

DATED

Tuesday 11th March

2025

MID SUFFOLK DISTRICT COUNCIL (1)

and

SUFFOLK COUNTY COUNCIL (2)

and

FLAGSHIP HOUSING ~~GROUP~~ LIMITED (3) BLUP

**AGREEMENT UNDER SECTION 106 AND DEED OF VARIATION
UNDER SECTION 106A OF THE TOWN AND COUNTRY
PLANNING ACT 1990**

relating to land on the north side of Station Road, Haughley, IP14 3PU



Howes Percival LLP
Flint Buildings
1 Bedding Lane
Norwich, NR3 1RG
Ref: JZC/217089.0224

THIS DEED is made this

11th

day of

March

2025

BETWEEN

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ("**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("**County Council**")
- (3) **FLAGSHIP HOUSING GROUP LIMITED** (registered society number 31211R) whose registered office is at 31 King Street, Norwich, Norfolk, United Kingdom, NR1 1PD ("**Owner**")

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together referred to as 'the Parties'

INTRODUCTION

- 1 The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- 2 The County Council is the education authority and library service provider for the area in which the Site is situated
- 3 The Owner is the freeholder owner of the Site which is registered at HM Land Registry under title number SK414391
- 4 The Application has been submitted to the Council and the Council has resolved to grant the Planning Permission subject to the entering into of this Deed.
- 5 The Council and the County Council consider and the Owner acknowledges that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to s106 of the Act the Parties have agreed to enter into this Deed in order to secure the Planning Obligations contained in this Deed
- 6 The Council in resolving to approve the Application is satisfied that the Planning Obligations sought under the provisions of this deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

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

“Act”	the Town and Country Planning Act 1990 (as amended)
“Affordable Dwellings”	the twenty nine (29) Dwellings to be constructed on the Site in accordance with the Planning Permission as Affordable Housing and which shall be provided in accordance with the Affordable Housing Schedule as Social Rent Dwellings and Shared Ownership Dwellings
”Affordable Housing Schedule”	the table at the Third Schedule which details the size, type, plot numbers and tenure of Affordable Dwellings or such other Affordable Housing Schedule as may be agreed in writing by the Council
”Affordable Housing”	housing falling within the definition of ‘Affordable Housing’ contained in Annex 2 to the National Planning Policy Framework, as published in December 2023 (unless otherwise agreed in writing with the Council)
”Nomination Agreement“	an agreement substantially in the form set out in the Appendix 1 dealing with the allocation of the Social Rent Dwellings by a Registered Provider which shall apply to the Social Rent Dwellings
”Application”	the application for full planning permission to develop the Site validated on 12 February 2024 and allocated reference number DC/23/05721 for

the erection of 29 no. dwellings and associated infrastructure (100% affordable housing scheme)

“Chargee”

any mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver

“Chargee’s Duty“

the tasks and duties set out in paragraph 4 of Part 1 to the Second Schedule

“Choice Based Lettings Scheme”

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

“Commencement of Development”

The first carrying out of a material operation within the meaning of section 56(4) of the Act as part of the Development but, for the purposes of this Deed, not including any operations relating to:

- the demolition of any existing buildings or clearance of the Site;
- the carrying out of soil or other surveys;

- archaeological investigations;
- site decontamination;
- diversion or laying of services;
- remedial work in respect of any contamination or other adverse ground conditions;
- the erection of fencing or boarding
- the erection of boards advertising the development;
- the construction of a site compound and construction access

“Completion”

the completion of a Dwelling to the extent that it is wind and watertight, fully fitted out and fit for habitation in terms of heating, plumbing, electrics and sanitation and in respect of which a building control completion certificate has been issued so that it is ready for Occupation and “Completed” shall be construed accordingly

“Completion of Development”

the date the last Dwelling is first Occupied

“Council Monitoring Fee”

the sum of £450.00 per trigger payable to the Council in respect of its duties and reasonable costs of monitoring performance of the obligations owed to it in this Deed.

“County Council Monitoring Fee”

the sum of £519.00 per obligation (Index Linked) (this being a total sum of £1,038.00) payable to the County Council in respect of its duties and reasonable costs of monitoring performance of the obligations owed to it in this Deed

“Development”

the development of the Site to be carried out in accordance with the Planning Permission

