

DATED

15th August

2024

MID SUFFOLK DISTRICT COUNCIL (1)

-and-

SUFFOLK COUNTY COUNCIL (2)

-and-

CROCUS HOMES LIMITED (3)

-and-

EARLSWOOD HOMES HOLDINGS LIMITED (4)

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

relating to the development of land South of
Mill Lane, Stradbroke, Suffolk



Ref: JZMBXB/246880.1

Date

15th August

2024

BETWEEN

- 1 **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ("the District Council"); and
- 2 **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council"); and
- 3 **CROCUS HOMES LIMITED** (Co. Regn. No. 5127689) of Saffron Barn, Swan Lane, Long Stratton, Norwich NR15 2XP. ("the Owner"); and
- 4 **EARLSWOOD HOMES HOLDINGS LIMITED** (Co. Regn. No. 08130321) of The Old Mill, Kings Mill, Kings Mill Lane, South Nutfield, England, RH1 5NB ("the Chargee").

together referred to as "the Parties"

BACKGROUND

- A The District Council is a local planning authority for the purposes of the Act for the area in which the Site is situated.
- B The County Council is the local highway authority the 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 obligations contained in this Deed are enforceable.
- C The ownership and other interests in the Site are set out in Schedule 1.
- D The Chargee is the registered proprietor of a charge dated 3 March 2023 which is in relation to land which includes the Site.
- E The Application has been submitted to the District Council and the Parties have agreed to enter into this Deed in order to secure the planning obligations and other covenants to the extent that is necessary to ensure that the Development is acceptable in planning terms.
- F The District Council enters into this Deed content that the requirements of the District Council's policies are met and that any objections by the District Council to the grant of planning permission on the basis of those policies are overcome.

- G The District 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:

OPERATIVE PROVISIONS

1 DEFINITIONS

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 Housing”	subsidised housing that will be available to persons whose housing needs are not met by the market in accordance with and defined in Annex 2 of the NPPF (as may be amended and replaced from time to time)
“Affordable Housing Contribution”	the sum to be agreed between the Owner and the District Council and paid to the District Council in lieu of providing some or all of the Affordable Housing Units on the Site calculated in accordance with the District Council's affordable housing policies in place at the time of the calculation to be paid to the District Council (or such other body as the District Council may elect) to spend on the provision of off-site Affordable Housing in the district of Mid Suffolk in the event that the provisions of paragraph 14 of Part 2 of Schedule 2 applies (and for the avoidance of doubt such sum may be paid to the District Council in phases in accordance with any phased payment of the commuted sum agreed with the District Council)

“Affordable Housing
Nomination Agreement”

an agreement substantially in the form set out in Schedule 6 (subject to such amendments agreed in writing that may be reasonably required by the Registered Provider and the District Council with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and “Nomination Agreement” shall have the same meaning

“Affordable Housing
Scheme”

means (unless otherwise agreed in writing) a written scheme approved by the District Council identifying the location, number of bedrooms, mix and tenure of each Affordable Housing Unit (including those to be provided as Affordable Rented Housing Units and to be provided as Shared Ownership Dwellings) and satisfying all of the following requirements

- i) Each Affordable Housing Unit should be integrated within the scheme and avoid clustering in one area of the Site.
- ii) All Affordable Housing Units must be built to current Nationally Described Space Standards as published March 2015 and meet Building Regulations Part M 4 Category 2.
- iii) All ground floor 1 bed flats / bungalows to be fitted with level access showers, not baths.
- iv) Adequate parking provision is made for the Affordable Housing Units including cycle storage for all Affordable Housing Units.

“Affordable Housing Units”

means (unless otherwise agreed in writing) 20% (twenty per cent) of the Dwellings to be provided on the Site pursuant to the Planning Permission to be Occupied as Affordable Housing in accordance with

the tenure mix and the provisions of the Second Schedule comprising 71 % (seventy-one per cent) of the Affordable Housing Units to be occupied as Affordable Rented Housing Units pursuant to a Choice Based Letting Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to the Affordable Housing Nomination Agreement as varied from time to time, and 29 % (twenty-nine per cent) of the Affordable Housing Units to be occupied as Shared Ownership and, in accordance with the Affordable Housing Nomination Agreement, to be Occupied by persons with a local connection to the District of Mid Suffolk, or such other tenure as agreed in writing by the District Council

"Affordable Rented Housing Units"

means housing made available by a Registered Provider as low-cost rental accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% (eighty per cent) of the equivalent Market Rent including any service charges applicable and increased in line with government policy and "Affordable Rent" shall be construed accordingly

"Application"

the application for residential development of up to 80 No dwellings (including affordable dwellings), provision of a new school car park and bus drop off area, land for a new pre-school facility, public open space, upgrades to Mill Lane and associated works with reference DC/20/05126

