

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

relating to Land South of Darsham Station, Main Road,
Darsham

Dated: 29th July 2024

HILLFAIRS FARMERS LIMITED (1)

EAST SUFFOLK COUNCIL (2)

SUFFOLK COUNTY COUNCIL (3)

THIS DEED IS MADE the 29th day of July 2024

PARTIES

- (1) **HILLFAIRS FARMERS LIMITED** (Co. Regn. No. 01448989) of Cart Lodge Office, Hill Farm, Heveningham, Halesworth, Suffolk IP19 0ED ("the Owner") and
- (2) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton IP12 1RT ("the Council")
- (3) **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 local education authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the relevant obligations in this Deed are enforceable.
- 3 The Owner is the freehold owner of the Site
- 4 On the 14 May 2024 the Council's Planning Committee resolved to approve the Planning Permission subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed
- 5 The Site lies within the area to which the Local Plan applies
- 6 It is a material consideration in the Council's planning policies that in any proposals for residential development consisting of ten or more new dwellings 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:

“Act”	the Town and Country Planning Act 1990 as amended.
“Application”	the application for outline planning permission for the Development validated by the Council and allocated reference number DC/21/4006/OUT
“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition 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.
“Completion of the Development”	the date that the last Dwelling is first Occupied
“Council Monitoring Fee”	the sum of Four Thousand and Five

	Pounds(£4,005)
“County Council Monitoring Fee”	the sum of nine hundred and fifty-two pounds (£952)
“Consumer Prices Index”	the Consumer Prices Index published by the Central Government or any subsequent indices replacing the same
“Development”	Outline Planning Application – A phased application for the erection of up to 110 residential dwellings, public open space and associated infrastructure, as set out in the Application
“Dwelling”	any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission.
“Habitat Regulations Mitigation Contribution”	means the sum of Three Hundred and Seventy Four Pounds and Twenty Nine Pence (£374.29) Index Linked per Dwelling payable on or before Commencement of Development to be used in accordance with the Council’s Local Plan Policies and the Appropriate Assessments of the Local Plans, and the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document.
“Index”	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation
“Index Linked”	the increase in any sum referred to in the Second, Third or Fourth Schedule by an

			amount equivalent to the increase in the Index (or the RPI Index where the Second or Third Schedule or Fourth Schedule requires) such sum is payable to be calculated in accordance with Clause 11 of this Deed;
	“Interest”		interest at 4 per cent above the minimum lending rate of the Bank of England from time to time.
	“Local Plan”		The East Suffolk Council – Suffolk Coastal Local Plan adopted 23 September 2020
	“Occupation” and “Occupied”		occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
	“Plan”		the plan attached to this Deed.
	“Planning Permission”		the outline planning permission subject to conditions as may be granted pursuant to the Application
	“Primary School Transport Contribution”		The sum of two hundred and seventy five thousand three hundred and eighty pounds (£275,380) RPI Index to be used to fund school transport for a minimum of 7 years for primary-age pupils (calculated as one thousand four hundred and five pounds £1405 per pupil per annum)
	“RPI Index”		the “All Items” index figure of the Index of

Retail Prices published by the Office for National Statistics from time to time or any successor organisation

“Secondary School Transport Contribution”

the sum of ninety-eight thousand three hundred and fifty pounds (£98,350) to be linked to the RPI Index to be used to fund school transport provision for a minimum of five years for secondary-age pupils (calculated as one thousand four hundred and five pounds £1,405 per pupil per annum)

“Section 106 Officer”

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

“Site”