“Dwelling“	a dwelling constructed on the Site as part of the Development, including a house or a flat, and used for private domestic residential purposes
Early Years Education Contribution	the sum of £75,768.00 (seventy five thousand seven hundred and sixty eight pounds) Index Linked payable to the County Council for the provision of a new early years setting serving the Site <i>to include any provision provided funded by the County Council</i>
“Education Contribution“	the Primary Education Contribution and the Early Years Education Contribution together
“Eligible Persons“	a person or persons and their households who are on the housing list maintained by the Council in accordance with the Housing Allocations Scheme or who are otherwise approved by the Council as being in need of separate or alternative accommodation and who are unable to rent or buy housing generally available on the open market to meet their needs where eligibility is determined with regard to local incomes and local house prices
“Homes England“	the statutory body trading as Homes England (or any successor body with a statutory role in funding Registered Providers)
“Housing Allocations Scheme“	the housing allocations scheme as formally adopted and published by the Council from time to time
“Index Linked“	proportionately increased equivalent to the proportionate increase in the Index from the date of this Deed to the date that payment is due in accordance with the terms of this Deed
“Index“	means:

- (a) in relation to the Off-Site Open Space Contribution the All In Tender Price Index published by the Building Cost Information Service ~~of the Royal Institution of Chartered Surveyors~~ or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Council and the Owner
- (b) in relation to the Education Contribution the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Council the County Council and the Owner;
- (c) in relation to the School Transport Contribution and any other sums payable under this Deed the Retail Price Index (All Items) published by the Office for National Statistics or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Council the County Council and the Owner

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“Late Payment Interest“

interest at four (4) per cent above the base lending rate of the Bank of England from time to time;

“Location Plan“

the plan marked “Site Location Plan” attached to this Deed at Appendix 2 with reference 0100

“Nominated Body“

either:

- a) Flagship Housing ~~Group~~ Limited of 31 King Street, Norwich NR1 1PD (Registered Society No IP031211); or
- b) One of the following as proposed by the Owner and agreed by the Council:
 - i. the Parish Council
 - ii. Such other body as the Council may elect or agree as being responsible for the maintenance of the Open Space
 - iii. The Open Space Management Company
 - iv. The Owner

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“Notice of Actual Commencement”	notice in writing to advise of the actual Commencement of Development
“Off-Site Open Space Contribution”	the sum of £27,700.00 (twenty seven thousand and seven hundred pounds) Index Linked payable to the Council for improvements of existing public open space and play equipment in the village of Haughley
”Occupation“	occupation of a building as a residential dwelling for the purposes permitted by the Planning Permission but not for the purposes of this Deed including occupation by contractors or for construction or fitting out purposes or as a showroom or sales office and ‘Occupied’ and ‘Occupier’ shall be construed accordingly
“Open Space Commuted Sum”	the sum to cover 10 years of repair, management and maintenance of the Open Space as calculated with the table set out in Appendix 3

“Open Space Management Company“

a company to be set up for the purposes of managing and maintaining the Open Space in perpetuity

“Open Space Standard Terms“

in accordance with the reasonable requirements of the Council in consultation with the Nominated Body to include:

- the transfer of the freehold estate of the Open Space with full title guarantee for a sum not exceeding £1 (one pound)
- with the benefit of all necessary rights and easements and with vacant possession
- subject to a restriction on the future use of the Open Space for recreational and amenity purposes by the general public
- an obligation to maintain the Open Space in accordance with the approved Open Space Works Specification

if the Nominated Body is not Flagship Housing ~~Group~~ Limited a requirement that the Nominated Body's conveyancing fees and disbursements are paid for by the Owner

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“Open Space Works Specification“

unless otherwise agreed in writing with the Council a scheme, including plans, drawings and specifications showing but not limited to the layout and design of the Open Space including details of any landscaping, paths and access arrangements, street furniture, fencing and surface water attenuation basin together with a timetable for the implementation of the scheme and details of proposed permanent Open Space management regime in perpetuity and confirmation of how maintenance of the Open Space in accordance

with the approved management regime will be funded

- “Open Space“** on-site amenity public open space and surface water attenuation basin to be provided within the Site for use in perpetuity in accordance with the Planning Permission and laid out in accordance with the Open Space Works Specification
- “Open Space First Tranche“** the area of Open Space shaded blue on the Open Space Handover Plan 0030 3301 P2 annexed to this Deed
- “Open Space Second Tranche“** the area of Open Space shaded orange on the Open Space Handover Plan 0030 3301 P2 annexed to this Deed
- “Parish Council“** the Parish Council of Haughley
- “Parties“** together, the Council, the County Council and the Owner and “Party” shall be construed accordingly
- “Planning Obligations“** the covenants contained in this Deed made with and enforceable by the Council and the County Council under Section 106 of the Act
- “Planning Permission“** the full planning permission subject to conditions as may be granted by the Council pursuant to the Application and any subsequent planning permissions for the Development granted pursuant to section 73 of the Act
- “Practical Completion“** means the issue of a certified of practical completion by the Owner’s architect or other suitable body and “*Practically Complete*” and “*Practically Completed*” shall be construed accordingly

