

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

**relating to land at Cherry Lee Darsham Road, Westleton  
Suffolk IP17 3AL**

Dated: 28<sup>th</sup> March

2022

**NORTHCHURCH LTD (1)**

**NICOLAS JAMES SPAULL (2)**

**EAST SUFFOLK COUNCIL (3)**

**SUFFOLK COUNTY COUNCIL (4)**

THIS DEED IS MADE the 28<sup>th</sup> day of March 2022

## PARTIES

- (1) **NORTHCHURCH LTD** of (Co. Regn. No. 10286849) of Fitzroy House, Crown Street, Ipswich IP1 3LG ("the Owner") and
- (2) **NICOLAS JAMES SPAULL** of Hestley Hall, Hestley Green, Thorndon, Eye IP23 7LR ("the Mortgagee")
- (3) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton IP12 1RT ("the Council")
- (4) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council")

## 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 relevant obligations in this Deed are enforceable.
- 2 The County Council is the local highway authority (except for trunk roads) and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the relevant obligations in this Deed are enforceable.
- 3 The Owner is the freehold owner of the Site
- 4 The Mortgagee has the benefit of a charge dated 22<sup>nd</sup> February 2018 over the Site
- 5 The Council has decided to approve the Application
- 6 The Site lies within the area to which the Local Plan applies
- 7 It is a material consideration in the Council's planning policies that in any proposals for residential development consisting of three or more new dwellings in a local service centre a proportion of one dwelling in three should be provided for Affordable Housing purposes

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 Second and Third Schedule:

<b>“Act“</b>	the Town and Country Planning Act 1990 as amended
<b>“Application“</b>	the application for outline planning permission for the Development validated by the Council on the 27 <sup>th</sup> November 2020 and allocated reference number DC/20/4709/OUT
<b>“Commencement of Development“</b>	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 works, 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, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly
<b>“Completion of the Development“</b>	the date that the last Dwelling is first Occupied
<b>“County Council Monitoring Fee“</b>	the sum of four hundred and twelve pounds (£412)
<b>“Consumer Prices Index“</b>	the Consumer Prices Index published by

<b>“Development”</b>	<p>the Central Government or any subsequent indices replacing the same</p> <p>Outline Planning Application (Some Matters Reserved) – Demolition of a dwelling and an outline application for up to 15 homes with full details submitted of the vehicular access as set out in the Application</p>
<b>”Dwelling”</b>	<p>any dwelling (including a house bungalow flat or maisonette and including Affordable Dwellings and Market Housing Units) to be constructed pursuant to the Planning Permission</p>
<b>“Habitat Regulations Mitigation Contribution”</b>	<p>means the sum of Three Hundred and Twenty One Pounds and Twenty Two Pence (£321.22) per Dwelling on or before Commencement of Development towards the cost of mitigating the impact of European Protected Sites as a result of the Development pursuant to the Habitats Regulations Assessment Recreational Disturbance Avoidance and Mitigation Strategy for Ipswich Borough, Babergh District, Mid Suffolk District and East Suffolk Councils – Technical Report dated 23 May 2019</p>
<b>“Index”</b>	<p>All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation</p>
<b>“Index Linked“</b>	<p>the increase in any sum referred to in the Second and Third Schedule by an amount equivalent to the increase in the</p>

	Index (or the RPI Index where the Second or Third Schedule requires) such sum is payable to be calculated in accordance with Clause 11 of this Deed
<b>“Interest“</b>	interest at 4 per cent above the minimum lending rate of the Bank of England from time to time
<b>“Local Plan“</b>	The East Suffolk Council – Suffolk Coastal Local Plan adopted 23 September 2020
<b>“Occupation“ and “Occupied“</b>	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.
<b>“Plan“</b>	the plan attached to this Deed
<b>“Planning Permission“</b>	the outline planning permission subject to conditions as may be granted pursuant to the Application
<b>“RPI Index“</b>	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
<b>“Secondary School Transport Contribution“</b>	the sum of twelve thousand and fifty pounds (£12050) RPI Index Linked to be used to fund school transport provision for a minimum of five years for secondary-age pupils
<b>“Section 106 Officer“</b>	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