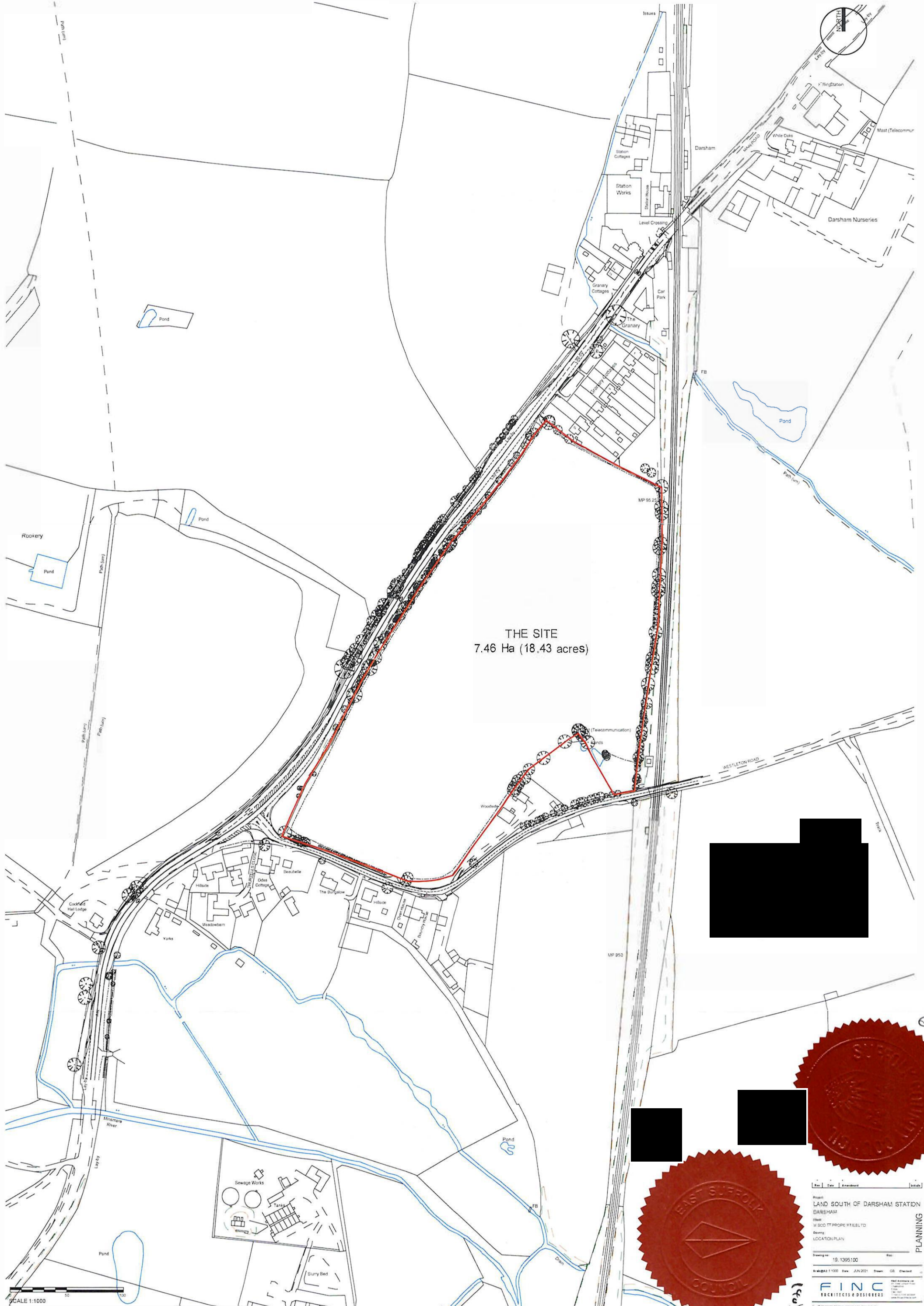
the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Plan.

“Working Days”

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

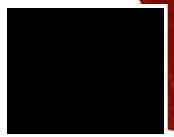
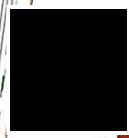
2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph 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.



THE SITE
7.46 Ha (18.43 acres)

SCALE 1:1000



Rev	Desc	Author	Check
Project: LAND SOUTH OF DARSHAM STATION DARSHAM Sheet: M20 FT PROPOSED FTBL TO Drawing: LOCATION PLAN Drawing no: 19.1395.100 Scale: 1:1000 Date: JAN 2021 Drawn: GS Checked: GS			
FINE ARCHITECTS & DESIGNERS		64291 PLANNING	

- 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.
- 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 Third Schedule and Fourth Schedule are conditional upon the grant of the Planning Permission save for paragraphs 3 and 4 of the Fourth Schedule and the rest of the provisions set out in this Deed which 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 and Third 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 Monitoring Fee on completion of this Deed

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

5.5 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, save as disclosed to the Council and County Council prior to the date of this Deed, or as set out in the Title Register of SK163523, 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

6. THE COUNCIL COVENANTS

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

7 THE COUNTY COUNCIL COVENANTS

7.1 The County Council hereby covenants with the Owner as set out in the Sixth 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. Neither the reservation of any rights or the inclusion of any covenant or restrictions over the Site in any transfer of the Site or part thereof will constitute an interest for the purposes of this clause 8.6.