“Primary Education Contribution”

the sum of £176,792.00 (one hundred and seventy six thousand seven hundred and ninety two pounds) Index Linked payable to the County Council for the provision of a new primary school in

Stowmarket *to include any provision forward funded by the County Council*

“Primary School Transport Contribution”

the sum of £68,845.00 (sixty eight thousand eight hundred and forty five pounds) Index Linked payable to the County Council for the provision of school transport for primary school age children resident on the Development to a primary school with places serving the Site

“Protected Tenant”

any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling; or
- (c) has been granted a Shared Ownership Lease by a Registered Provider (or similar arrangement where a share of the Affordable Dwelling is owned by the tenant and a share is owned by the Registered Provider) by the Registered Provider in respect of a particular Affordable Dwelling and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Dwelling;

“Registered Provider”

Means (unless otherwise agreed in writing):

- (a) Flagship Housing ~~Group~~ Limited of 31 King Street, Norwich NR1 1PD (Registered Society No IP031211); or
- (b) such other registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by Regulator of Social Housing under Chapter 3 of Part 2 of that Act as notified to the Council by the Owner in writing

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“Regulator of Social Housing”	the statutory body set up to regulate the provision of Affordable Housing in England and any successor body
“Secondary School Transport Contribution”	the sum of £35,125.00 (thirty five thousand one hundred and twenty five pounds) Index Linked payable to the County Council for the provision of school transport for secondary school age children resident on the Development to a secondary school with places serving the Site
“School Transport Contribution”	means the Primary School Transport Contribution and the Secondary School Transport Contribution together
“Shared Ownership Dwellings”	the thirteen (13) Affordable Dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed Eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in the Homes England’s capital funding guide unless otherwise agreed in writing with the Council
“Shared Ownership Lease”	a lease in a form approved by Homes England or where there is no such form in a form approved in

advance in writing by the Council to provide for the following:

- (a) not more than 75% and not less than 10% of the equity (or such other percentage as the Council may agree acting reasonably) shall be initially sold to the purchaser by the Registered Provider
- (b) power to the purchaser to increase their ownership of the equity in a Shared Ownership Dwelling up to eighty percent (80%) if they so wish (or up to 100% if either the Shared Ownership Dwelling in question is not grant funded by Homes England or Homes England waive designated protected area grant conditions for the Site);
- (c) an initial rent not exceeding 3% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding the annual increase of the Retail Prices Index plus 0.5% or such other rent as complies with the requirements from time to time of the Regulator of Social Housing

“Site“

land on the north side of Station Road, Haughley, IP14 3PU shown edged red for identification purposes only on the Location Plan and more particularly described in the First Schedule against which this Deed may be enforced

“Social Rent“

the rent for Social Rent Dwellings as determined by the national rent regime in accordance with the Rent Standard and Guidance published by Homes England or any subsequent replacement or where there is no such regime at a rent determined by the Council and increased only in line with the

Government's prevailing Rent Standards and Guidance

“Social Rent Dwellings“

the sixteen (16) Affordable Dwellings which are to be provided subject to Social Rent (unless otherwise agreed in writing with the Council) and allocated in accordance with the Nominations Agreement.

“Working Days“

Monday to Friday (inclusive) except public holidays 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 sub-clause schedule paragraph sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause schedule paragraph sub-paragraph 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 any other genders and words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner.
- 2.4 Wherever more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the Council and or the County Council their successors to their respective statutory functions.

- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document.
- 2.8 References to a "Plan" or "Drawing" in this Deed shall be references to the plans attached to this Deed bearing the relevant plan number or any amended plans as shall be agreed between the Owner the Council and the County Council.
- 2.9 None of the covenants contained in this Deed on the part of the Owner shall be enforceable against owner-occupiers or tenants or mortgagees of the Dwellings nor against those deriving title from them (save for any owner-occupiers or tenants or mortgagees of the Affordable Dwellings who will continue to be bound by the terms of this Deed in relation to the Affordable Housing obligations contained hereto subject to the provisions of Part 1 of the Second Schedule).
- 2.10 None of the covenants in this Deed shall be enforceable against any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 2.11 The headings are for reference only and shall not affect construction.
- 2.12 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

3 LEGAL BASIS

- 3.1 This 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 Owner of the Site under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities against the Owner or their successors in title.
- 3.3 This Deed is a deed and may be modified or discharged in part or in total at any time after the date of this Deed by deed between the Parties in the form of a deed.

4 CONDITIONALITY

4.1 This Deed is conditional upon:

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

save for the provisions of clauses 7.3 7.4 9 12 14 15 18 19 and 20 (legal costs change in ownership right of entry notices dispute resolution notices jurisdiction and delivery) which shall come into effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council as set out in the Second Schedule.