"BCIS Index"

the All In Tender Price Index published by the Building Cost Information Service 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 District Council the County Council and the Owner
"BCIS Indexed"	the increase in any sum referred to in Schedules 2 and 3 by an amount equivalent to the increase in the BCIS Index from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 11 of this Deed
"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 Choice Based Letting Scheme relates to apply for a selection of suitable properties or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development", "Commencement" and "Commence" shall be construed accordingly
"Completion of Development"	the date when the final Dwelling is first Occupied

“Community Infrastructure Levy”	means the Community Infrastructure Levy introduced by the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended or any successor levy or charge which triggers payments towards infrastructure
“County Council’s Nominee”	means such body as the County Council may nominate
“Development”	the development of the Site pursuant to the Application for residential development of up to 80 No dwellings (including affordable dwellings), provision of a new school car park and bus drop off area, land for a new pre-school facility, public open space, upgrades to Mill Lane and associated works.
“Dwelling”	a dwelling (including a house flat or bungalow and including Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly
“Education Site Specification”	the specification for the Early Years Education Land appended to this Agreement <i>unless an alternative specification is agreed in writing with the County Council</i>
“Early Years Education Contribution”	the sum of £3,281.16 (Three Thousand Two Hundred and Eighty-One Pounds and Sixteen Pence) per Dwelling BCIS Indexed to be paid to the County Council to be used towards the provision of new pre-school facilities
“Early Years Education Land Transfer”	a transfer of the Early Years Education Land which shall contain the following provisions or such alternative provisions together with such other provisions as the Owner and County Council may reasonably agree (both acting reasonably and unless otherwise agreed in writing):

JA
JK
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- (a) The Owner shall transfer the fee simple estate free from encumbrances which would prevent the transfer to the County Council or the County Council's Nominee and use of the Early Years Education Land for an Early Years Facility and such ancillary uses as the County Council may reasonably require
- (b) All easements and rights necessary in relation to pedestrian cyclist and vehicular access via a road which is constructed or to be constructed and thereafter maintained by the Owner (or a person so authorised by them) to highway adoption standards at the cost of the Owner for the benefit of the Early Years Education Land until such time as such road may be adopted by the County Council as a highway maintainable at the public expense
- (c) clauses providing that the Early Years Education Land shall be flat, free of contamination and either fully serviced (meaning the installation of utility services (as set out below) to the boundary of the Early Years Education Land) or to be fully serviced within a reasonably agreed timescale (dependent on the proposed date of transfer of the Early Years Education Land and the extent to which the remainder of the Development has progressed) with full and free rights to the land boundary for the purposes of installing, providing and maintaining and using utility services including surface water drainage, foul sewer, water, electricity, telephone, and superfast broadband for a pre-school of a stated capacity (provided that such superfast broadband is available within the locality at the

time of installation of the services or such other broadband as is available in the event that it is not) and for the avoidance of doubt the Owner will bear the full costs of the installation of the above services;

- (d) The right to grant a lease of or dispose of the Early Years Education Land in whole or in part to a County Council's Nominee
- (e) That the Owner shall undertake reasonable archaeological investigations of the Early Years Education Land prior to transfer and provide copies of these to the County Council
- (f) A requirement that the Early Years Facility is commenced within a reasonable period following the transfer to the County Council or the County Council's Nominee and in any event to use reasonable endeavours to commence within 2 years from the date of transfer
- (g) The Early Years Facility to be completed as soon as reasonably practicable following commencement of the works to construct the same and in any event to use reasonable endeavours to complete within 2 years of the date of such commencement
- (h) Obligations that the County Council or the County Council's Nominee (as relevant) will maintain the said land in a clean and tidy condition and for the completed Early Years Facility to be likewise maintained
- (i) The Early Years Education Land to be otherwise in accordance with the Education Site Specification

"Early Years Education Land"	a minimum of 915.2 square metres of land for the provision of an Early Years Facility in a location to be as agreed in writing between the Owner and County Council in accordance with Part 2 of the Schedule 2
"Early Years Facility"	a new early years facility for the education and care of pre-school children whether on the Early Years Education Land or elsewhere but subject to the same being in a location that will reasonably serve the needs of pre-school children residing at the Development
"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
"Illustrative Site Layout Plan"	means the plan with reference 0297-1001-Rev M appended to this deed or such other plan as may be agreed between the District Council (in consultation with the County Council) and the Owner or is approved in accordance with the Planning Permission
"Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
"LAP"	means a local area of play to be provided as part of the Open Space
"Management Company"	a company or body who will take over responsibility for the future maintenance of the Open Space and which definition may include a resident's association established for this purpose or a private limited company
"Market Housing Units"	those Dwellings which are general market housing for sale or rent on the open market and which are not Affordable Housing Units