8.7 Save for the obligations contained within 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 to 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
- 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 of Commencement of Development 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 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/21/4006/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 INDEXATION

Any sum referred to in the Second Schedule the Third Schedule and the Fourth Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index or RPI Index (as the context dictates 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:

11.1 A is the sum payable under this Deed;

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

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

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

11.5 C/D is greater than 1

12 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.

13 VAT

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

14 DISPUTE PROVISIONS

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

- 14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either 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.
- 14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
- 14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten Working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.
- 14.5 The provisions of this clause shall not affect the ability of the Council 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

15 JURISDICTION

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

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

Part of the freehold land at Land South of Darsham Station, Main Road, Darsham within registered title number SK163523 shown edged Red for identification only on the Plan.

SECOND SCHEDULE

The Owner's Covenants with the Council

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
- "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 1.9,3.8 and or 3.9 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 one in every three Dwellings to be made available as Affordable Housing comprising unless otherwise agreed with the Council 50% Affordable

	Dwellings for Rent and 25% Shared Ownership Dwellings and 25% First Homes 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 Annex 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”	<p>A scheme to be submitted 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:</p> <ul style="list-style-type: none"> - 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

"Affordable Housing Table"	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
"Allocation Policy"	Means the policy and procedure adopted by the Council to determine the eligibility and priority for the allocation of the Affordable Dwellings for Rent
"Armed Services Member"	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
"Chargee"	any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager

(including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

“Compliance Certificate”	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 unless paragraph 3.2 applies the Eligibility Criteria (Local)
“Custom and Self-Build Design Code”	<p>A document that provides written and illustrated rules that establish the design parameters of a development and of each Custom and Self-Build Plot, and which shall address:</p> <ul style="list-style-type: none">a) Layout,b) Plot size and shape,c) Developable footprint,d) Building height or number of storeys,e) Orientation,f) Landscaping,g) Boundary treatment,h) Material palette,i) Number and location of car parking and cycle storage spaces, andj) Refuse storage
“Custom and Self-Build Dwelling”	A Dwelling which meets the definition in section 1 of the Self-Build and Custom Housebuilding Act 2015 (as amended).
“Custom and Self-Build	A plot of land upon which a Custom and Self-build

Plot”	Dwelling is to be constructed, being not less than 5% of the total number of Dwellings.;
“Custom and Self-Build Register”	The Council’s register of persons seeking to acquire a Custom and Self-Build Plot pursuant to section 1 of the Self-build and Custom Housebuilding Act 2015.
“Custom and Self-Build Sale Contract”	A contract or contracts for the sale of a Custom and Self-build Plot which is conditional upon the construction of the Custom and Self-build Dwelling
“Discount Market Price”	Means a sum which is the Market Value of a First Home discounted by at least 30%
“Disposal”	<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 Dwelling other than:</p> <ul style="list-style-type: none"> (a) a letting or sub-letting in accordance with paragraph 3 (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 (c) an Exempt Disposal <p>And “Disposed” and “Disposing” shall be construed accordingly</p>
“Eligibility Criteria (Local)”	<p>Means local criteria met in respect of a purchase of a First Home if:</p> <ul style="list-style-type: none"> (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/or

(b) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member and/or

(c) 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 (National)”

Criteria

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 1.9 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 3

“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 tenant or sub-tenant of a permitted letting under paragraph 3

“First Time Buyer”	Means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003
“Fully Serviced”	A Custom and Self-build Plot that has access to a public highway and has connections for electricity, water, waste water and telecommunications
“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 or Custom and Self Build Dwelling
“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
“Marketed Appropriately”	Marketing the Custom and Self-build Plots in accordance with the agreed Marketing Strategy for a period of not less than 12 months. This will commence when the Marketing Strategy has been agreed between the applicant and the Council, the

Custom and Self-build Plots have been Fully Serviced, have defined boundaries, and are available for immediate purchase.