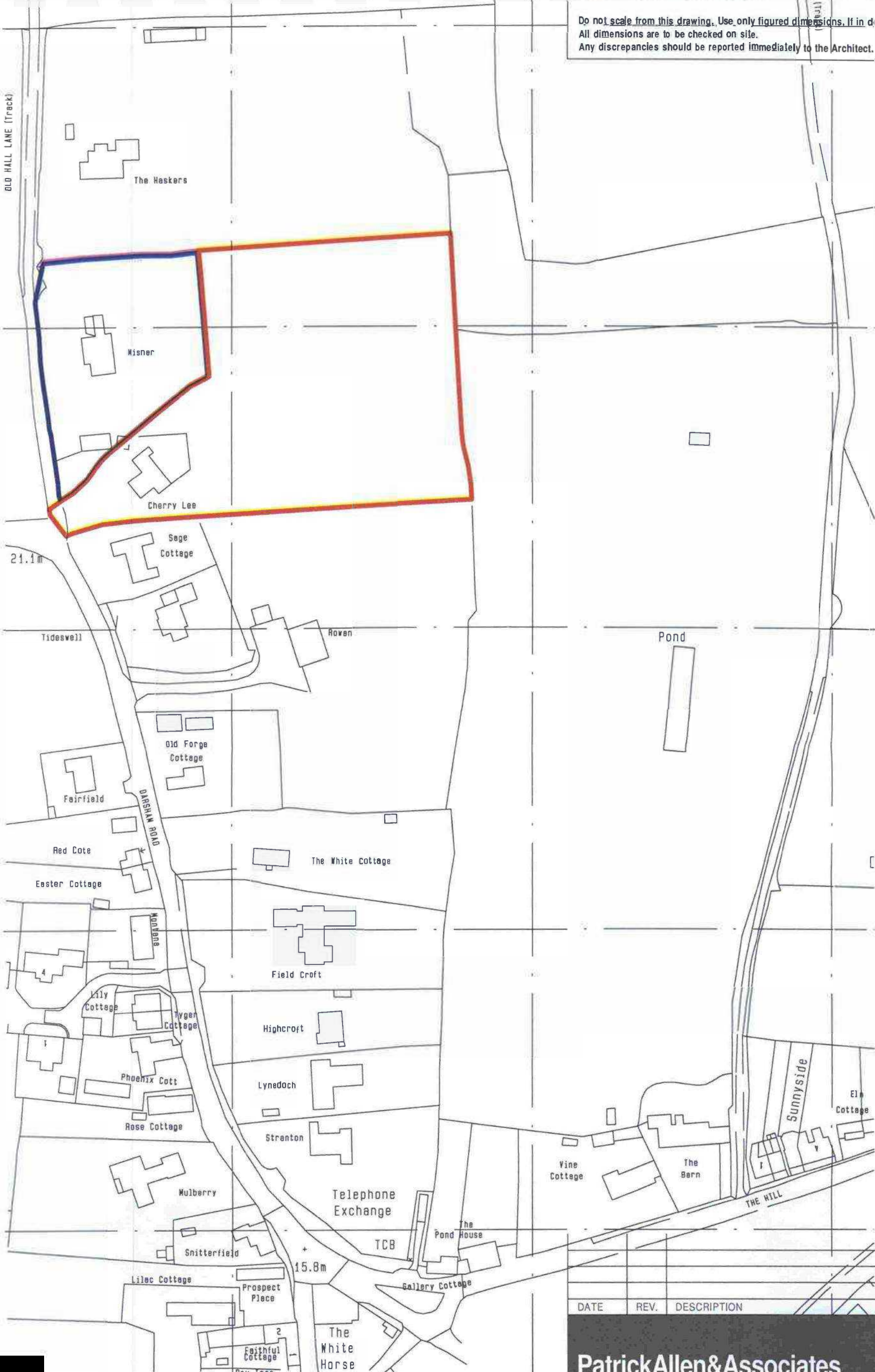
**“Site”**

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

**2 CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph 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 or the County Council the successors to their respective statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

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 Do not scale from this drawing. Use only figured dimensions. If in doubt, ask.  
 All dimensions are to be checked on site.  
 Any discrepancies should be reported immediately to the Architect.



**PROPOSED DEVELOPMENT**  
 Land off: Old Hall Lane, Westleton.  
 Location Plan  
 Scale 1:1250 (A3)

**3882-12A**

DATE	REV.	DESCRIPTION	DRAWN

**Patrick Allen & Associates Architects**  
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2.8 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use all reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

2.9 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 to or upon whom it is to be given or served at the address for that party given in this Deed or such other address in the United Kingdom as that party may by notice to the other parties hereto or their solicitors stipulate as that party's address for service of notice pursuant to this Deed or if not such address is given or stipulated at that party's last known address and any notice so given or served shall be deemed to be received and the date on which it is given or served shall be deemed to be 48 hours after posting.

### **3 LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as appropriate as local planning authorities against the Owner and their successors in title.

### **4 CONDITIONALITY**

The obligations set out in the Second Schedule and the Third Schedules are conditional upon the grant of the Planning Permission

and the rest of the provisions set out in this Deed ) shall take effect immediately upon completion of this Deed.

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

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

5.2 The Owner hereby covenants with the Council to pay the Council' reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.



5.3 The Owner hereby covenants to pay the Council's monitoring fee of £816 on completion of this Deed.

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

5.5 The Owner warrants that he is the freehold owner of the Site and has full power and capacity to enter into this Deed and that no other party, other than the Mortgagee, has any charge over or any other interest in the Site which would require them to be a party to this Deed or whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

## **6. THE COUNCIL COVENANTS**

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

## **7 THE COUNTY COUNCIL COVENANTS**

7.1 The County Council hereby covenants with the Owner 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 Owner from the Council and/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) 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 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.

8.5 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 Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

- 8.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.7 Save for the obligations contained within paragraph 2 to the Second Schedule of this Deed which shall continue to be binding and enforceable against individual purchasers, owners, occupiers, lessees or their mortgagees of the Affordable Dwellings subject the provisions contained therein the covenants, restriction and requirements contained in this Deed shall not be enforceable against:
- 8.7.1 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
- 8.7.2 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 telecommunications or highways in connection with the Development of the Site.
- 8.8 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.
- 8.9 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and/or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities.
- 8.10 The Owner covenants from the date that this Deed takes effect to allow the Council and/or the County Council and its 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.
- 8.11 The Owner 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.

- 8.12 In the event In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act ("Section 73 Consent");
- 8.12.1 the obligations in this Deed shall in addition to binding the Site in respect of respect of the Planning Permission relate to and bind the Site in respect of any Section 73 Consent; and
- 8.12.2 the definitions of Development Application and Planning Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any applications under section 73 of the Act and the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification pursuant to section 106A of the Act;
- 8.12.3 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent.

## **9 WAIVER**

No waiver (whether expressed or implied) by the Council and/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 and/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 Owner agrees to give the Council and the County Council written notice within 10 working days 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/20/4709/OUT 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 and the title number or numbers thereof.

## **11 MORTGAGEE'S CONSENT**

11.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

## **12 INDEXATION**

Any sum referred to in the Second Schedule and the Third 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 and unless the context reads otherwise) 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:

12.1 A is the sum payable under this Deed;

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

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

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

12.5 C/D is greater than 1

## **13 INTEREST**

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

## **14 VAT**

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

## **15 DISPUTE PROVISIONS**

- 15.1 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.
- 15.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 15.1 or as to the appropriateness of the professional body then such question may be referred by either part 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.
- 15.3 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.
- 15.4 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.
- 15.5 The provisions of this clause shall not affect the ability of the Council and/or the County 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.