“Market Rent”	means market rent as defined in the latest edition of the Red Book and certified by a member of the Royal Institution of Chartered Surveyors
“Nominated Body”	means one of the following at the Owner’s election: <ul style="list-style-type: none"> a) the Parish Council; b) the Management Company; c) the Owner; or d) such other body (other than those listed above) as the District Council may agree
“Notice of Actual Commencement”	notice in writing to advise of the actual date of Commencement
“Notice of Expected Commencement”	notice in writing to advise of the expected date of Commencement of Development
“NPPF”	means the National Planning Policy Framework (December 2023) as amended or replaced
“Occupation”	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
“Odour Mitigation Contribution”	the sum of £65,000 (Sixty-Five Thousand Pounds) BCIS Indexed to be paid to the District Council and to be used for the Odour Mitigation Purposes
“Odour Mitigation Purposes”	means, in the event that the District Council receive an odour nuisance complaint from a future Occupier of the Development which is substantiated or upheld following the Council’s investigations in accordance with its environmental health responsibilities, the

	provision of any mitigation or measures which may be required to abate the identified odour nuisance
“On Site Car Park and Bus Drop-Off Facility”	the car park and bus drop-off facility to be provided on Site as part of the Development for the use of the public pursuant to the Planning Permission (unless otherwise agreed in writing)
“Open Space”	the areas of open space to be provided on the Site in accordance with the Planning Permission (unless otherwise agreed in writing with the District Council)
“Open Space Commuted Sum”	means a sum to be calculated by the District Council and agreed with the Owner based on the Open Space Plan and Open Space Specification, which will be payable to the Parish Council, subject to BCIS Index and to the provisions in the Second Schedule
“Open Space Plan”	a plan to be submitted to the District Council for approval indicating the location of the Open Space
“Open Space Specification”	means the specification and timetable for delivery of the Open Space including the specifications plans and drawings showing but not limited to the location, layout and design of the Open Space including details of any proposed play areas (including the LAP) and equipment landscaping, paths and access arrangements, street furniture and fencing (unless otherwise agreed in writing with the District Council and to the extent such details have not already been approved through the Application and secured pursuant to the Planning Permission)
“Open Space Transfer”	a transfer of the Open Space which inter alia shall contain the following provisions (or such other terms as may reasonably be agreed):

- a) The Owner shall transfer the fee simple estate free from encumbrances save those set out in the title;
- b) All easements and rights necessary in relation to access for the benefit of the Open Space;
- c) Any exceptions and reservations in relation to drainage and services and access, support and access of light and air for the benefit of the Development;
- d) Restrictive covenants:
 - (i) Not to use or permit the Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space;
 - (ii) Not to use or permit the Open Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development.

"Parish Council"	means Stradbroke Parish Council
"Plan"	the plan attached to this Deed titled "Site Location Plan" with reference 0297-1000
"Planning Permission"	the planning permission which may be granted by the District Council pursuant to the Application
"Practical Completion"	issue of a certificate of practical completion by the Owner's architect or project manager or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party's architect or project manager

“Red Book“	means the RICS Valuation – Global Standards 2017 (the Red Book) or such other document amending, consolidating or replacing it
“Registered Provider”	means a 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 the Regulator of Social Housing under Chapter 3 of that act. For the avoidance of doubt this includes the District Council.
“Reservation Period“	a period running for 10 years from the Occupation of the 39 th Dwelling
“RPI Index”	means 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
“RPI Indexed“	the increase in any sum referred to in Schedules 2 and 3 by an amount equivalent to the increase in the RPI Index from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 11 of this Deed
“RTA Purchaser”	means a former tenant of an Affordable Housing Unit who purchases the Affordable Housing Unit under a Right to Buy under Part V of the Housing Act 1985 (including a preserved right to buy) or pursuant to the right to acquire under the Housing and Regeneration Act 2008 or any similar or substitute statutory rights in force from time to time
“Shared Ownership Dwellings“	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 Homes England's Capital Funding Guide and "Shared Ownership" shall be construed accordingly

"Shared Ownership Lease"

a lease or sub-lease of a Shared Ownership Dwelling in a form prescribed by Homes England granted at a premium whereby not less than 10% (ten per cent) and not more than up to 75% (seventy five per cent) on first purchase of the equitable interest is paid by the tenant on completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% (one hundred per cent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased, such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared ownership Lease or such other figure permitted by Homes England from time to time and capable of being increased by the rate as set out in the prevailing government Rent Guidance and any capital receipt received by the Registered Provider in excess of eighty per cent (80%) as a result of the tenant exercising their right to staircase out to one hundred per cent (100%) shall be retained by the Registered Provider for re-investment in Affordable Housing within the district of Mid Suffolk or in accordance with the requirements of Homes England's Capital Funding Guide with priority given to recycling in Mid Suffolk for a minimum period of two years after staircasing (unless otherwise agreed in writing)

"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 in so far as the land lies within title SK422619

"Working Days"

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

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, 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 feminine and neuter 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 there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually insofar as such obligation relates to land within such party's ownership 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 District Council and the County Council the successors to their respective statutory functions.
- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the District 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 reference to the plans attached to this Deed bearing the relevant plan number or any amended plans as shall be agreed between the Owner, the District Council and the County Council as relevant.

