

DATED 16<sup>th</sup> December 2024

-----

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND COUNTRY  
PLANNING ACT 1990 RELATING TO LAND AT HOGGS LANE ILKETSHALL ST  
LAWRENCE**

between

**EAST SUFFOLK COUNCIL**

and

**SUFFOLK COUNTY COUNCIL**

and

**MARK OLIVER GARDNER and KATHLEEN AMELIA CAROL GARDNER**

and

**JORDAN DEVELOPMENTS (EAST ANGLIAN) LIMITED**



This deed is dated the 16<sup>th</sup> day of December

2024

#### Parties

- (1) EAST SUFFOLK COUNCIL of East Suffolk House Station Road Melton Woodbridge IP12 1RT (the Council)
- (2) SUFFOLK COUNTY COUNCIL of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the County Council")
- (3) MARK OLIVER GARDNER and KATHLEEN AMELIA CAROL GARDNER of Laurel Farm, Stone Street, Spexhall, Suffolk IP19 0RN. (the Owner)
- (4) Jordan Developments (East Anglia) Limited incorporated and registered in England and Wales with company number 04900337 whose registered office is at C/O Glx Ltd, 69-75 Thorpe Road, Norwich, Norfolk, England, NR11UA (the Developer)

#### BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Property is situated.
- (B) 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.
- (C) The Owner is the freehold owner of the Property free from encumbrances.
- (D) The Developer has made the Planning Application and is proposing to carry out the Development.
- (E) On 7 October 2022 the Developer entered into a conditional contract with the Owner for the acquisition of the Property by the Developer

#### Agreed terms

##### 1. Interpretation

The following definitions and rules of interpretation apply in this deed.

##### 1.1 Definitions:

**Base Rate:** the base rate from time to time of Barclays Bank Plc

**BCIS Index:** the All In Tender Price Index published by the Building Cost Information 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 Parties hereto

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding for the purposes of this deed, and for no other purpose, the following operations:

- a) demolition works;
- b) site clearance;
- c) ground investigations;
- d) site survey works;
- e) temporary access construction works;
- f) archaeological investigation; and
- g) erection of any fences and hoardings around the Property.

**Commenced and Commences** shall be construed accordingly.

**Commencement Date:** the date Development Commences.

**Council Monitoring Fee:** the sum of £445 (four hundred and forty five pounds) per Council obligation trigger point contained within this Deed being £2670 (two thousand six hundred and seventy pounds)

**County Council Monitoring Fee:** the sum of £476 (four hundred and seventy-six pounds) per County Council obligation trigger point contained within this Deed being £952 (nine hundred and fifty-two pounds)

**Default Interest Rate:** 4% per annum above the Base Rate.

**Development:** the development of the Property authorised by the Planning Permission.

**Dwelling:** a dwelling (including a house flat or bungalow) to be constructed pursuant to the Planning Permission and “Dwelling” and “Dwellings” shall be construed accordingly

**“Habitat Regulations Mitigation Contribution”** means the sum of three hundred and seventy four pounds and twenty nine pence (£374.29) Index Linked to the BCIS Index 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 Linked:** increased in accordance with the following formula:

Amount payable= the payment specified in this deed x (A/B) where:

- a) A is the figure for the RPI Index or the BCIS Index (as the context dictates) that applied immediately preceding the date the payment is due; and
- b) B is the figure for the RPI Index or the BCIS Index (as the context dictates) that applied when the index was last published before the date of this deed.

**Local Plan:** means the Waveney Local Plan adopted in March 2019

**Management Company:** means a company or body who will take over responsibility for the future maintenance of the Open Space and which definition may include a Parish Council, a Residents Association established for this purpose or a Private Limited Company;

**Occupation:** means 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 and “Occupied and “Occupy” shall be construed accordingly

**Open Space:** means the areas of open amenity space and onsite playing areas within the Development;

**Open Space Perimeter Margin Plan** means the drawing OSS0 A showing annexed to this Deed

**Open Space Specification:** means a scheme showing:

1. Full details of the amount of Open Space
2. The extent, location and boundaries of Open Space
3. Details of the design and layout of the Open Space including all equipment, surfacing drainage features, access arrangements, street furniture, fencing and landscaping together with appropriate plans drawings and specifications submitted and the Open Space Perimeter Margin Plan attached to this Deed
4. Details of the ongoing management and maintenance of the Open Space
5. A timetable for the laying out and provision of the Open Space

