WATKINS

Signature of witness

Name of witness

Address



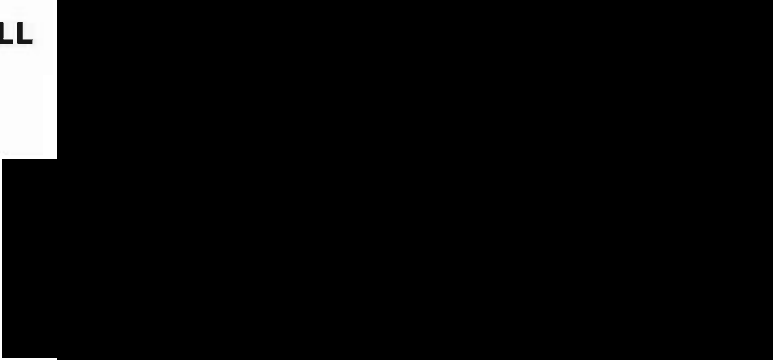
SIGNED AS A DEED BY

STEPHEN JOHN BURRELL

Signature of witness

Name of witness

Address



SIGNED AS A DEED BY

PAMELA JEAN COBB

Signature of witness

Name of witness

Address



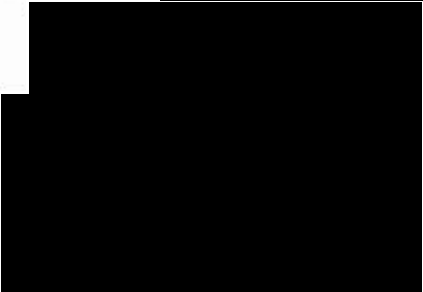
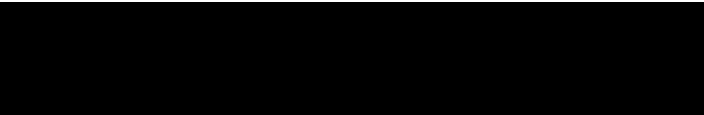
SIGNED AS A DEED BY

MARK ANDREW COBBOLD

Signature of witness

Name of witness

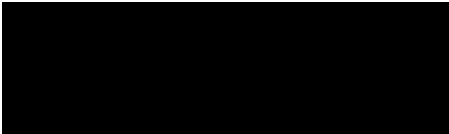
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SIGNED AS A DEED BY

EVERA HOMES LLP

in the presence of:



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VARIATION SCHEDULE

Within the Principal Deed at part 1 Definitions delete the definition of "Affordable Housing Contribution" and replace with the following definition:

<i>"Affordable Housing Contribution"</i>	<i>Twenty-eight thousand five hundred Pounds (£28,500) BCIS Indexed</i>
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Within the Principal Deed at part 1 Definitions delete the definition of "Planning Permission" and replace with the following definition:

<i>"Planning Permission"</i>	<i>the outline planning permission granted by the Council on 20 September 2018 referenced F./2013/0345/OUT and any subsequent planning permission for the Development granted pursuant to Section 73 of the Act</i>
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Within the Principal Deed at part 1 Definitions after the definition for Working Days insert the following definitions:

<i>"Approved Details"</i>	<i>the Councils written approval of the Off-Site Landscape Buffer Land Details</i>
<i>"Approved Time"</i>	<i>the timescale as stated on the decision notice for Implementing Permission DC/14/2096/HYB (or any planning permission for residential development that may supersede Permission DC/14/2096/HYB)</i>
<i>"Implementing"</i>	<i>the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Permission DC/14/2096/HYB begins to be carried out other than operations consisting of site clearance demolition work archaeological investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions diversion and lay of services erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Implemented" shall be construed accordingly</i>
<i>"Off-Site Landscape Buffer Land"</i>	<i>the area of land as shown shaded green for identification purposes on Plan One attached to this Deed</i>
<i>"Off-Site Landscape Buffer Land Details"</i>	<i>the details of the Off-Site Landscape Buffer Land drawn to a scale of not less than 1:200 including accurate indications of the position and species of all planting and</i>

	<i>the girth and canopy spread and height of all existing trees and hedgerows on the border of the planting area</i>
<i>"Permission DC/14/2096/HYB"</i>	<i>the outline part of the hybrid planning permission granted on 3 February 2020 for up to 375 dwellings (but not including the access or school site)</i>
<i>"Public Open Space Contribution"</i>	<i>fifty-nine thousand and fifty-five pounds (£59,055) BCIS Indexed</i>

Within the Principal Deed at the Second Schedule after clause 2.5 insert the following:

COVENANTS WITH THE COUNCIL:

3 PUBLIC OPEN SPACE CONTRIBUTION

The Owner covenants with the Council:

- 3.1 *To pay the Public Open Space Contribution to the Council prior to the first Occupation of seventy-five (75) Dwellings*
- 3.2 *Not to Occupy or permit Occupation of more than seventy-four (74) Dwellings unless and until the Public Open Space Contribution has been paid to the Council*

4 OFF-SITE LANDSCAPE BUFFER LAND

- 4.1 *The Owner covenants to submit to the Council for approval the Off-Site Landscape Buffer Land Details prior to the Occupation of sixty (60) Dwellings*
- 4.2 *The Owner covenants not to allow or permit Occupation of more than fifty-nine (59) Dwellings unless and until the Off-Site Landscape Buffer Land Details have been submitted to the Council*
- 4.3 *Once the Owner has received the Approved Details to then lay out and complete the Off-Site Landscape Buffer Land in accordance with the Approved Details prior to the Occupation of eighty (80) Dwellings*
- 4.4 *To not allow Occupation of more than seventy-nine (79) Dwellings unless and until the Off-Site Landscape Buffer Land has been laid out and completed in accordance with the Approved Details*
- 4.5 *For a period of five years from the completion of the Approved Details within the Off-Site Landscape Buffer Land to replace planting which was removed or dying within the first available planting season thereafter*

with planting of similar size and species unless the Council gives written consent for any alternative