2.9 None of the covenants contained in this Deed on the part of the Owner shall be enforceable against:

2.9.1 those persons who purchase (including purchasers by way of long lease) any Dwelling for occupation by themselves or their lessees or tenants of the Dwellings (save that the restrictions relating to Occupation set out herein in respect of the Affordable Housing Units set out in paragraph 8 of Part 2 of Schedule 2 shall be enforceable against the owners and occupiers of such units); or

2.9.2 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; or

2.9.3 the Registered Provider and its mortgagee or chargee or Receiver save for the provisions in respect of the Affordable Housing Units set out in Part 2 of Schedule 2.

2.10 The headings are for reference only and shall not affect construction.

2.11 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 under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council as appropriate as local planning authorities against the Owner or its 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.

3.4 This Deed is a local land charge and upon completion shall be registered by the District Council as such.

4 **CONDITIONALITY**

4.1 This Deed is conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development

save for the provisions of this Clause 4 and Clauses 2, 3, 7.3- 7.6, 7.8-7.11, 7.14, 7.16, 9, 14, 15, 16, 17, 19, 20 and Paragraph 1 of Part 2 Schedule 3 and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

4.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

4.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Agreement will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development;

4.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed and is not superseded by a subsequent planning permission accepted by the Owners this Agreement will cease to have any further effect; and

4.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Agreement will apply in full.

4.3 Wherever in this Agreement reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used), the following provisions will apply:

4.3.1 proceedings by way of judicial review are concluded:

- (a) when permission to apply for judicial review has been refused and no further application can be made;
- (b) when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or
- (c) when any appeal(s) is or are finally determined.

4.3.2 proceedings under Section 288 of the 1990 Act are concluded:

- (a) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
- (b) when any appeal(s) is or are finally determined.

5 THE OWNER'S COVENANTS

5.1 The Owner covenants with the District Council as set out in the Schedule 2.

5.2 The Owner covenants with the County Council as set out in the Schedule 3.

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

6.1 The District Council covenants with the Owner as set out in Schedule 4.

6.2 The County Council covenants with the Owner as set out in the Schedule 5.

7 MISCELLANEOUS

7.1 The Owner shall act in good faith and shall co-operate both with the District 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 of the District Council and or the County Council to have access to any part 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 District Council and County Council to 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

District Council and/or the County Council (as appropriate) for any expenses or liability arising to the District Council and/or County Council in respect of any breach by the Owner of any obligation contained herein save to the extent that any act or omission of the District Council and/or County Council its employees or agents has caused or contributed to such expenses or liability.

- 7.3 The Owner covenants to pay to the District Council on completion of this Deed the proper and reasonable legal costs of the District Council incurred in the negotiation preparation and execution and completion of this Deed. The Owner further covenants to pay to the District Council a monitoring fee of £2,250 (Two Thousand Two Hundred and Fifty Pounds) upon demand of the same.
- 7.4 The Owner covenants to pay to the County Council the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed prior to the completion of this Deed in addition to a monitoring fee of £1,904 (One Thousand Nine Hundred and Four Pounds) for the monitoring of the obligations within this Deed.
- 7.5 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.6 Where an approval consent or expression of satisfaction or a subsequent deed or transfer is required by the Owner from either the District Council or the County Council under the terms of this Deed such approval or consent or expression of satisfaction or negotiation and completion of any transfer shall not be unreasonably withheld or delayed.
- 7.7 Following the performance and satisfaction of all the obligations contained in this Deed the District Council shall, on application by the Owner, forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.8 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.
- 7.9 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 District Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed.

- 7.10 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or part of the Site to which the breach relates save for an interest arising only from the grant or reservation of an easement or similar right or the benefit of any restrictive covenant in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.11 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.
- 7.12 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.
- 7.13 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 the District Council or the County Council.
- 7.14 In the event that any new planning applications are made in respect of the Development pursuant to Section 73 of the 1990 Act then with effect from the date that the new planning permission is granted pursuant to Section 73 of the 1990 Act:
- 7.14.1 unless the local planning authority requires otherwise the planning obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission shall also bind the Site in respect of any planning permission granted pursuant to Section 73 of the 1990 Act; and
- 7.14.2 the definitions of "Application", "Development" and "Planning Permission" shall be assumed to include references to any applications under Section 73 of the 1990 Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause 7.14 shall fetter the discretion of the District Council in determining any applications under Section 73 of the 1990 Act and the appropriate nature

and/or quantum of planning obligations in so far as they are materially different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act (whether by way of a new Deed or supplemental Deed pursuant to Section 106 of the 1990 Act or a modification pursuant to Section 106A of the 1990 Act).