5.2 The Owner covenants with the County Council as set out in the Fifth Schedule.

6 THE COUNCIL'S AND THE COUNTY COUNCIL'S COVENANTS

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

6.2 The County Council covenants with the Owner as set out in the Sixth Schedule.

7 MISCELLANEOUS

7.1 The Owner shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests either of the Council and or the County Council and their duly authorised officers or agents to have access to any part or all of the Site or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.

7.2 The Owner agrees declares and covenants both with the Council and the County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Deed. and further shall indemnify the Council and County Council for any expenses or liability arising to the Council and the County Council in respect of any breach by the Owner of any obligation contained herein save to the extent any act or omission of the Council or County

- Council its employees or agents has caused or contributed to such expenses or liability.
- 7.3 To pay to the Council within 10 Working Days of completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed.
- 7.4 The Owner agrees and covenants to pay to the County Council on or before completion the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed.
- 7.5 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.6 This Deed shall be registerable as a local land charge by the Council.
- 7.7 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owner from either the Council or County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the Council by the Corporate Manager - Growth and Sustainable Planning and on behalf of the County Council by the Executive Director Growth, Highways and Infrastructure or officer acting under his hand.
- 7.8 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.9 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 7.10 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 expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owner) and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed.
- 7.11 No person shall be liable for any breach of any of the Planning Obligations or other provisions of this Deed after they shall have parted with their entire interest in the Site

(or the part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it.

- 7.12 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.
- 7.13 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived.
- 7.14 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to either the Council or the County Council.
- 7.15 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 7.16 The Owner covenants and warrants to the Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

8 WAIVER

- 8.1 No waiver (whether expressed or implied) by the Council the County Council or the Owner 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 the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9 CHANGE IN OWNERSHIP

9.1 The Owner agrees with the Council and the County Council to give each of them independently written notice of any transfer in ownership of any of its freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer and 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 transferred by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like.

10 INDEXATION

10.1 Any sum referred to in the Second and Fifth Schedules shall be increased by an amount equivalent to the increase in the Index 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:

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

C is the Index for the month two (2) months before the date on which the sum is payable;

D is the Index for the month two (2) months before the date of this Deed; and

C/D is greater than 1.

11 INTEREST

11.1 If any payment due to the Council and/or the County Council under this Deed is not paid on the due date Late Payment Interest will be payable from the due date to the date payment is received.

12 RIGHT OF ENTRY

12.1 At all times on not less than forty-eight (48) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of either or both of the Council or the County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

12.1.1 such employee or agent on arrival at the Site shall if requested by any person present who appears to be the Owner the manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Site);

12.1.2 such entry shall be effected between 08.00 and 17.00 on any day;

12.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;

12.1.4 such employee or agent may take photographs measurements and levels;

12.1.5 such employee or agent may not remain on the Site for longer than is reasonably necessary for carrying out a proper inspection; and

12.1.6 such employee or agent and any other accompanying persons shall comply with the Owner's or the Owner's representative's reasonable direction and comply with all health and safety regulations during the visit.

13 VAT

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

14 NOTICES

14.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 14.2.

14.2 The address for any notice or other written communication in the case of each party to this Deed shall be as follows:-

The Council	The Corporate Manager –Growth and Sustainable Planning Endeavour House 8 Russell Road Ipswich IP1 2BX
The County Council	The Executive Director of Growth, Highways and Infrastructure (or duly appointed successor) Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
The Owner	As per the address provided at the beginning of this Deed or such other address as the Owner may notify from time to time

14.3 Any notice or other written communication to be given by either the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County Council by a duly authorised officer of the Council or the County Council as appropriate.

15 DISPUTE RESOLUTION

15.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) which cannot be resolved by prior agreement between the Parties to the dispute or difference (“the Dispute Parties”) shall be referred to arbitration before a single Expert (the “Expert”)

15.2 The Dispute Parties shall jointly appoint the Expert not later than twenty-eight (28) days after service of a request in writing by any Dispute Party to do so

15.3 If the Dispute Parties are unable to agree within twenty-eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of either of the Parties as follows:

- a) if the difference or question relates to the rights and liabilities of any Dispute Party or to the terms or conditions to be embodied in the Deed or document

appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society; or

- b) if the difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or
- c) if the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Dispute Parties but in default of agreement appointed at the request of any Dispute Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
- d) if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Dispute Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute

15.4 In the event of a reference to arbitration the Dispute Parties agree to:

- a) prosecute any such reference expeditiously; and
- b) do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable.

15.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award.

15.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing.

15.7 The award shall be final and binding in the absence of manifest error both on the Parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be and the Expert's 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.