**Plan:** the plan attached to this deed 0.

**Planning Application:** the application for full planning permission registered by the Council on 9 August 2023 under reference number DC/23/304S/FUL

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application in the draft form attached to this deed

**Property:** the land at Hoggs Lane Ilketshall as shown edged red on the Plan and being part of the land currently registered at HM Land Registry with absolute title under Title number(s) SK 316229

**RPI Index:** the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Parties

**Section 73 Consent:** means a planning permission granted pursuant to Section 73 of the Act which varies and/or removes any condition(s) subject to which the

Planning Permission and/or any subsequent Section 73 Consent was granted;

**Secondary School Transport Contribution:** means the sum of £35,125 (thirty-five thousand, one hundred and twenty-five pounds) Index Linked to the RPI Index towards the cost of providing school transport for secondary school age pupils to and from the Property including any costs forward funded by the County Council

**Section 106 Officer:** means 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

**TCPA 1990:** the Town and Country Planning Act 1990.

**TRO Contribution:** means the sum of £15,000 (fifteen thousand pounds) Index Linked to the BCIS Index towards the cost of extension of the existing 30 mph speed limit on Hoggs Lane fronting the Property to include all related legal and administrative costs and any other officer time and ancillary expenses

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.

- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written**.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Any words following the term(s) **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

## **2. Statutory provisions**

- 2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.
- 2.2 The covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Owner with the intention that they bind the interests held by that person in the Property and their respective successors and assigns.
- 2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA 1990.

## **3. Conditionality**

The obligations set out in Schedule 1 and Schedule 2 of this deed are conditional upon the grant of the Planning Permission and the rest of the provisions set out in this deed shall take effect immediately upon completion of this deed.



#### **4. Covenants to the Council and the County Council**

The Owner and Developer covenants with the Council to:

- (a) observe and perform the covenants, restrictions and obligations contained in Schedule 1; and
- (b) give at least 10 Working Days written notice to the Council of the intended Commencement Date.
- (c) give written notice to the Council as soon as reasonably practicable following the Occupation of the 5th Dwelling.

The Owner and Developer covenants with the County Council to:

- (d) observe and perform the covenants, restrictions and obligations contained in Schedule 3; and
- (e) give at least 10 Working Days written notice to the County Council of the intended Commencement Date
- (f) give written notice to the County Council as soon as reasonably practicable following the Occupation of the 7<sup>th</sup> Dwelling

#### **5. Covenants by the Council and the County Council**

- 5.1 The Council covenants with the Owner and Developer to observe and perform the covenants, restrictions and obligations contained in Schedule 2.
- 5.2 The County Council covenants with the Owner and Developer to observe and perform the covenants, restrictions and obligations contained in Schedule 4.

#### **6. Indexation**

- 6.1 Any financial contributions payable to the Council or County Council will be Index Linked.
- 6.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased, then it includes reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or, in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

#### **7. Lender's consent**

- 7.1 Any future lender whose interest in the Property is bound by the terms of this Agreement) shall not be personally liable for any breach of the obligations in this deed unless

committed or continuing at a time when the lender is in possession of all or any part of the Property.

**8. Release**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting before parting with that interest.

**9. Determination of deed**

The obligations in this deed (with the exception of clause 11) shall cease to have effect if, before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is varied or revoked other than at the Owner's request; or
- (c) is quashed following a successful legal challenge.

**10. Local land charge**

This deed is a local land charge and shall be registered as such by the Council.

**11. Council's and County Council's costs**

The Owner shall pay to the Council on or before the date of this deed

- (a) the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed; and

the Council Monitoring Fee

The Owner shall pay to the County Council on or before the date of this deed

- (b) the County Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed; and

- (c) the County Council Monitoring Fee

**12. Interest on late payment**

If any sum or amount has not been paid to the Council or County Council by the date it is due, the Owner shall pay the Council or County Council (as the case requires) interest on that amount at the Default Interest Rate (both before and after any judgment). This interest will accrue on a daily basis for the period from the due date to and including the date of payment.

### **13. Ownership**

- 13.1 The Owner warrants that no person other than the Owner and the Developer has any legal or equitable interest in the Property.
- 13.2 Until the covenants, restrictions and obligations in Schedule 1 and Schedule 3 have been complied with, the Owner will give to the Council and County Council within 10 (ten) Working Days the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property:
- (a) the name and address of the person to whom the disposition was made; and
  - (b) the nature and extent of the interest disposed of.