7.15 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities.

7.16 The Owners covenant and warrant to the District Council and the County Council that they have full power to enter into this Deed and there is no other person (other than the Chargee) 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**

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

9 **CHANGE IN OWNERSHIP**

The Owner agrees with the District Council and the County Council to give each of them independently written notice of any transfer in ownership of its freehold interest 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 purchased 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 **RIGHT OF ENTRY**

At all times on not less than twenty-four (24) hours' written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of the District 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:

10.1.1 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);

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

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

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

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

10.1.6 such employee or agent and any other accompanying persons shall comply with the Owner's or the Owner's representative's reasonable directions and precautions in the interests of safety.

11 INDEXATION

Any sum referred to in Schedules 2 and 3 shall be increased by an amount equivalent to the increase in the BCIS Index or RPI Index (as appropriate and unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

11.1.1 A is the sum payable under this Deed;

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

11.1.3 C is the BCIS Index or RPI Index (as appropriate) for the month two (2) months before the date on which the sum is payable;

11.1.4 D is the BCIS Index or RPI Index (as appropriate) for the month two (2) months before the date of this Deed; and

11.1.5 C/D is greater than 1.

12 VAT

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

13 INTEREST

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

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 District Council	The Chief Planning Officer Mid Suffolk District Council, Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX
The County Council	The Executive Director of Growth, Highways and Infrastructure Endeavour House 8 Constantine Road Ipswich Suffolk IP1 2BX
The Owner	the address at the beginning of this Deed
The Chargee	the address at the beginning of this Deed

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

15 **CHARGEЕ CONSENT**

The Chargee consents to this Deed so that its interest in the Site registered at the Land Registry under title number SK422619 is bound by the obligations contained in this Deed PROVIDED THAT the Chargee is not required to observe or perform the obligations in this Deed unless and until it takes possession of any part of the Site registered with title number SK422619.

16 **DISPUTE RESOLUTION PROVISIONS**

16.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Agreement (including without limitation any question regarding its existence validity or termination) shall be referred to an independent single Expert ("the Expert").

16.2 The Expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant to clause 16.1.

16.3 The parties to the dispute shall jointly appoint the Expert not later than twenty (20) Working Days' after service of a request in writing by any party to the dispute to do so

16.4 If the parties to the dispute are unable to agree within twenty (20) Working Days' as to the appointment of such Expert then the Expert shall be appointed on the application of any of the parties to the dispute as follows:

16.4.1 difference or question relates to the rights and liabilities of any party to the dispute or to the terms or conditions to be embodied in the Agreement or document appertaining to the Agreement 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

16.4.2 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

16.4.3 difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the parties but in default of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or

- 16.4.4 if such difference of question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.
- 16.5 In the event of a reference to an Expert the parties to the dispute agree to:
- 16.5.1 prosecute any such reference expeditiously; and
- 16.5.2 do all things or take all steps reasonably necessary in order to enable the Expert to make a final determination as soon as reasonably practicable and in any event within one (1) month of his appointment PROVIDED THAT if the Expert fails to do so any party to the dispute may apply to the President for the time being of the Institution of Law Society, Civil Engineers, Royal Institution of Chartered Surveyors or Royal Town Planning Institute (as appropriate) for a substitute to be appointed in which case the same procedure shall be repeated.
- 16.6 The Expert shall invite written representations from any of the parties.
- 16.7 The Expert will have the power to consolidate proceedings or hold concurrent proceedings.
- 16.8 The findings of the Expert shall be in writing signed by the Expert.
- 16.9 The findings of the Expert shall be final and binding on all of the parties to the dispute except in the case of manifest, material error.
- 16.10 The Expert shall act as an expert and not as an arbitrator.
- 16.11 The costs of the Expert shall be payable by the parties in such proportion as may be determined by the Expert and failing such determination to be borne in equal shares by the parties.
- 16.12 Unless this Agreement has already been terminated any of the parties to the dispute shall in every case continue to comply with its obligations under this Agreement regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this clause 16 but without prejudice to the rights and obligations of the parties to the dispute in relation to the termination of the Agreement.
- 16.13 Nothing in the provisions of this clause 16 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Agreement.

17 SATISFACTION OF ANY OF THE TERMS OF THIS DEED

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 District Council (or County Council in respect of an obligations enforceable by it) for a certificate to that effect and upon the District Council (or County Council as appropriate) being satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied and upon the payment by the Owner of the District Council's (or County Council's as appropriate) reasonable costs in issuing the certificate, the District Council (or County Council as appropriate) shall forthwith issue a certificate to such effect.