“Marketing Period”

A period of not less than 12 months within which the Custom and Self-build Plots shall be Marketed Appropriately.

“Marketing Strategy”

A document setting out the marketing arrangements for each Custom and Self-build Plot, which shall include: a) The period in which the Custom and Self-build Plots will be Marketed Appropriately;

b) The arrangements on which the Custom and Self-Build Plots will be Marketed Appropriately; This should address:

i. Details of marketing materials. Good quality visual information should be made available, such as drone photos/videos, website content, and inspiration brochures to aid marketing.

ii. Details of marketing and promotional methods. This should include social media; website advertising; database marketing; and information packs as a minimum.

iii. On-site signage. As a minimum the Custom and Self-build Plots must be promoted as Custom and Self-build Plots for sale with signage at the site entrance and by the Custom and Self-build Plots themselves. Information must be displayed at each Custom and Self-build Plot which includes as a minimum the Custom and Self-build Plot number and Plot Passport information. QR codes are encouraged to provide quick access to further information. Custom and Self-build Plots must be clearly demarcated and be in a clear and tidy state.

The Owner should set out methods to enable potential plot purchasers to gain safe access into the site to view the Custom and Self-build Plots.

c) The price that each Custom and Self-build Plot will be advertised for, including valuation methodology, derived from an experienced local RICS registered valuer who should have experience of valuing Custom and Self-build Plots;

d) The contact details of the marketing agent. The agent should be experienced in selling Custom and Self-build Plots;

e) Signposting to specialist custom and self-build mortgage brokers;

f) Information on 'Help to Build' and any similar initiatives to assist custom and self-builders;

g) The site visit arrangements;

h) The Plot Passport for each custom and self-build plot;

i) A commitment that the Owner holds a Record of Sales Enquiries for each Custom and Self-build Plot, which will be provided to the Council upon request;

k) The arrangements for the delivery of any Custom and Self-build Plots not taken up after the minimum

"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 an Affordable Dwelling
“Nomination Agreement”	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 at Appendix B or such other form agreed in writing between the Council and the Registered Provider
“Plot Passport”	A document that provides information for potential plot purchasers regarding the delivery of a Custom and Self-build Dwelling on the Custom and Self-build Plot, and shall include: the plot location, plot size and shape, any design and development parameters established in a Design Code (if relevant), likely ground conditions, location of servicing connection, Community Infrastructure Levy exemption (if relevant), and plot price
“Practical Completion”	means a stage reached when the construction of an Dwelling is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied
“Price Cap”	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

“Protected Person”

means any person who:

- (a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling or
- (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
- (c) a 100% Staircaser or
- (d) any successor in title of a chargee or 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

“Record of Sale Enquiries”	<p>A record of enquiries made by individuals in relation to each plot which shall include:</p> <ul style="list-style-type: none"> a) Date of enquiry; b) Nature of enquiry; c) Whether the enquirer visited the site; and d) Reason/s why the enquirer did not purchase the plot or find it suitable.
“Registered Provider” or “RP”	<ul style="list-style-type: none"> (i) For the purposes of this Deed means either A body registered as a social landlord pursuant to the provisions of the Housing Act 1996 or a housing association within the meaning of the Housing Associations Act 1985 or; (ii) any person or body or entity which is registered as a provider of social housing in accordance with Section 80(2) and Chapter 3 of the Housing and Regeneration Act 2008 or (iii) any body, organisation or company which is a 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 <p>to be approved in writing by the Council;</p>
“SDLT	<p>Means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect</p>

“Secretary of State”	Means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function
“Shared Ownership Dwellings”	means those Dwellings purchased on a Shared Ownership Lease
“Shared Ownership Lease”	<p>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:</p> <ul style="list-style-type: none"> (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 Consumer Prices Index published by the Office of National Statistics (or if such index ceases to be published such other index the Council shall reasonable determine) plus 1% 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