### **14. Reasonableness**

Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed and the schedules to it shall not be unreasonably withheld or delayed.

### **15. Cancellation of entries**

- 15.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs), the Council shall issue a written confirmation of that performance or discharge.
- 15.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 9 (and subject to the payment of the Council's reasonable and proper costs and charges), the Council shall on the written request of the Owner cancel all entries made in the local land charges register in respect of this deed.

### **16. Disputes**

Any dispute, controversy or claim arising out of or relating to this deed, including any question regarding its breach, existence, validity or termination of the legal relationships established by this deed, shall be finally resolved by arbitration in accordance with the Arbitration Act 1996. It is agreed that:

- (a) the tribunal will consist of one arbitrator appointed jointly by the parties;
- (b) in default of the parties' agreement on the arbitrator, the arbitrator shall be appointed on either party's request by the President for the time being of the Royal Institution of Chartered Surveyors;
- (c) the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally); and

(d) the seat of the arbitration shall be within East Suffolk council area.

**17. No fetter of discretion**

Nothing (contained or implied) in this deed fetters or restricts the Council's or County Council's statutory rights, powers, discretions and responsibilities.

**18. Waiver**

No failure or delay by the Council or County Council to exercise any right or remedy provided under this deed or by law constitutes a waiver of that or any other right or remedy. No single or partial exercise of that right or remedy prevents or restricts the further exercise of that or any other right or remedy.

**19. Future permissions**

Nothing in this agreement prohibits or limits the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

Unless otherwise agreed between the Parties if a Section 73 Consent is granted by the Council in relation to the Development, then with effect from the date that each such Section 73 Consent is granted:

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

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

**PROVIDED THAT**

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

## 20. Agreements and declarations

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

## 21. Notices

21.1 Any notice [or other communication to be given under this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first-class post or other next working day delivery service.

21.2 Any notice or other communication to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at Riverside 4 Canning Road Lowestoft Suffolk NR33 0EQ marked for the attention of the Section 106 Officer;
- (b) to the County Council at Suffolk County Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX and marked for the attention of the Executive Director of Growth Highways and Infrastructure
- (c) to the Owner at Laurel Farm, Stone Street, Spexhall, Suffolk IP19 0RN marked for the attention of ANNEX A MARK OLIVER GARDNER and KATHLEEN AMELIA CAROL GARDNER
- (d) as otherwise specified by the relevant party by notice in writing to each other party.

21.3 Any notice [or other communication given in accordance with clause 21.1 and clause 21.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt [or at the time the notice or document is left at the address provided that, if delivery occurs:
  - (i) before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day; and

- (ii) if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am second Working Day after posting.

21.4 A notice or other communication given under this deed is not validly given if sent by email alone.

21.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **22. Third party rights**

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

## **23. Value added tax**

23.1 Each amount stated to be payable by the Council or the County Council or the Owner to another party under or pursuant to this deed is exclusive of VAT (if any).

23.2 If any VAT is at any time chargeable on any supply made by the Council or County Council or the Owner under or pursuant to this deed, the party making the payment shall pay the relevant party an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

## **24. Governing law**

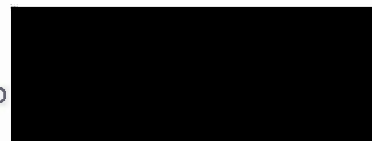
This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the law of England.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The common seal of  
**EAST SUFFOLK COUNCIL**  
was affixed to this document  
in the presence of:



Authorised signatory



The common seal of  
**SUFFOLK COUNTY COUNCIL**  
was affixed to this document  
in the presence of:

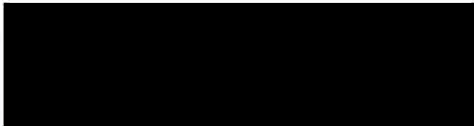


Authorised signatory





Signed as a deed by  
MARK OLIVER GARDNER  
in the presence of:



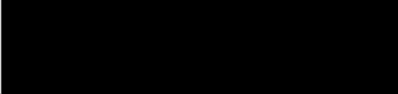
SIGNATURE OF OWNER



SIGNATURE OF WITNESS  
NAME, ADDRESS AND  
OCCUPATION OF WITNESS



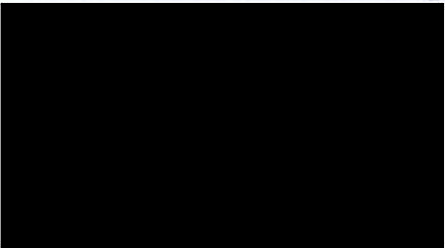
Signed as a deed by  
KATHLEEN AMELIA CAROL  
GARDNER  
in the presence of:



SIGNATURE OF OWNER



SIGNATURE OF WITNESS  
NAME, ADDRESS AND  
OCCUPATION OF WITNESS



Executed as a deed by  
Jordan Developments (East  
Anglia) Limited  
acting by

[REDACTED]

NAME OF DIRECTOR

a director, in the presence of:

[REDACTED]

SIGNATURE OF WITNESS

NAME, [REDACTED]

ADDRESS [REDACTED]

AND OCCUPATION OF

WITNESS [REDACTED]

[REDACTED]

SIGNATURE OF DIRECTOR

Director

**Schedule 1      Covenants to the Council**

|                                     |   |
|-------------------------------------|---|
| 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 paragraphs 1.10, 3.8 or 3.9 of this Schedule, the lower of the following two amounts:<br>(a) 30% of the proceeds of sale; and<br>(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 |
| "Affordable Dwellings"              | 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<br>Means 7 Dwellings to be made available as Affordable Housing the exact number, location, tenure and mix set out in the Affordable Housing Table unless otherwise agreed with the Council in writing;   |
| "Affordable Dwellings for Rent"     | Affordable Housing let by a Registered Provider to Eligible Persons 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 with the Council in writing;  |
| "Affordable Housing"                | Housing that will be available to eligible households and as defined in Annex 2 of the National Planning Policy Framework (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 Contribution"   | means the sum of £30,000 (thirty thousand pounds) Index Linked to be paid as a contribution of 0.5 of an Affordable Dwelling in lieu of on site affordable housing to be used towards the provision of Affordable Housing through the acquisition of land or the construction or  |

development of new properties or the purchase or refurbishment of existing market properties in East Suffolk;

“Affordable Housing Scheme”

A scheme to be submitted for each Phase intended to include Affordable Housing for the provision of the Affordable Dwellings generally in accordance with the Affordable Housing Table unless otherwise agreed with the Council such Affordable Housing Scheme shall include details of;

- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;
- the name and registration number of the Registered Provider where a Registered Provider has been identified by the Developer or the Council as able and willing to acquire the Affordable Dwellings for Rent for Reasonable Consideration
- a plan and schedule indicating the number, location, tenure, plot numbers, type and size (including 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 may reasonably require to enable approval of the Affordable Housing Scheme;

“Affordable Housing Table”

means the following table read in conjunction with Qube drawing 2022-26 0200 rev M

| plot No | tenure      | house type | beds  | form              | floor area m2 | parking          |
|---------|-------------|------------|-------|-------------------|---------------|------------------|
| 14      | First homes | 05a        | 2b/4P | end terrace house | 67            | 2 x court spaces |

|    |                                   |     |       |                        |    |                 |
|----|-----------------------------------|-----|-------|------------------------|----|-----------------|
| 15 | First Homes                       | 05a | 2B/4P | mid terrace house      | 67 | 2x court spaces |
| 16 | Shared Equity or Shared Ownership | 05a | 2B/4P | End terrace house      | 67 | 2x court spaces |
| 17 | Shared Equity or Shared Ownership | 09  | 3B/5P | Detached house         | 94 | 2x court spaces |
| 18 | Affordable Rented                 | 04  | 1B/2P | ground floor flat      | 61 | 2x court spaces |
| 19 | Affordable Rented                 | 04  | 2B/4P | First floor flat       | 68 | 2x court spaces |
| 20 | Affordable rented                 | 04  | 2B/4P | semi-detached bungalow | 72 | 2x court spaces |

unless otherwise agreed in writing with the Council in accordance with schedule 1

“Allocation Policy”

Means the policy and procedure adopted by the Council to determine the eligibility and priority for allocation of the 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)