18 COMMUNITY INFRASTRUCTURE LEVY

The parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 (as amended) the obligations imposed in this Deed are (a) necessary to make the Development permitted pursuant to the Application acceptable in planning terms (b) directly relate to the Development permitted pursuant to the Application and (c) fairly and reasonably relate in scale and kind to the Development permitted pursuant to the Application.

19 JURISDICTION

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

20 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

THE COMMON SEAL OF MID SUFFOLK)
DISTRICT COUNCIL was affixed in the)
presence of:)



.....
Authorised Officer

THE COMMON SEAL OF SUFFOLK)
COUNTY COUNCIL was affixed in the)
presence of:)



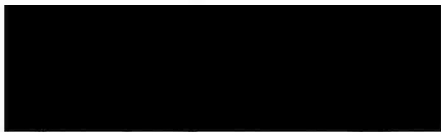
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Authorised Officer

EXECUTED AS A DEED BY **CROCUS**)

HOMES LIMITED acting by a Director)

MATTHIEW DAVIDSON)

in the presence of:)



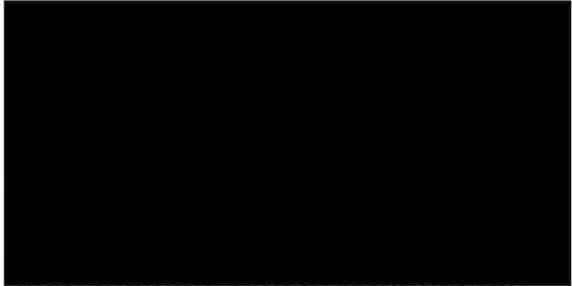
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DIRECTOR

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



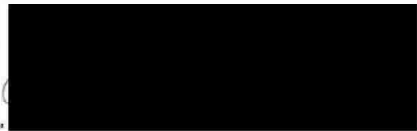
EXECUTED AS A DEED BY **EARLSWOOD**)

HOMES HOLDINGS LIMITED acting by a)

Director)

JASON PAUL VINCE)

in the presence of:)



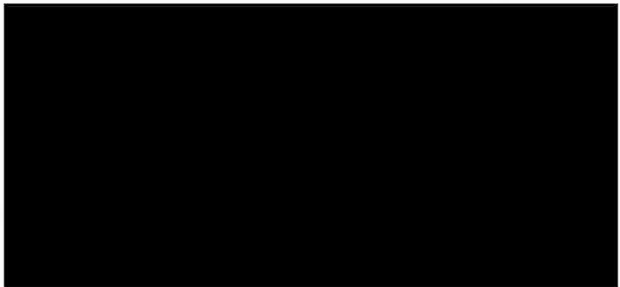
.....
DIRECTOR

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



SCHEDULE 1

DETAILS OF THE OWNER'S TITLE AND DESCRIPTION OF THE SITE

Crocus Homes Limited is the freehold owner of land included in the land on the west side of Grove Cottage, Queen Street, Stradbroke, Eye IP21 5HH under Land Registry title number SK422619.

SCHEDULE 2

THE OWNER'S COVENANTS WITH THE DISTRICT COUNCIL

PART 1

- 1 The Owner shall serve the District Council with: (i) the Notice of Expected Commencement not less than five (5) Working Days before the date that the Owner expects Commencement of Development to occur; and (ii) within fifteen (15) Working Days of Commencement of Development having occurred, the Notice of Actual Commencement in order to confirm that Commencement has occurred.
- 2 The Owners shall give the District Council no less than one (1) month's written notice of the anticipated date for the Occupation of the first Dwelling.
- 3 The Owners shall within fifteen (15) Working Days' give written notice to the District Council following:
 - 3.1 the date of Occupation of the first (1st) Dwelling;
 - 3.2 the date of Occupation of the thirty-ninth (39th) Dwelling;
 - 3.3 the date of Occupation of the forty-fifth (45th) Dwelling;
 - 3.4 the date of Occupation of 50% (fifty per cent) of the Market Housing Units;
 - 3.5 the date of Occupation of 80% (eighty per cent) of the Market Housing Units;
and
 - 3.6 Completion of Development.

Part 2

Affordable Housing

- 1 The Owners covenant with the District Council that 20% (twenty per cent) of the Dwellings are to be constructed as part of the Development as Affordable Housing Units in the following percentages unless otherwise agreed in writing with the District Council:

71% (seventy-one percent) of the Affordable Housing Units - **Affordable Rented Housing Units**

and

29% (twenty-nine percent) of the Affordable Housing Units - **Shared Ownership Dwellings**