15.8 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause 15 but without prejudice to the rights and obligations of any of the Parties in relation to the termination of the Deed.

15.9 Nothing in this clause 15 shall affect the ability of the Council or 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 SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

16.1 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the Council or the County Council for a certificate to that effect and upon the Council or County Council being reasonably satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the Council or the County Council shall forthwith issue a certificate to such effect.

17 APPROVALS

17.1 Where any details, programmes, plans, strategies, reports, matters or materials are approved by the Council under the terms of this Deed further or amended details programmes plans strategies reports matters or materials may be submitted from time to time and if approved by the Council shall replace those previously approved.

18 NOTICES

18.1 the Owner covenants to inform the County Council no less than ten (10) Working Days following the:

- a) Commencement of Development;
- b) Occupation of the first (1st) Dwelling;
- c) Occupation of the 15th (fifteenth) Dwelling;

- d) Occupation of the 22nd (twenty-second) Dwelling; and
- e) Completion of the Development.

19 JURISDICTION

19.1 This Deed is governed by and interpreted in accordance with the law of England

20 DELIVERY

20.1 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 of which the Parties to this Deed have executed this document as a Deed on the date first written

FIRST SCHEDULE

DETAILS OF THE OWNER'S TITLE

The freehold land shown for identification purposes only edged red on the Location Plan being land on the north side of Station Road, Haughley, IP14 3PU and registered at H M Land Registry under title number SK414391

SECOND SCHEDULE

Part 1

Affordable Housing provisions

The Owner hereby covenants with the Council so as to bind the Site as follows (unless otherwise agreed in writing):

1 NOTICES

- 1.1 The Owner shall give to the Council Notice of Actual Commencement within seven (7) days of Commencement.
- 1.2 The Owner shall give to the Council not less than two (2) months' written notice of the anticipated date for the first Occupation of the first Affordable Dwelling to be Occupied.
- 1.3 The Owner shall give to the Council no less than seven (7) days' written notice following:
 - 1.3.1 the date of the first Affordable Dwelling to be Occupied or is Occupied for the first time; and
 - 1.3.2 the Completion of the Development.

2 OWNER'S OBLIGATION TO CONSTRUCT AFFORDABLE DWELLINGS

- 2.1 Having given notice under paragraph 1.1 of this Schedule unless the Owner is the Registered Provider the Owner shall agree with the Council on the identity of the Registered Provider to which the Affordable Dwellings are to be transferred the Owner may Commence the Development whilst that process is ongoing but shall not Occupy any Dwellings until the identity of the Registered Provider has been agreed with the Council.
- 2.2 The Owner shall construct the Affordable Dwellings in accordance with the Planning Permission, to a standard of construction which meets the Technical Housing Standards – Nationally Described Space Standard March 2015 (unless otherwise agreed in writing with the Council)
- 2.3 Unless otherwise agreed in writing by the Council the Owner will provide the Affordable Housing with mix and tenure outlined in the Third Schedule to this Deed.

- 2.4 Unless the Owner is the Registered Provider the Owner shall transfer to the Registered Provider the Affordable Dwellings prior to Occupation of any Dwelling and provide written notification of such to the Council SAVE FOR instances where the Owner is the Registered Provider
- 2.5 Unless the Council is the Registered Provider the Owner shall procure a covenant in the transfer(s) of the Affordable Dwellings that the Registered Provider(s) will enter into the Nomination Agreement within one (1) month of the date of the transfer(s) to it of the Affordable Dwellings (or such other time period as is agreed in writing with the Council) SAVE FOR instances where the Owner is the Registered Provider
- 2.6 Subject to the provisions of paragraph 2.7 below the Owner covenants that the Social Rent Dwellings shall only be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or chose pursuant to the Nominations Agreement which confers nomination rights on the Council unless otherwise agreed by the Council in writing or in accordance with the Government's Help to Buy Agency requirements
- 2.7 From the date of Practical Completion of the Affordable Dwellings shall not be used other than for Affordable Housing as set out herein save that this obligation shall not be binding upon:
- 2.7.1 any Protected Tenant or any mortgagee of a Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and charges;
 - 2.7.2 any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty;
 - 2.7.3 any purchaser from a mortgagee of an individual Affordable Dwelling pursuant to any default by the individual mortgagor; or
 - 2.7.4 any mortgagee of a Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions in the Shared Ownership Lease or any person or body deriving title from any such person.
- 2.8 Unless the Council is the Registered Provider, any capital receipt received from a lessee purchasing further shares in the Shared Ownership Dwelling between 81% and 100% is to be retained by the RP and re-invested in affordable housing within the area of the Council subject to any contrary requirements within the Homes England's Capital

Funding Guide. If after a period of five (5) years it has not been possible to spend the recycled funds within the area of Mid Suffolk District Council the funds may be spent elsewhere for the provision of affordable housing.