**16 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 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.

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

## **FIRST SCHEDULE**

### **Details of the Owner's Title, and description of the Site**

Freehold land at Cherry Lee Darsham Road, Westleton Suffolk IP17 3AL within registered title number SK 384653 shown edged Red for identification only on the Plan.

### **Details of the Mortgagee**

Registered Charge dated 22 February 2018 registered on 29<sup>th</sup> March 2018 against title number SK 384653

## SECOND SCHEDULE

### The Owner's Covenants with the Council

#### 1. Definitions

**"100% Staircaser"** Means a lessee of a Shared Ownership Dwelling or under a Shared Ownership Lease who has exercised their right under that lease to purchase 100% of the equity in the Shared Ownership Dwelling who has exercised their right to purchase the remaining equity

**"Additional First Homes Contribution"** Means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraph 2.22, 2.23 and 2.31 of this Schedule, the lower of the following two amounts:

(a) 30% of the proceeds of sale; and

(b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

And which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home

**"Affordable Dwellings"** Means 5 Dwellings to be made available as Affordable Housing comprising three (3) (1 bed



two person bungalows) Affordable Dwellings for Rent and the one (1) (2 bed 4 person houses) Shared Ownership Dwellings and one (1) (2 bed 4 person house) First Home the exact location of which shall be agreed as part of the Affordable Housing Scheme

**“Affordable Dwellings for Rent”**

Affordable Housing let by a Registered Provider to Eligible Person where the rent level is capped at 80% of the local market rent (including any service charges, where applicable) and within local housing allowance rates, or as otherwise agreed in writing with the Council

**“Affordable Housing”**

Housing that will be available to eligible households and as defined in Annexe 2 of the National Planning Policy Framework (July 2021) or any amending or subsequent national planning policy that may be published by the Government 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 Scheme”**

A scheme to be submitted that will provide Affordable Housing for the provision of the Affordable Dwellings generally in accordance with the Affordable Housing Table unless otherwise agreed with the Council such Affordable Housing Scheme shall include details of:

- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings
- the name and registration number of the Registered Provider where known

- a plan and schedule indicating the number, location, tenure, plot numbers, types and size (including the number of occupants each dwelling can house) of Affordable Dwellings allocated to the Affordable Housing Scheme;
- full details of the Affordable Housing mix if differing from that set out in the Affordable Housing Table (such proposal to reflect the Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Council)

such other information as the Council reasonable require to enable approval of the Affordable Housing Scheme

<b>“Affordable Housing Table“</b>	Means the table at the Second Schedule indicating the house types and tenure types of the Affordable Dwellings unless otherwise agreed in writing with the Council
<b>“Allocation Policy“</b>	Means the policy and procedure adopted by the Council to determine the eligibility and priority for the allocation of the Affordable Dwellings for Rent
<b>“Armed Services Member“</b>	Means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

<b>“Chargee”</b>	any 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 ( however appointed)including a housing administrator ( each a “Receiver”) of the whole or part of the Affordable Dwellings or any person deriving title from such mortgagee or chargee
<b>“Chargee’s Duty”</b>	the tasks and duties set out in paragraph 2.7 of this Second Schedule
<b>“Compliance Certificate“</b>	Means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and under paragraph 2.15 applies the Eligibility Criteria (Local)
<b>“Discount Market Price”</b>	Means a sum which is the Market Value of a First Home discounted by at least 30%
<b>“Disposal”</b>	<p>Means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in a First Home other than:</p> <p>(a) a letting or sub-letting in accordance with paragraph 2.26-2.30</p> <p>(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner</p> <p>(c) an Exempt Disposal</p> <p>And “Disposed“ and “Disposing“ shall be construed accordingly</p>

**“Eligibility Criteria (Local)”**

Means local criteria met in respect of a purchase of a First Home if:

(a) a purchaser meets the criteria in the Local Connections Cascade (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connections Cascade); and

(b) the purchaser meets any further local criteria in effect at the date of the relevant disposal of a First Home

It being acknowledged that at the date of this Deed the Council has only prescribed Eligibility Criteria (Local) in respect of (a)

**“Eligibility Criteria (National)”**

Means criteria which are met in respect of a purchase of a First Home if:

(a) a purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and

(b) the purchasers annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed £80,000 or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home

**“Eligible Person”**

means a person or persons 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

**“Exempt Disposal”**

Means the Disposal of a First Home in one of the following circumstances:

(a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner

(b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Home Owner

(c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order

(d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 2.29 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraph 2.26-2.30

**“First Homes“**

means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap

**“First Homes Owner“**

Means a person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

(a) a Developer or

(b) another]developer or entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or

(c) the freehold a tenant or sub-tenant of a permitted letting under paragraph 2.26-2.30

**“First Time Buyer“**

Means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003

**“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

**“Local Connection Cascade“**

the local connections criteria to be applied to each and every let or sale of an Affordable Dwelling as set out in Appendix A

**“Market Dwellings“**

that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing

**“Market Value“**

means the open market value as assessed by a Valuer of a Dwelling and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account any discount in the valuation

**“Mortgagee“**

Means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire a First Home or Affordable Dwelling including all such regulated entities which provide Shari’ah compliant finance for the purpose of acquiring a First Home or Affordable Dwelling

<b>“Nomination Agreement“</b>	The agreement to be entered into by the Council and the Registered Provider in respect of rights for the Council to nominate Eligible Persons for the Affordable Dwellings for Rent in the form provided by the Council a draft of which is appended to this Deed in Schedule 6
<b>“Practical Completion”</b>	means a stage reached when the construction of an Affordable Dwelling or a First Home is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied
<b>“Price Cap“</b>	Means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be published from time to time by the Secretary of State
<b>“Protected Person“</b>	means any person who: <ul style="list-style-type: none"> <li>(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 Dwelling or</li> <li>(b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling or</li> <li>(c) a 100% Staircaser or</li> <li>(d) any successor in title of a chargee or</li> </ul>

mortgagee of the person named a) – c)  
above

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

**“Qualifying Person”**

Means a person or persons unable to buy housing generally available on the open market and whose household income is below £80,000 (or such other amount agreed in writing with the Council in accordance with government policy);