- 2 The Owner shall submit the Affordable Housing Scheme to the District Council with or before the first application for reserved matters approval.
- 3 The Owner shall not commence development until the Affordable Housing Scheme has been approved in writing by the District Council such approval not to be unreasonably withheld or delayed.
- 4 The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme to a standard of construction which meets the Nationally Described Space Standards and, as a minimum, the requirements for accessible and adaptable Dwellings under Part M4(2) of the Building Regulations (or any relevant regulation that supersedes and replaces those regulations), with adequate parking, cycle storage and shed provision, accessed via a highway network and visually similar, and not separated from, the Market Housing Units AND FOR THE AVOIDANCE OF DOUBT this obligation does not require the adoption as public highway of any means of access to the Affordable Housing Units.
- 5 Subject to paragraphs 9 to 14 of this Part 2 of Schedule 2 below the Owner shall:
 - 5.1 not Occupy or permit Occupation of more than 50% (fifty per cent) of the Market Housing Units until 50% (fifty per cent) of the Affordable Housing Units have been constructed and are ready for Occupation and have been transferred to the Registered Provider; and
 - 5.2 not Occupy or permit Occupation of more than 80% (eighty per cent) of the Market Housing Units until all of the Affordable Housing Units have been constructed and are ready for Occupation and have been transferred to the Registered Provider.
- 6 Prior to Commencement of Development to agree with the District Council on the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred (unless otherwise agreed in writing with District Council).

- 7 Any transfer to a Registered Provider of the land on which the Affordable Housing Units will be constructed shall be:
- 7.1 with vacant possession;
 - 7.2 free from any 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);
 - 7.3 subject to grant by the Owner to the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units;
 - 7.4 subject to a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the construction, operation, use, maintenance and management of the Development; and
 - 7.5 subject to a covenant to enter into the Affordable Housing Nomination Agreement with the District Council prior to Occupation of an Affordable Housing Unit which is included in the transfer.
- 8 The Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing save where provided otherwise in paragraphs 9 to 14 of this Part 2 of Schedule 2 below).
- 9 The District Council and the Owner agree that the obligations and restrictions contained in this Part 2 of Schedule 2 shall not bind:
- 9.1 A 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 Housing Units PROVIDED THAT
 - 9.1.1. such mortgagee or chargee or receiver shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the

District 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

9.1.2. if such disposal has not completed within three (3) months, the mortgagee, chargee or receiver shall be entitled to dispose of the Affordable Housing Units free from the obligations and restrictions contained in this Part 2 of Schedule 2 which provisions shall determine absolutely in relation to the Affordable Housing Units.

9.2 any RTA Purchaser;

9.3 any Affordable Housing Unit where a Registered Provider sells to a tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, a voluntary grant scheme under section 21 of the Housing Act 1996 or any amendment or replacement thereof;

9.4 a leaseholder of a Shared Ownership Dwelling who has exercised their right under the Shared Ownership Lease to acquire 100% of the equity of their property; or

9.5 a mortgagee or chargee or Receiver of the persons in paragraphs 9.2–9.4 of this Part 2 of Schedule 2; or

9.6 any person or body deriving title through or from any of the parties mentioned in this paragraph 9 of this Part 2 of Schedule 2.

10 In the event that the Registered Provider (within two (2) months' of written invitation) is unable to make an acceptable offer to purchase the Affordable Housing Units or no longer wants to purchase the Affordable Housing Units to enable the Owners to transfer the Affordable Housing Units to the Registered Provider pursuant to this Part 2 of Schedule 2 the Owners shall:

10.1 notify the District Council three (3) months prior to the Practical Completion of the first Affordable Housing Unit;

10.2 set out the reasons (together with any supporting evidence) in writing why a transfer to the Registered Provider has not been entered into pursuant to paragraph 7 of this Part 2 of Schedule 2;

- 10.3 submit any other information reasonably requested by the District Council to satisfy why the Owners have not been able to enter into a transfer with the Registered Provider pursuant to paragraph 7 of this Part 2 of Schedule 2;
 - 10.4 nominate an alternative Registered Provider for the District Council's approval;
or
 - 10.5 offer the relevant Affordable Housing Units to the District Council to be purchased by the District Council as Affordable Housing.
- 11 In the event the District Council make a reasonable offer to the Owner (within three (3) months' of notice under paragraph 10.5 above), the Owner shall transfer the Affordable Housing Units to the District Council on the same terms as those specified in paragraph 7.
 - 12 In the event the Owner nominates an alternative Registered Provider for the District Council's approval under paragraph 10.4 above and the District Council approves the same, the Owners shall offer to transfer the Affordable Housing Units on the same terms as those specified in paragraph 7 to that Registered Provider.
 - 13 In the event the District Council does not make a reasonable offer to the Owners (within three (3) months' of written invitation) to purchase all of the relevant Affordable Housing Units or the District Council indicates that they do not want to purchase the relevant Affordable Housing Units, or the alternative Registered Provider does not complete a transfer within three (3) months of offer, the District Council shall serve on the Owner written confirmation that the Owner shall be permitted to sell the relevant Affordable Housing Units on the open market (such written confirmation not to be unreasonably withheld or delayed) and the Owner shall pay the Affordable Housing Contribution to the District Council within three (3) months of receipt of that written confirmation (such sum to be calculated in accordance with the District Council's policies as are applicable at the time of calculation) in lieu of the provision of Affordable Housing on the Site.
 - 14 Upon the payment of the Affordable Housing Contribution to the District Council the provisions of this Part 2 of this Second Schedule shall no longer be applicable in respect of the relevant Affordable Housing Units and the Owner shall be free to dispose of the said Affordable Housing Units as Market Housing Units.