- 2.9 The Owner shall not Occupy or permit Occupation of any of the Affordable Dwellings for any purpose other than as Affordable Housing.

3 FUTURE USE OF AFFORDABLE HOUSING DWELLINGS

- 3.1 The Owner covenants that any transfer of land on which any of the Affordable Dwellings has been constructed to a Registered Provider shall be:

3.1.1 with vacant possession on the first transfer;

3.1.2 free from encumbrance other than existing at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker);

3.1.3 subject to a grant by the Owner to the acquiring Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Dwellings;

3.1.4 subject to a reservation of all rights of access and passage of service and rights of entry reasonably necessary for the purpose of the constructions, operation, use, maintenance and management of the Development;

3.1.5 subject to a covenant to enter into a Nomination Agreement substantially in a form to be agreed with the Council within three (3) months the date of the Site is transferred from the Owner to the Registered Provider;

3.1.6 subject to a covenant that the Registered Provider shall include a pre-emption in its own favour in any transfer of an Affordable Dwelling from the said Registered Provider to the owner or tenant of an Affordable Dwelling; and

3.1.7 subject to a covenant that the Registered Provider shall use all capital receipts from the sale of Affordable Dwellings only for the purpose of providing Affordable Housing.

- 3.2 The obligations and restrictions contained in this paragraph 3 of this Third Schedule shall not bind:

- 3.2.1 a Chargee who has complied with the provisions of paragraph 4 of this Third Schedule;
 - 3.2.2 any right to acquire purchaser;
 - 3.2.3 any Affordable Dwellings purchased by a tenant through Social Homebuy funded pursuant to Section 19(3) Housing and Regeneration Act 2008 or a voluntary grant scheme pursuant to Section 21 Housing Act 1996 or any replacement of said schemes;
 - 3.2.4 a leaseholder of a Shared Ownership Dwelling who is entitled to exercise their right under a Shared Ownership Lease to acquire 100% of the equity of their property; or
 - 3.2.5 any person or body deriving title through or from any other parties mentioned in this paragraph 3.2.
- 3.3 In the event that the Council is the Registered Provider the Social Rented Dwellings shall only be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or chosen pursuant to the terms of the draft Nominations Agreement annexed to this Agreement or in accordance with the Government's Help to Buy Agency requirements.

4 CHARGEES DUTY IN RELATION TO AFFORDABLE HOUSING DWELLINGS

- 4.1 The provisions of this Part 1 of the Second Schedule shall not be binding on a Chargee PROVIDED THAT:
- 4.1.1 such Chargee shall first give 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 exchange contracts for a disposal or 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
 - 4.1.2 if such exchange of contracts for a disposal or a disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the

Affordable Dwellings free from the provisions of paragraph 4.1.1 of this Part 1 of the Second Schedule which provisions shall determine absolutely

PROVIDED THAT at all times the rights and obligations in this paragraph 4.1 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.

Part 2

OPEN SPACE

Open Space

1 The Owner hereby covenants with the Council so as to bind the Site as follows (unless otherwise agreed in writing):

1.1 The Owner covenants not to Commence Development until the Open Space Works Specification has been submitted to and approved by the Council in writing.

1.2 The Owner covenants not to allow Occupation of more than 15 (fifteen) Dwellings on the Site until the Open Space First Tranche has been provided and laid out in accordance with the approved Open Space Works Specification.

1.3 The Owner covenants not to allow Occupation of the final Dwelling on the Site until the Open Space Second Tranche has been provided and laid out in accordance with the approved Open Space Works Specification.

1.4 The Owner covenants at its own cost to maintain and manage the Open Space strictly in accordance with the approved Open Space Works Specification and the Planning Permission until such time as it has been transferred to the Nominated Body in accordance with the Open Space Standard Terms and any Open Space Commuted Sum has been paid to the Parish Council if the Parish Council is the Nominated Body AND FOR THE AVOIDANCE OF DOUBT there shall be no obligation on the Owner to transfer the Open Space if the Nominated Body is Flagship Housing ~~Group~~ Limited. *BLUP*

1.5 The Owner covenants not to use or allow the use of the Open Space for any purpose other than as public open space for public recreation and amenity land for the general public at all times in perpetuity.

Off-Site Open Space Contribution

2 The Owner covenants with the Council so as to bind the Site as follows (unless otherwise agreed in writing):

2.1 To pay the Off-Site Open Space Contribution to the Council upon the first Occupation of the first Dwelling on the Site.

2.2 To not allow or permit Occupation of more than 1 (one) Dwelling on the Site until the Off-Site Open Space Contribution has been paid to the Council.