**“Reasonable  
Consideration“**

offer prices from Registered Providers which give the Owner a reasonable consideration having regard to current market conditions in the acquisition of affordable housing of a similar type and location by Registered Providers on a grant free basis via Section 106 Agreements

**“Registered Provider”**

either:-

**or “RP“**

- (i) 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;
- (ii) any person or body or entity which is registered as a provider or social housing in accordance with Section 80(2) and Chapter 3 of the Housing and Regeneration Act 2008 or
- (iii) any body, organisation or company which is registered charity with the Charity Commissioners for England and Wales and approved by Homes England



or any other body, organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a registered social landlord to be approved in writing by the Council;

<b>“Sales Procedure“</b>	Means the procedure to be approved by the Council to verify the Market Value and eligibility of a First Time Buyer in relation to the First Home
<b>“SDLT</b>	Means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
<b>“Secretary of State“</b>	Means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
<b>“Shared Ownership Dwelling“</b>	means those Dwellings purchased on a Shared Ownership Lease
<b>“Shared Ownership Lease“</b>	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:  (i) not more than 75% and not less than 10% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider  (ii) power to the purchaser to increase their ownership up to 100%  (iii) an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider

subject to annual increases not exceeding Retails Price Index (All Items) published by the Office of National Statistics (or if such index ceases to be published such other index the Council shall reasonable determine) plus 0.5% or such other rent as complies within the requirements from time to time of Homes England

**“Valuer”**

Means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer acting in an independent capacity

**2. AFFORDABLE HOUSING**

- 2.1 The Owner covenants not to Commence the Development until the Affordable Housing Scheme has been agreed with the Council ( such agreement not to be unreasonably delayed or withheld by the Council)
- 2.2 The Owner covenants that not more than four (4) of the Market Dwellings shall be Occupied until a contract has been entered into with a Registered Provider for transfer of all of the Affordable Dwellings (save for the First Home unless the Registered Provider has agreed to purchase such First Home)
- 2.3 The Owner covenants that no more than six (6) of the Market Dwellings shall be occupied until the Affordable Dwellings ( save for the First Home unless the Registered Provider has agreed to purchase such First Home) have been constructed in accordance with the Planning Permission made ready for residential Occupation and transferred to the Registered Provider or marketed for sale to Qualifying Persons or First Time Buyers in accordance with the terms of this Deed
- 2.4 The Owner covenants that from the date of Practical Completion of the Affordable Dwellings they shall not be used other than for the purposes of Housing for Eligible Persons or Qualifying Persons or First Time Buyers in accordance with the Affordable Housing Scheme subject however to the provisions herein

- 2.5 In the event that a Registered Provider cannot be found for any of the Affordable Dwellings throughout England despite the Owner's reasonable endeavours to do so the Owner will be required to provide notification to the Council's satisfaction (the Council at all times acting reasonably) that demand from Registered Providers has not been forthcoming for Reasonable Consideration
- 2.5.1 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 Owner to seek an agreed way forward that does not disadvantage the Owner or their Development whilst maximising the provision of Affordable Housing
- 2.5.2 if after three calendar months of handover of the Affordable Dwellings to the Registered Provider there remains any Affordable Dwellings not leased or sold and the Registered Provider can provide evidence to the Council's satisfaction there are no prospective occupants the Registered Provider shall be free to seek written agreement of the Council to convert those Affordable Dwellings to an alternative form of affordable housing defined within Annexe 2 of the National Planning Policy Framework (July 2021) (or an amended or subsequent national planning policy that be published by the Government from time to time)
- 2.6 The Affordable Housing provisions in the Second Schedule of this Deed shall not be binding on a Chargee (or any receiver (including an administrative receiver) appointed by such Chargee of any other person appointed under any security documentation to enable such Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) if the whole of any part of the Affordable Dwellings or any persons or bodies deriving title through such Chargee or Receiver PROVIDED THAT:
- i) such Chargee or Receiver of an Affordable Dwellings for Rent or Shared Ownership Dwelling shall first given written notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable 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 principal monies, interest and costs and expenses; and

ii) if such disposal of the Affordable Dwellings for Rent or Shared Ownership Dwellings has not been completed within the three month period, the Chargee or Receiver shall be entitled to dispose of the Affordable Dwellings for Rent or Shared Ownership Dwellings free from the affordable housing provisions in this Deed which provisions shall determine absolutely

2.7 The First Homes provisions in the Second Schedule of this Deed shall not apply to any Mortgagee or any receiver (including an administrative receiver appointed by such Mortgagee or any other person appointed under any security documentation to enable such Mortgagee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of any individual First Home or any person or bodies deriving title through such Mortgagee or Receiver PROVIDED THAT:

such Mortgagee or Receiver of a First Home shall first give written notice to the Council of its intention to Dispose of the relevant First Home ; and

iii) once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home subject only to paragraph 2.7 (iv) at its full Market Value

(iv) following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution

(v) following receipt of notification of the Disposal of the relevant First Home the Council shall:

(a) forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 2.18; and

(b) apply all such monies received towards the provision of Affordable Housing in East Suffolk

Affordable Housing Table

House Type	Tenure	Number
1 bed 2 person bungalow	Affordable Dwellings for Rent	3
2 bed 4 person house	Shared Ownership Dwelling	1
2 bed 4 person house	<u>First Home</u>	1
<b>Total</b>		<b>5</b>

2.8 The Registered Provider shall enter into a Nomination Agreement with the Council and shall not let dispose or otherwise permit the Occupation of any of the Affordable Dwellings for Rent until such Nomination Agreement has been entered into