1. AFFORDABLE HOUSING

- 1.1 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)
- 1.2 The Owner covenants that not more than 40% 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 any Affordable Dwellings to be sold directly by the Owner)
- 1.3 The Owner covenants that no more than 60% of the Market Dwellings shall be occupied until the Affordable Dwellings (save for any Affordable Dwellings to be sold directly by the Owner) 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
- 1.4 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 Affordable Housing for Eligible Persons or Qualifying Persons or First Time Buyers in accordance with the Affordable Housing Scheme subject however to the provisions herein
- 1.5 In the event that a Registered Provider cannot be found for any of the Affordable Dwellings for Rent or Shared Ownership 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
- 1.5.1 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
- 1.6 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 Annex 2 of the National Planning Policy Framework (July 2023) (or an amended or subsequent national planning policy that be published by the Government from time to time)

- 1.7 Nothing in this Schedule shall be binding on a Protected Person or any Mortgagee or Chargee of a Protected Person or any receiver appointed by such Mortgagee or Chargee of any person deriving title from any such person.
- 1.8 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 or 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)) of the whole or 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
- 1.9 The 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

i) 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 1.9 (ii) at its full Market Value

(ii) 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

(iii) 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 3.5; and

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

Affordable Housing Table

House Type	Tenure	Number
1b2p – 6 (33%) 2b4p – 6 (33%) 3b5p – 5 (28%) 4b6p – 1 (5%)	Affordable Dwellings for Rent	18
1b2p – 3 (33%) 2b4p – 4 (45%) 3b5p – 2 (22%)	Shared Ownership Dwelling	9
1b2p – 3 (33%) 2b4p – 4 (45%) 3b5p – 2 (22%)	First Home	9
Total		36
40% to meet M4(2) wheelchair accessible standards		

2. AFFORDABLE DWELLINGS FOR RENT AND SHARED OWNERSHIP DWELLINGS

- 2.1 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
- 2.2 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 applicants who have a Local Connection in accordance with the Local Connections Cascade at Appendix A)
- 2.3 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 nor prevent any Registered Provider from charging the Affordable Dwellings in whole or part.

- 2.4 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
- 2.5 Unless otherwise agreed in writing or provided herein, 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
- 2.6 Unless otherwise agreed in writing with the Council, in the event 100% of a Shared Ownership Dwelling is purchased:
 - i. the net proceeds from the final sale of the Shared Ownership Dwelling are to be ringfenced by the Registered Provider for 5 years for the provision of Affordable Housing within the East Suffolk District, and should the owner of the Shared Ownership Dwelling wish to sell it he must notify the Registered Provider and allow the

- Registered Provider to purchase the Shared Ownership Dwelling back in the first instance at Market Value;
- ii. in the event the Registered Provider purchases the Shared Ownership Dwelling in accordance with this clause at 2.6i, the Shared Ownership Dwelling will be marketed as such subject to the terms of this Deed; and
 - iii. in the event the Registered Provider declines to purchase the Shared Ownership Dwelling or fails to notify the owner of the Shared Ownership Dwelling of its intention to make an offer to purchase the dwelling within twenty-eight days of the notification as specified in this clause at 2.6i, then the owner of the Shared Ownership Dwelling may sell it on the open market free from the terms of this Deed.

3 FIRST HOMES

- 3.1 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)
- 3.2 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 3.1(b) shall cease to apply
- 3.3 Subject to paragraphs 3.6 to 3.10, 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
- 3.4 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:
 - 3.4.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 3.2 applies meets the Eligibility Criteria (Local) (if any)
 - 3.4.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price and
 - 3.4.3 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 Transferee 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

3.4.4 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 3.3 and 3.4.1 have been met

3.5 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"

3.6 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:

3.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 3.1 and 3.2 (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 3.3 and 3.4.1 or

3.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraphs 3.6.1 before able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Home Owner undue hardship

- 3.7 Upon receipt of an application served in accordance with paragraph 3.6 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
- 3.8 If the Council is satisfied that either of the grounds in paragraph 3.6 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 3.6 that the relevant Dwelling may be Disposed of:
- 3.8.1 to the Council at the Discount Market Price; or
- 3.8.2 (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 3.10 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

- 3.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 3.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 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 3.6 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
- 3.10 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 3.8 or 3.9 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
- 3.11 Upon receipt of the Additional First Homes Contribution the Council shall:
- 3.11.1 within 28 Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.5 where such restriction has previously been registered against the relevant title
- 3.11.2 apply all monies received towards the provision of Affordable Housing