Part 3

COUNCIL CONTRIBUTIONS

- 1 The Owner hereby covenants with the Council so as to bind the Site as follows:
 - 1.1 To pay the Council Monitoring Fee to the Council prior to the Commencement of Development

THIRD SCHEDULE

Affordable Housing Schedule

The Affordable Dwellings shall be provided (unless otherwise agreed in writing by the Council) as:

Dwelling Type	Number	Plot Number(s) to be provided as Social Rent Dwellings	Plot Number(s) to be provided as Shared Ownership Dwellings
One Bed Two Person Bungalow	4	Plots 1, 2, 9 and 10	None
One Bed Two Person House	2	Plots 28 and 29	None
Two Bed Four Person Bungalow	2	None	Plots 7 and 8
Two Bed Four Person House	9	Plots 19, 20, 21, 22 and 23	Plots 5, 6, 17 and 18
Three Bed Five Person House	9	Plots 11, 12 and 13	Plots 14, 15, 24, 25, 26 and 27
Four Bed Six Person House	3	None	Plot 16
Four Bed Six Person House	2	Plots 3 and 4	None

FOURTH SCHEDULE

COUNCIL'S COVENANTS WITH THE OWNER

- 1 The Council covenants with the Owner:
 - 1.1 To provide written confirmation of the discharge of the Planning Obligations when satisfied that such obligations have been performed
 - 1.2 In the event that any of the contributions the Council receive pursuant to this Deed have not been committed (by way of contract or otherwise) to the purposes for which they were paid within ten years from the date of their respective payments then the Council shall repay to the person that paid the sum to the Council so much of the monies as shall remain uncommitted together with any interest thereon

FIFTH SCHEDULE

OWNER'S COVENANTS WITH THE COUNTY COUNCIL

The Owner hereby covenants with the Council so as to bind the Site as follows:

1 SCHOOL TRANSPORT CONTRIBUTION

- 1.1 to pay 50% the School Transport Contribution to the County Council in a single lump sum payment prior to the Occupation of more than 15 (fifteen) of the Dwellings;
- 1.2 to not permit Occupation of more than 15 (fifteen) of the Dwellings until the School Transport Contribution has been paid to the County Council;
- 1.3 to pay the remaining 50% of the School Transport Contribution to the County Council in a single lump sum payment prior to the Occupation of more than 22 (twenty two) Dwellings.
- 1.4 to not permit Occupation of more than 22 (twenty two) Dwellings until all of the School Transport Contribution has been paid to the County Council.

2 EDUCATION CONTRIBUTION

- 2.1 to pay 50% the Education Contribution to the County Council in a single lump sum payment prior to the Occupation of more than 15 (fifteen) of the Dwellings;
- 2.2 to not permit Occupation of more than 15 (fifteen) of the Dwellings until the Education Contribution has been paid to the County Council;
- 2.3 to pay the remaining 50% of the Education Contribution to the County Council in a single lump sum payment prior to the Occupation of more than 22 (twenty two) Dwellings.
- 2.4 to not permit Occupation of more than 22 (twenty two) Dwellings until all of the Education Contribution has been paid to the County Council.

3 COUNTY COUNCIL MONITORING FEE

- 3.1 to pay the County Council Monitoring Fee on or before completion of this Deed towards the cost of reporting and monitoring the obligations contained in this Deed

SIXTH SCHEDULE

COUNTY COUNCIL'S COVENANTS WITH THE OWNER

- 1 The County Council covenants with the Owner to hold the School Transport Contribution in a central interest-bearing account and apply the same and any interest accrued towards the purpose for which it was paid
- 2 To provide to the Owner, on the Owner's written request, information regarding the expenditure of the School Transport Contribution PROVIDED THAT such request is made within ten (10) years of Completion of Development.
- 3 In the event that the School Transport Contribution has not been committed (by way of contract or otherwise) to the purposes for which it was paid if requested to do so in writing after the expiry of 10 years of Completion of the Development the County Council shall within a further period of (1) year repay to the person that paid the sum to the Council so much of the School Transport Contribution as shall remain uncommitted together with any interest accrued at the Bank of England's base rate minus two 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.
- 4 The County Council covenants with the Owner to hold the Education Contribution in a central interest-bearing account and apply the same and any interest accrued towards the purpose for which it was paid.
- 5 To provide to the Owner, on the Owner's written request, information regarding the expenditure of the Education Contribution PROVIDED THAT such request is made within ten (10) years of Completion of Development.
- 6 In the event that the Education Contribution has not been committed (by way of contract or otherwise) to the purposes for which it was paid if requested to do so in writing after the expiry of 10 years of Completion of the Development the County Council shall repay within a further period of (1) year to the person that paid the sum to the Council so much of the Education Contribution as shall remain uncommitted together with any interest accrued at the Bank of England's base rate minus two 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.