2.9 On the first and any subsequent letting of an Affordable Dwelling for Rent the Council will (unless otherwise agreed in writing) nominate eligible applicants in accordance with the Allocation Policy and Nomination Agreement (priority will go to applicant who have a Local Connection in accordance with the Local Connections Cascade at Appendix A)

2.10 The Registered Provider shall not dispose of any interest in any of the Affordable Dwellings for Rent other than by way of an assured tenancy or an assured short hold tenancy under the Housing Act 1988 (or any form of residential tenancy prescribed by statute in substitution for or in addition to those)

PROVIDED THAT nothing in this paragraph shall be deemed to prohibit the sale of the Affordable Dwellings individually or together (in any numerical combination) as one transaction (whether or not subject to any tenancy) to any other Registered Provider

2.11 The Owner will notify the Council within 28 days of the transfer of any Affordable Dwellings to a Registered Provider of the plot number, street address, house type, size and tenure of each dwelling and date of transfer

- 2.12 The Shared Ownership Dwelling shall only be disposed of (which term shall include a freehold sale or sale of a registerable lease) to a Qualifying Person in accordance with the Local Connections Cascade
- 2.13 All proceeds of sale of a Shared Ownership Dwelling received by the Registered Provider (whether on initial sale, partial staircasing or final staircasing) less the costs of developing the Shared Ownership Dwelling and disposing of the same, are to be ring-fenced and used for the provision of Affordable Housing within the East Suffolk District.
- 2.14 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
- (a) the Eligibility Criteria (National); and
  - (b) the Eligibility Criteria (Local)
- 2.15 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 2.14 shall cease to apply
- 2.16 Subject to paragraphs 2.18 to 2.23, no First Homes shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee
- 2.17 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until the Council has been provided with evidence that:
- 2.17.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 2.15 applies meets the Eligibility Criteria (Local) (if any)
  - 2.17.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and
  - 2.17.3 the transfer of the First Home includes:
    - (a) a definition of the "Council" which shall be East Suffolk Council
    - (b) the definition of "First Homes Provision" in the following terms:

"means the provision set out in clause[s] [ ] of the [Supplemental] S106 Agreement a copy of which is attached hereto as the Annexure"

(c) a definition of "[Supplemental] S106 Agreement" means the [supplemental] agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) the Council [and] (2) [ ] and (3) [ ]

(d) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferree acknowledges that it may not transfer or otherwise Dispose of the First Home or any part of it other than in accordance with the First Homes Provisions

(e) a copy of the First Homes Provisions in an Annexure

2.17.4 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty- eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 2.16 and 2.17 have been met

2.18 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 of the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by East Suffolk Council of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT or their conveyancer that the provisions of clause XX (the First Homes Provision) of the Transfer dated [DATE] referred to in the Charges Register have been complied with or that they do not apply to the disposition".

2.19 The owner of the First Home may apply to the Council to Dispose of it other than as First Home on the grounds that either:

2.19.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 2.14 and 2.15 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 2.16 and 2.17 or

2.19.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraphs 2.19.1 before able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Home Owner undue hardship

- 2.20 Upon receipt of an application served in accordance with paragraph 2.19 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.
- 2.21 If the Council is satisfied that either of the grounds in paragraph 2.19 above have been made out it shall confirm in writing within twenty eight (28) days of the receipt of the written request made in accordance with paragraph 2.19 that the relevant Dwelling may be Disposed of:
- 2.21.1 to the Council at the Discount Market Price; or
- 2.21.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home
- and on the issue of that written confirmation the obligation in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 2.22 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.
- 2.22 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 2.19 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 2.19 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 2.19 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.
- 2.23 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 2.21 or 2.22 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 2.24 Upon receipt of the Additional First Homes Contribution the Council shall:
- 2.24.1 within 10 working days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 2.18 where such restriction has previously been registered against the relevant title
- 2.24.2 apply all monies received towards the provision of Affordable Housing



- 2.25 Any person who purchases a First Home free of the restriction in schedule [ ] [ ] of this Deed pursuant to the provisions in paragraph 2.22 and 2.23 shall not be liable to pay the Additional First Homes Contribution to the Council.
- 2.26 Each First Home shall only be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 2.27–2.29 below.
- 2.27 A First Homes Owners may let or sub-let their First Home for a fixed term of no more than two (2) years provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner’s period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner’s period of ownership may not exceed two (2) years.
- 2.28 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonable withhold or delay giving such consent and not to without such consent in any circumstances (a) – (f) below:
- a. the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment
  - b. the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
  - c. the First Homes Owner reasonable requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - d. the First Homes Owner reasonable requires to live elsewhere for the duration of the letting or sub-letting as a result of a relationship breakdown
  - e. the First Homes Owner reasonable requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
  - f. the First Homes Owner reasonable requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person

- 2.29 A letting or sub-letting permitted pursuant to paragraph 2.27 and 2.28 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 2.30 Nothing in this paragraph 2 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation (except where local policy restrictions apply) provided that the First Home remains at all times the First Home Owner's main residence.
- 2.31 The Owner shall provide the S.106 Officer at the Council with written notification within fourteen days of:
- 2.31.1 The Commencement of Development
  - 2.31.2 Occupation of the first Market Dwelling
  - 2.31.3 Occupation of the third Market Dwelling
  - 2.31.4 Occupation of the fifth Market Dwelling
  - 2.31.5 The date of Practical Completion of the Affordable Dwellings

### **3 Habitat Regulations Mitigation Contribution**

- 3.1 The Owner covenants on or before Commencement of Development to pay the Habitat Regulations Mitigation Contribution to the Council
- 3.2 The Owner covenants not to Commence the Development permit the Commencement of Development until the Habitat Regulations Contribution has been paid to the Council

## **THIRD SCHEDULE**

### **The Owner Covenants with the County Council**

#### **1. Secondary Transport Contribution**

- 1.1 The Owner covenants to the County Council to pay the Secondary Transport Contribution (Index Linked to the RPI Index) to the County Council prior to the Commencement of Development
- 1.2 The Owner hereby covenants not to Commence or permit or allow the Commencement of Development unless and until the Secondary Transport Contribution (Index Linked to the RPI Index) has been paid in full to the County Council.