- 4.6 **FOR THE AVOIDANCE OF DOUBT** Paragraphs 4.1 to 4.5 shall cease to have effect if the Permission DC14/2096/HYB (or any planning permission for residential development that may supersede Permission DC/14/2096/HYB) has been Implemented within the Approved Time

Within the Principal Deed at the Fourth Schedule after clause 2.2 insert the following:

THE COUNCIL COVENANTS WITH THE OWNERS:

- 2.3 *To use the Public Open Space Contribution towards the provision of play and or open space within the vicinity of the Development*
- 2.4 *After the expiry of ten (10) years from the date that the Open Space Contribution was received to pay to the person who paid such amount of the Open Space Contribution which has not been committed or expended by the Council in accordance with the provisions of this Deed such payment to be made within twenty eight (28) Working Days of such request*

3 OFF-SITE LANDSCAPE BUFFER LAND

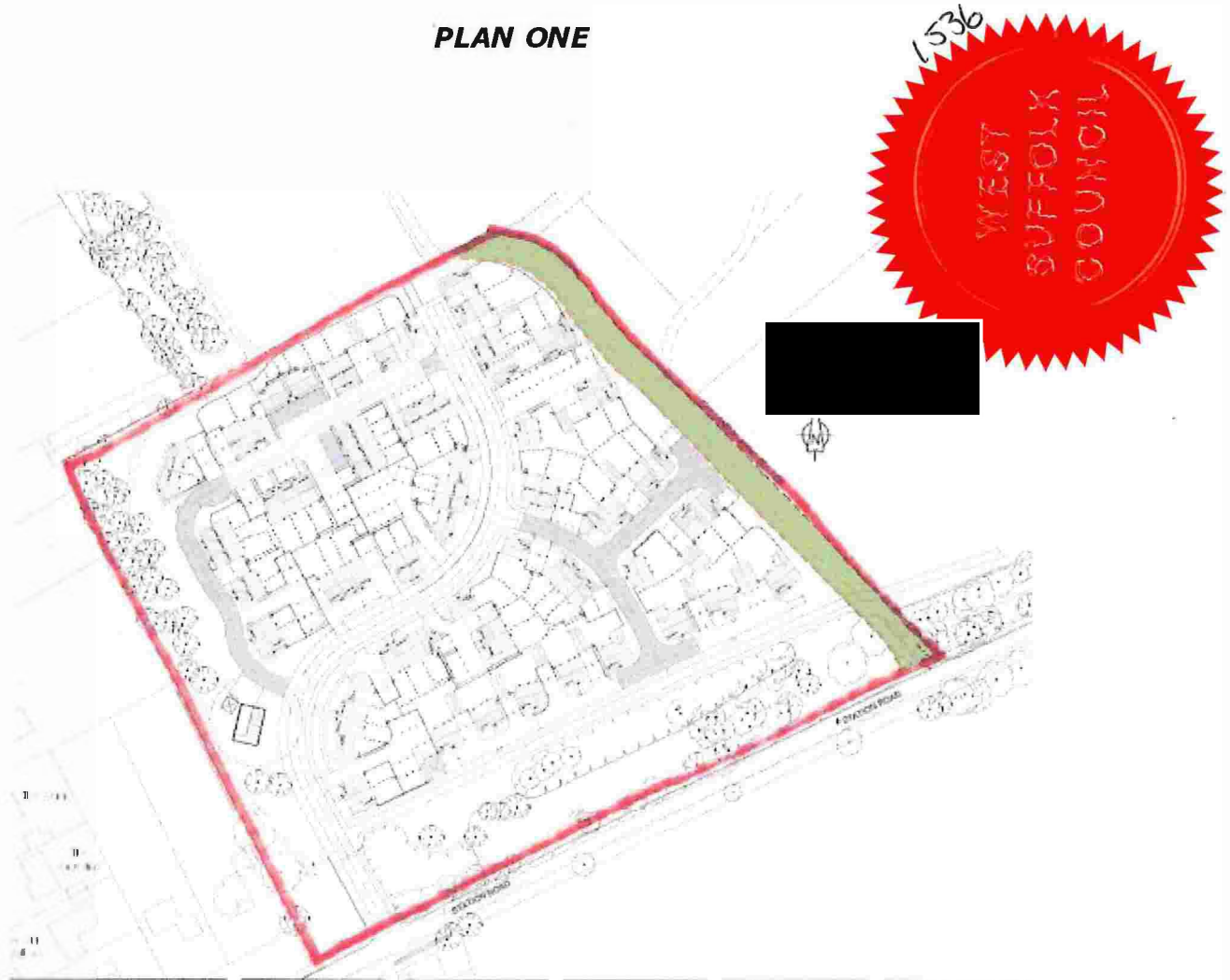
- 3.1 *To act reasonably at all times using reasonable endeavours to respond in writing to the Owner within twenty (20) Working Days of receipt of the Off-Site Landscape Buffer Land Details and to not withhold or delay unreasonably the Approved Details*

Within the Principal Deed after the Sixth Schedule insert the following new schedule:

SEVENTH SCHEDULE

The Land shown for identification purposes shaded green which shall for the purposes of this Deed be known as the Off-Site Landscape Buffer Land and the Site is shown edged red

PLAN ONE



END OF DEED