APPENDIX 1

Nominations Agreement

DRAFT DEED OF NOMINATION RIGHTS

is made [enter date at completion]

BETWEEN

(1) [ENTER NAME OF RP]

and

(2) **BABERGH DISTRICT COUNCIL/MID SUFFOLK DISTRICT COUNCIL** (delete as appropriate)

Relating to

[Enter name and address as set out in Section 106. If new or different address, enter
“and also known as“]

[Enter Planning Application reference]

[Enter Date of S106 Agreement:]

Shared Legal Services

Babergh District Council/Mid Suffolk District Council (delete as appropriate)

Council Offices

Endeavour House

8 Russell Road

Ipswich IP1 2BX

Part I

Provisions relating to Affordable Rent Units – Pages 3 to 11

Part II

Provisions relating to Shared Ownership Units – Pages 11 to 19

(Delete this page if only one part is used)

DRAFT

THIS DEED OF NOMINATION RIGHTS

is made [enter date at completion]

BETWEEN:

(1) **[Enter name of RP]** whose registered address is **[enter RP'S address]**

(‘the RP’) and

(2) **BABERGH DISTRICT COUNCIL/MID SUFFOLK DISTRICT COUNCIL (delete as appropriate)** of Endeavour House, 8 Russell Road Ipswich Suffolk, IP1 2BX

(‘the Council’)

‘the Parties’

Part I - Provisions relating to Affordable Rent Units

1. Definitions

1.1. ‘Affordable Housing’ has the meaning given to it in Annex 2 of the National Planning Policy Framework published in July 2021 (as may be amended from time to time or such other national policy that may from time to time replace or update this framework) or any successor policy thereto issued by HM Government.

1.2. ‘Affordable Housing Location Plan’ means a document consistent with the provision of Affordable Housing Units pursuant to the Planning Permission detailing the following:

- i) the Affordable Housing Units and their location;

- ii) the number of bedrooms per Dwelling;
- iii) street name and postal address; and
- iv) tenure.

1.3. 'Affordable Housing Unit' means [enter number] Dwellings ([enter percentage number] % of the Dwellings) which shall be Affordable Rent Units (unless otherwise agreed by the Council) and 'Affordable Housing Units' shall be construed accordingly.

1.4. 'Affordable Rent' means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable. Rents will be set, and may be adjusted over time, in accordance with the Government's policy for Affordable Rents as set out in the Rent Standard of April 2023 and any subsequent update or such Government policy which may succeed it.

1.5. 'Affordable Rent Unit' means an Affordable Housing Unit made available by a RP as low cost rental accommodation (as defined in Section 69 of the Housing and Regeneration Act 2008).

1.6. 'Allocations Policy' means the policy adopted by the Council which governs households that are eligible to Occupy Affordable Housing, in line with its statutory duties.

1.7. 'Chargee' means any mortgagee or chargee of the RP or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator.

1.8. 'Choice Based Lettings Scheme' means the allocation process that the Council has adopted for allocating social housing or any allocation process which may succeed it.

1.9. 'Dwelling' means a dwelling (including a house flat maisonette or bungalow and including both market housing units and Affordable Housing Units) to be constructed pursuant the Planning Permission and 'Dwellings' shall be construed accordingly.

1.10. 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings Scheme (or any replacement or similar system in place at the time).

1.11. 'Homes England' means the non-departmental public body known as Homes England or any successor organisation who is charged with the function of investing in the provision of Affordable Housing.

1.12. 'Initial Let' means the first tenancy of a newly constructed and previously unoccupied Affordable Rent Unit.

1.13. 'Local Connection' means a connection to the District of [enter name] and as defined in the Allocations Policy.

1.14. 'Local Connection Criteria' means the requirements that need to be met for a Local Connection as set out in the Allocations Policy.

1.15. 'Market Rent' means, in relation to accommodation, an estimate of its market rent inclusive of all service charges at the time the tenancy is granted that is based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.

1.16. 'Notice of Practical Completion' means a written notice (in a form to be agreed between the RP and the Council) to be given to the Council within two (2) weeks from the issue date of the certificate of Practical Completion. The function of such notice being the notification to the Council by the RP of the expected date on which the construction and fitting out of the Affordable Rented Units will be complete and ready to let.

1.17. 'Occupation' means the action of living in or using an Affordable Housing Unit as an only and principal home, for the purposes permitted by the Planning Permission, not including occupation by personnel engaged in construction, fitting out, decoration, marketing or display; or occupation in relation to security operations and 'Occupy' and 'Occupied' shall be construed accordingly.