#### **2 County Council Monitoring Fee**

- 2.1 The Owner covenants to the County Council to pay the County Council Monitoring Fee to the County Council on the completion of this Deed
- 2.2 The Owner hereby covenants not to Commence or permit or allow the Commencement of Development unless and until the County Council Monitoring Fee has been paid in full to the County Council.

#### **3 County Council Legal Fees**

- 3.1 The Owner covenants to the County Council to pay its reasonable legal fees properly incurred in the negotiation, preparation, execution and completion of this Deed

#### **4 The Owner covenants to notify the County Council in writing within fourteen (14) days of:**

- 4.1 The Commencement of Development
- 4.2 Completion of the Development.

## **FOURTH SCHEDULE**

### **Council Covenants**

The Council covenants with the Owner as follows:

1. At the written request of the Owner 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 shall pay the Habitat Regulations Mitigation Contribution when received into an account and use the Habitat Regulations Mitigation Contribution for the purposes set out in the Deed within ten (10) years from receipt PROVIDED THAT nothing shall prevent the Council from paying any part of the Habitat Regulations Mitigation Contribution to a person, body or company that be responsible for the carrying out of the work as set out in this Deed

## FIFTH SCHEDULE

### County Council Covenants

The County covenants with the Owner as follows:

- 1.1 the County will place the Secondary Transport Contribution in a central interest bearing account and apply the same towards the purpose for which it was paid
  
- 1.2 In the event that the Secondary Transport Contribution has not been committed (by way of contract or otherwise) to the purpose for which it was paid within 7 years of Completion of the Development then the County shall repay to the payer so much of the Secondary Transport Contribution as shall remain uncommitted 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. Such payment to be made within twenty-eight (28) Working Days of such request.

**SIXTH SCHEDULE**  
**Nomination Agreement**

**DATED**

**2022**

**(name) (1)**

**and**

**EAST SUFFOLK COUNCIL (2)**

**NOMINATION AGREEMENT**

**Relating to Affordable Dwelling(s) for Rent**

**At**

**(name of scheme)**





“Allocation Policy” means the policy and procedure that the Council has adopted to determine eligibility and priority for Affordable Dwellings for Rent

“Chargee” means any mortgagee or charge of a Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 by such mortgagee or chargee or any other person appointed by a mortgagee or chargee under its security documentation for the purpose of enforcing its mortgage or charge or any administrator (howsoever appointed) including a housing administrator

“Choice Based Lettings” - means the process used to advertise Affordable Dwellings for Rent in the Council area or any system that replaces it.

“Development” means the Development as defined in the Section 106 Agreement to which this Nominations Agreement is appended

“Effective Date” means the date that the application form is received by the Partner Organisation (PO), except in the following situations:

- i. When an applicant is moved from one band to a higher band, their new effective date will be the date that their circumstances changed or when the PO is advised of this;
- ii. Where an applicant receives priority on medical or welfare grounds, their effective date will be the date that they the application for the award is received by the PO;
- iii. Where an applicant has been accepted as homeless their effective date will be the date that they applied as homeless unless they already qualify for Band B with an earlier date;
- iv. Where a woman is pregnant and the baby will make her eligible for a larger property, her effective date for the larger property will be the date that the baby is born

“Initial Let” means the first tenancy or lease of a newly constructed and previously unoccupied Affordable Dwelling(s) for Rent in accordance with Section 199 of the

Housing Act 1996 as amended by Section 315 of the Housing and Regeneration Act 2008

“Landlord(s)” means a person or persons who are required to use the Council’s Choice Based Lettings process

“Nominee” or “Nominees” means a person named in the Shortlist nominated by the Council to the Registered Provider who qualify for a tenancy in accordance with the Registered Provider’s letting criteria (details of which have been provided to the Council prior to the date of such nominations) to be the tenant of an Affordable Dwelling(s) for Rent.

“Partner Organisation“ or “PO“ means each of the eight District and Borough Councils participating in the current Choice Based Lettings scheme

“Property“ means the land [ ] shown edged red on the plan attached hereto

“Registered Provider” or “RP” means a Registered Provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator under Chapter 3 of that Act

“Regulator” – Homes England (formerly the Homes and Communities Agency) or any body that replaces its role as regulator of Registered Providers

“Shortlist“ means the list of applicants (as may be updated from time to time) to be supplied by the Council in line with the Allocation Policy and procedures giving the names of person(s) who the Council considers to be eligible for this size of property and have a local connection (as determined by the Council/or as determined in the Section 106 Agreement for the Property and who has been assessed as being in housing priority

“Tenancy Agreement” means an introductory/probationary tenancy, assured shorthold, assured or secure tenancy agreement in a form prepared by the Registered Provider and in line with an approved policy that meets the requirements of the Regulator.

“Vacancy Notice” means a written notice given by the Registered Provider to the Council the function of such notice being the notification to the Council by the Registered Provider that the construction and fitting out of the Affordable Dwelling(s) for Rent is completed and the Affordable Dwelling(s) for Rent is ready to be advertised through choice based letting or let through any subsequent agreed letting procedure. The notice shall be in a form agreed by the parties.

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

(a) Moved to other accommodation either by transfer or decant provided by the Registered Provider; or

(b) Moved to other accommodation under a reciprocal arrangement provided by another Registered Provider registered with the Regulator under the Housing Act 1996 or Housing and Regeneration Act 2008

“Void Notice” means a written notice given by the Registered Provider to the Council the function of such notice being the notification to the Council by the Registered Provider that the Affordable Dwelling(s) for Rent is available to be advertised through Choice Based Lettings or let through any subsequent agreed letting procedure. The notice shall be in a form agreed by the parties.