- “Discount Market Price” means a sum which is the Market Value of a First Home discounted by at least 30%;
- “Disposal” means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest other than:
- (a) a letting or sub-letting of a First Home 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
- and “Dispose” and “Disposed” and “Disposing” shall be construed accordingly;
- “Dwelling” means any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission
- “Eligibility Criteria (Local)” means local criteria met in respect of a purchase of a First Home if:
- (a) the purchaser meets the criteria in the Local Connections Cascade (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connections Cascade); and
  - (b) the purchaser meets any further local criteria in effect at the date of the relevant Disposal of a First Home
- it being acknowledged that at the date of this Deed the Council has only prescribed Eligibility Criteria (Local) in respect of (a);

“Eligibility Criteria  
(National)”

means criteria which are met in respect of a purchase of a First Home if;

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

A person or persons on the housing register maintained by the Council or 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 Homes 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 1.10 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 Home”              | 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 the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:<br><br>(a) the Owner or the Developer; or<br><br>(b) another developer or other 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 the freehold a 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;  |
| “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 Connections Cascade | The local connections criteria to be applied to each and every let or sale of an Affordable Dwelling as set out in Schedule 1;   |



|                                |  |
|--------------------------------|--|
| “Market Dwellings”             | that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;  |
| “Market Value”                 | means the open market value as assessed by a Valuer of a Dwelling and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account any discount in the valuation;  |
| “Mortgagee”                    | means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire an 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;   |
| “Occupation” and<br>“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;   |
| “Practical Completion”         | means the stage reached when the construction of a 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 set locally or 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;
- 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;
- c) a 100% Staircaser;
- d) any successor in title to a Chargee or Mortgagee of the persons named in a) – c) above;

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

“Qualifying Persons”

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 Owners a reasonable consideration having regard to current Affordable Housing of a similar type and location by Registered Providers on a grant free basis via Section 106 Agreements;

“Registered Provider” or “RP”

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;
- any person or body or entity which is registered as a provider or social housing in accordance with Section 80(2) and Chapter 3 of the Housing and Regeneration Act 2008 or;
- any body, organisation or company which is registered charity with the Charity Commissioners for England and Wales and approved by Homes England or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a registered social landlord; to be approved in writing by the Council;

|                           |   |
|---------------------------|---|
| “Sales Procedure”         | means the procedure to be approved in writing by the Council to verify the Market Value and eligibility of purchasers in relation to the Shared Equity Dwellings;   |
| “SDLT”                    | means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;  |
| “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 Equity Dwellings” | means Affordable Dwellings to be purchased at no more than 75% Market Value on a freehold basis with a second charge (“the Second Charge”) for the remaining 25% in favour of the RP. The Second Charge shall have no interest payable in relation to it and shall not involve any consideration being due on initial sale. The Second Charge shall not be redeemed or removed by the purchaser otherwise than on or after the second anniversary of the first Occupation of the Shared Equity Dwelling and only for consideration the equivalent of 25% of the Market Value at that time, or, if at any point during the Term the Shared Equity Dwelling is sold, then the proceeds of sale shall be divided on the basis of 75% of the proceeds to the vendor and 25% to the RP or Council and the Second Charge shall thereafter be redeemed and removed from the title on completion of the sale; |

|                              |   |
|------------------------------|---|
| "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"> <li>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;</li> <li>ii. power to the purchaser to increase their ownership up to 100%;</li> <li>iii. an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider ( or Developer if there is no Registered Provider) subject to annual increases not exceeding Consumer Price Index (CPI) published by the Office for National Statistics (or if such index ceases to be published such other index the Council shall reasonably determine) plus 1% or such other rent as complies with the requirements from time to time of Homes England;</li> </ul> |
| "Site"                       | the land described in Schedule 1 against which this Deed may be enforced as shown edged red for identification purposes only on the Plan  |
| "Valuer"                     | means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer actin in a n independent capacity;   |
| "100% Staircaser"            | means a lessee of a Shared Ownership Dwelling or a under a Shared Ownership Lease who has exercised their right under that lease to purchase 100% of the equity in the Shared Ownership Dwelling or the owner of a Shared Equity Dwelling who has exercised their right to purchase the remaining equity;   |