## **2 Enabling Provisions**

This Agreement is made pursuant to Section 111 of the Local Government Act 1972 Section 33 (1) (b) of the Local Government (Miscellaneous Provisions) Act 1982 and Section 1 of the Localism Act 2011 and all other enabling powers

## **3 Procedure**

The parties agree that the Registered Provider shall give the Council nomination rights for each and every Initial Let and Void and the following procedure shall apply to the nomination of persons in respect of the Affordable Dwellings(s) for Rent.

### **3.1 Initial lets**

- 3.1.1 The Registered Provider shall give the Council not less than 4 months' written notice of the date when the Affordable Dwelling(s) for Rent will be ready for Occupation
- 3.1.2 The Registered Provider shall serve a Vacancy Notice on the Choice Based Lettings system detailing the date available for Occupation in respect of the Affordable Dwelling(s) for Rent at the point when it wishes the Affordable Dwelling(s) for Rent to be advertised. This will be in line with agreed advertising cycles which form part of the Allocation Policy.
- 3.1.3 The Council shall arrange for the Affordable Dwelling(s) for Rent to be advertised. Within 2 Working Days of the bidding cycle closing the Council shall serve upon the Registered Provider a Shortlist. The Nominees will be prioritised in line with their housing need and banding priority and effective date. The Council may agree to delegate the shortlisting to the Registered Provider and as required, verification of relevant applicant information.
- 3.1.4 The Shortlist to be served by the Council under clause 3.1.3 shall:
- i. Specify the appropriate category of Affordable Dwelling(s) for Rent, and
  - ii. Indicate the priority for the housing of the persons named and any other relevant information using a standard pro-forma document via a generic e-mail address to the Council's Choice Based Lettings scheme
- 3.1.5 Upon the properties being ready to let the Registered Provider shall within five (5) Working Days of the date of receipt of the Shortlist select a Nominee from the Shortlist taking into account the priority in the order given for housing indicated by the Council and shall use its reasonable endeavours to arrange a viewing of the Affordable Dwelling(s) for Rent and offer a Tenancy Agreement to such selected Nominee subject to any final checks as agreed in line with the Council's Allocation Policy and the Registered Provider's letting criteria
- 3.1.6 If the selected Nominee fails to accept the offer of a tenancy within one (1) Working Day of receipt of the Registered Provider's offer such selected Nominee shall be deemed to have rejected the Registered Provider's offer and the

Registered Provider shall select and make an offer to another Nominee by repeating the procedure set out in clause 3.1.5

- 3.1.7 If the second selected Nominee fails to enter into a Tenancy Agreement within one (1) Working Day of receipt of the Registered Provider's offer then such second selected Nominee shall be deemed to have rejected the Registered Provider's offer and the Registered Provider shall select and make an offer to a third Nominee by repeating the procedure set out in clause 3.1.5
- 3.1.8 If such third selected Nominee fails to enter into a Tenancy Agreement within one (1) Working Day of receipt of the Registered Provider's offer then the Registered Provider will request a further Shortlist from the Council and the Council will supply this within three (3) Working Days.
- 3.1.9 If the Council is unable to supply any further Nominees the Registered Provider will request that the Affordable Dwelling(s) for Rent is re-advertised and the procedures set out in 3.1.3 – 3.1.8 are complied with

#### **4. Voids**

- 4.1 Should an Affordable Dwelling(s) for Rent 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 procedures set out in 3.1.2 – 3.1.9 shall apply except 3.1.2 which shall refer to Void Notice rather than Vacancy Notice in addition to 4.1.1:
- 4.1.1 The Registered Provider shall give the Council not less than 1 months written notice of the date when the Affordable Dwelling(s) for Rent will be ready for Occupation

#### **5. Provision of information and alteration of lists**

- 5.1 The Registered Provider shall give notification to the Council of the following events within (2) Working Days of their occurrence:
- i. a Nominee failing to view an Affordable Dwelling(s) for Rent when a viewing has been arranged

- ii. a Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Nomination Agreement
- iii. a Nominee accepting an offer of a Tenancy Agreement
- iv. Registered Provider rejecting a Nominee in accordance with Clause 5.3

5.2 Arrangements for notification to the Council will be set out in the Council's approved Allocation Policy

5.3 The Registered Provider shall have the right to interview and make enquiries of each Nominee and by serving written notice upon the Council to that effect to reject any Nominee if in the opinion of the Registered Provider the grant of an assured tenancy to such Nominee would be in contravention of the Registered Provider's registered rules or its letting criteria. The Registered Provider is required to make decisions without influence from third parties.

5.4 The Council shall notify the Registered Provider in writing of any Nominee that is withdrawn from the Shortlist

5.5 The Registered Provider must ensure that they handle all information in line with the current Data Protection Act 1998 and future general data protection regulations and procedures and the requirements of the Councils' Allocation Policy

5.6 The Council and the Registered Provider agree that the nominations rights contained in this Nomination Agreement may be varied from time to time by agreement in writing by the parties

## **6. 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 2 Working Days after posting

## **7. Chargee Provisions**

The provisions in this Agreement shall not be binding on a Chargee PROVIDED THAT:

- a) The Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Dwelling(s) for Rent ("the RP Notice"); and
- b) if the Council provides written notice to the Chargee within four weeks of receipt of the RP Notice that acceptable arrangements can be made for the transfer of the Affordable Dwelling(s) for Rent 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 Dwelling(s) for Rent 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 principal monies interest and costs and expenses
- c) if the Council does not serve the notice referred to in paragraph b) within the four week period referred to or if such disposal has not completed within the three month period the Chargee shall be entitled to dispose of the Affordable Dwelling(s) for Rent free of the restrictions set out in this Nomination Agreement

PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage.

## **8. Transfer to other Registered Providers**

- 8.1 The Registered Provider shall provide notice to the Council within five (5) Working Days of any transfer of the Affordable Dwelling(s) for Rent to a Registered Provider
- 8.2 The Registered Provider shall use its reasonable endeavours to procure that any Registered Provider to which the Affordable Dwelling(s) for Rent erected thereon are transferred otherwise than by direction of the Regulator under its statutory powers shall enter into a similar agreement mutatis mutandis with the Council simultaneously on completing the transfer of the Property

## **9. 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

## **10. Costs**

The Registered Provider agrees with the Council to pay the reasonable legal costs which the Council incurs in preparing and entering into this Nomination Agreement and the Council's reasonable costs to cover the nominations procedure. Any changes to current charges will be negotiated with all landlords who are required to let their properties in line with the Council's allocation and letting policy and procedures

## **11. Agreements and Declarations**

- 11.1 Nothing in this Nomination Agreement fetters or restricts the exercise by the Council of any of its powers



11.2 The obligations contained in this Nomination Agreement are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 section 33

**12 Third Party Rights**

No provisions of this Nomination Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999

In witness whereof the parties have executed this Nomination Agreement on the day and year first before written

**THE COMMON SEAL of** )  
 )  
was affixed in the presence of:- )

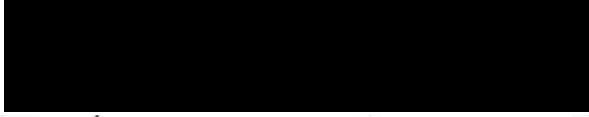
Director  
Secretary

**THE COMMON SEAL of EAST SUFFOLK )**  
**COUNCIL** was affixed in the presence of:- )

Authorised signatory

SIGNED AS A DEED by NORTHCHURCH )

LIMITED acting by  )



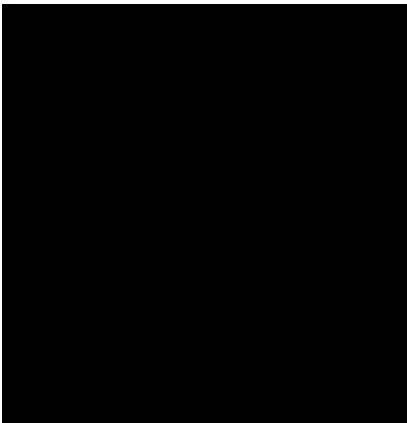
  
a Director, in the presence of:

Name:

Signature:

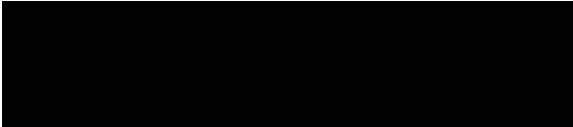
Occupation:

Address:



SIGNED AS A DEED by )

NICOLAS JAMES SPAULL )



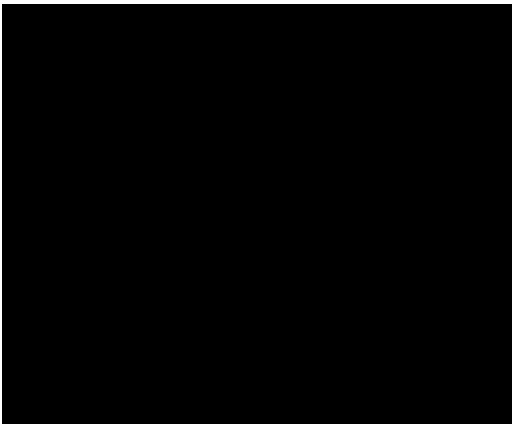
in the presence of:

Name:

Signature:

Occupation:

Address:





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THE COMMON SEAL OF )  
EAST SUFFOLK COUNCIL )  
was hereunto affixed in the )  
presence of: - )

Authorised signatory



Authorised signatory



The Common Seal of )  
SUFFOLK COUNTY COUNCIL )  
was hereunto affixed )  
in the presence of: )



Authorised Officer



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## **APPENDIX A – LOCAL CONNECTION CASCADE**

### **1. Affordable Dwellings for Rent**

1.1 The Affordable Dwellings for Rent are to be allocated to a person nominated by the Council in line with its Allocation Policy who is considered by them 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 in Westleton for the preceding 5 years; OR

(b) has continuously had a principal place of work in Westleton 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 in Westleton 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 Westleton

1.2 If there are no persons who qualify under paragraph 1.1 above the Affordable Dwelling shall be allocated to person nominated by the Council who

(a) has continuously lived 15 miles of the Site for the preceding 5 years; OR

(b) has continuously had a principal place of work within 15 miles of the Site 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 15 miles of the Site 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 15 miles of the Site

1.3 If there are no persons who qualify under paragraph 1.1 and 1.2 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 and who is unable to compete in the normal open market for property in East Suffolk

1.4 Where there is a mutual exchange the Registered Provider may let the Affordable Dwelling to any incoming tenant who satisfied the local connection criteria at paragraphs 1.1 to 1.3 above

### **2. Affordable Dwellings for Sale**

2.1 On advertising the first Disposal of a Shared Ownership Dwelling or First Home the Dwelling shall be marketed for sale for the first 3 months to persons who:

(a) has continuously lived in Westleton for the preceding 5 years; OR

(b) has continuously had a principal place of work in Westleton 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 in Westleton 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 Westleton

2.2 On advertising subsequent Disposals of a Shared Ownership Dwelling or First Home If the Dwelling shall be marketed for sale for the first 3 months to persons who?

(a) have continuously within the District of East Suffolk for the preceding 5 years or (b) has continuously had a principal place of work within the District of East Suffolk 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 the District of East Suffolk 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 the District of East Suffolk

2.3 If there are no persons who qualify under paragraph 2.1 and 2.2 within 3 months of marketing the Affordable Dwelling it may be sold free of Local Connections restrictions

**APPENDIX B – NOMINATION AGREEMENT**