- 1.1 The Owner covenants not to Commence Development until the Affordable Housing Scheme has been agreed in writing with the Council.
- 1.2 The Owner covenants that no more than 5 of the Market Dwellings shall be Occupied (save unless otherwise agreed with the Council) until the Council has been notified of the name and registration number of the proposed Registered Provider for the Affordable Dwellings (save for any Affordable Dwellings to be sold directly by the Owner) or that the Council has been provided with reasonable evidence by the Owner that there is no available Registered Provider under paragraph 1.6
- 1.3 The Owner covenants that no more than 5 of the Market Dwellings shall be Occupied (save unless otherwise agreed with the Council) unless a contract has been entered into with a Registered Provider for transfer of all the Affordable Dwellings (save for any Affordable Dwellings to be sold directly by the Owner) unless that there is no Registered Provider willing and able to enter into a contract for Reasonable Consideration within such period of 3 months of the date of Commencement of Development
- 1.4 The Owner covenants that no more than 10 of the Market Dwellings shall be Occupied until the Affordable Dwellings have been constructed in accordance with the Planning Permission made ready for residential Occupation and either transferred to a Registered Provider or marketed for sale to Qualifying Persons or First Time Buyers in accordance with the terms of this Deed.
- 1.5 The Owner covenants that from the date of Practical Completion the Affordable Dwellings 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.
- 1.6 In the event that a Registered Provider cannot be found for any of the Affordable Dwellings (save for any Affordable Dwellings to be sold directly by the Owner subject to the Sales Procedure) throughout England despite the Owner's reasonable endeavours to do so the Owner will be required to prove to the Council's satisfaction (the Council at all times acting reasonably) that demand from Registered Providers has not been forthcoming for Reasonable Consideration.

- 1.7 If the Council is satisfied ( acting reasonably) that demand from Registered Providers has not been forthcoming for Reasonable Consideration with the period referred to in paragraph 1.3 the Council will enter into written negotiations with the Owner to seek an agreed way forward that does not disadvantage the Owner whilst maximising the provision of Affordable Housing which may include re- designating the relevant dwellings as First Homes Dwellings and dealt with in accordance with the provisions in this schedule.
- 1.8 If after three calendar months of handover of the Affordable Dwellings to the RP there remains any Affordable Dwellings not leased or sold and the RP can provide evidence to the Council's satisfaction there are no prospective occupants the RP 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 to the National Planning Policy Framework (July 2021) (or any amended or subsequent national planning policy that may be published by the Government from time to time).
- 1.9 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 or any person deriving title from any such person.
- 1.10 The Owner covenants that no more than 9 of the Market Dwellings shall be Occupied until the Affordable Housing Contribution has been paid to the Council.

#### **Mortgagee Protection Clauses**

- 1.11 The Affordable Housing obligations in this Schedule 1 shall not apply to any Mortgagee or Chargee (or any receiver (including an administrative receiver appointed by such Mortgagee or Chargee) or any other person appointed under any security documentation to enable such Mortgagee or Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwellings or any individual First Home or any persons or bodies deriving title through such Chargee, Mortgagee or Receiver PROVIDED THAT:
- 1.11.1 such Chargee or Receiver of an Affordable Dwelling for Rent or Shared Ownership Dwelling or Shared Equity Dwelling 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 complete a Disposal of the Affordable Dwelling[s] 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

- 1.11.2 if such Disposal of the Affordable Dwelling[s] for Rent or Shared Ownership Dwelling[s] or Shared Equity Dwelling[s] has not completed within the three month period, the Chargee or Receiver shall be entitled to Dispose of the Affordable Dwelling[s] for Rent or Shared Ownership Dwelling[s] or Shared Equity Dwelling[s] free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely
- 1.11.3 such Mortgagee or Receiver of a First Home shall first give written notice to the Council of its intention to Dispose of the relevant Dwelling; and
- 1.11.4 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 1.10.5 at its full Market Value
- 1.11.5 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
- 1.11.6 following receipt of notification of the Disposal of the relevant First Home the Council shall:
  - i. 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
  - ii. apply all such monies received towards the provision of Affordable Housing in East Suffolk

## **2. Rent and Shared Ownership Dwelling Provisions**

- 2.1 Where a Registered Provider is able and willing to acquire the Affordable Dwellings for Rent for Reasonable Consideration, 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

- 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 shorthold 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 a RP 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 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 RP 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 RP and allow the RP to purchase the Shared Ownership Dwelling back in the first instance at Market Value
  - ii. in the event the RP purchases the Shared Ownership Dwelling in accordance with this clause at 2.5i, the Shared Ownership Dwelling will be marketed as such subject to the terms of this Deed; and
  - iii. in the event the RP 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 2.5i, 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 Home 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) a definition of "First Homes Provisions" in the following terms:

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

c) A definition of " S106 Agreement" means the 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 First Home 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 to 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*