Part 3

Open Space

- 1 The Owner hereby covenants with the District Council that prior to Commencement of Development and in parallel with the relevant reserved matter application or discharge of condition application for the Planning Permission to submit the Open Space Plan and the Open Space Specification to the District Council for approval.
- 2 If the District Council fails within forty-five (45) Working Days of submission of the Open Space Plan and Open Space Specification to notify the Owner of its approval of the Open Space Plan and the Open Space Specification the Owner shall be entitled to assume deemed approval of the Open Space Plan and Open Space Specification.
- 3 The Owner covenants not to Commence the Development unless and until the Open Space Plan and the Open Space Specification have been approved by the District Council in writing such approval not to be unreasonably withheld or delayed and the Owner shall within six (6) months of Commencement of Development elect whether to maintain the Open Space whether by itself or a Management Company or offer to transfer the same to another specified Nominated Body subject to such body accepting the offer of such transfer within six (6) weeks of the offer being made.
- 4 Unless otherwise agreed in writing with the District Council (in the Open Space Specification or otherwise) the Owner hereby covenants with the District Council to provide the Open Space in accordance with the approved Open Space Plan and the Open Space Specification and to provide the Open Space within three (3) months of Occupation of the forty-fifth (45th) Dwelling.
- 5 The Owner further covenants with the District Council at their own cost to maintain and manage the Open Space strictly in accordance with the Open Space Plan the Open Space Specification and the Planning Permission until the date of the Open Space Transfer described in paragraph 7 of this Part 3 of Schedule 2 has been completed and for the avoidance of doubt the Open Space can be transferred in full to the Nominated Body or if the Parties (acting reasonably) so agree in part to different Nominated Bodies.

- 6 The Owner covenants that following the District Council's written confirmation that the Open Space has been laid out in accordance with the Open Space Plan and Open Space Specification to transfer the freehold or part thereof of the Open Space as to whichever Nominated Body it has elected to transfer the same to and such transfer shall include such terms as necessary and outlined in the Open Space Transfer and shall for the avoidance of doubt include a covenant that the Open Space shall thereafter be retained and maintained in accordance with the Open Space Plan the Open Space Specification and the Planning Permission.
- 7 Subject to the requirements of paragraph 6 of this Part 2 of Schedule 2 the Owner shall transfer the Open Space to the Nominated Body in full or Nominated Bodies in part no later than eighteen (18) months from Occupation of the last Dwelling in accordance with the Open Space Transfer.
- 8 If the Open Space is transferred to the Parish Council, the Owner covenants to pay the Open Space Commuted Sum to the District Council (to be transferred to the Parish Council) upon the transfer of the Open Space.

Part 4

On Site Car Park and Bus Drop-Off Facility

- 1 To provide the On Site Car Park and Bus Drop-Off Facility in accordance with the Planning Permission prior to the Occupation of the thirty-ninth Dwelling.
- 2 To allow the On Site Car Park and Bus Drop-Off Facility proposed as part of the Application to be used by members of the public from the date of Occupation of the thirty-ninth Dwelling in perpetuity unless otherwise agreed in writing.

Part 5

Odour Mitigation Contribution

- 1 To pay the Odour Mitigation Contribution to the District Council prior to the Occupation of the first Dwelling.
- 2 Not to Occupy or allow Occupation of the first Dwelling prior to payment of Odour Mitigation Contribution to the District Council.

SCHEDULE 3

THE OWNER COVENANTS WITH THE COUNTY COUNCIL

Part 1

Early Years Contribution

- 1 The Owner covenants to pay 25% of the Early Years Education Contribution BCIS Indexed to the County Council prior to first Occupation of any of the Dwellings.
- 2 The Owner covenants not to Occupy or permit Occupation of any Dwelling prior to payment of 25% of the Early Years Education Contribution BCIS Indexed to the County Council.
- 3 The Owner covenants to pay a further 25% of the Early Years Education Contribution BCIS Indexed to the County Council prior to first Occupation of more than 50% of the Dwellings.
- 4 The Owner covenants not to Occupy or permit Occupation of more than 50% of the Dwellings prior to payment of a further 25% of the Early Years Education Contribution BCIS Indexed to the County Council.
- 5 Subject to paragraph 7 of this Part 1 of Schedule 3, the Owner covenants to pay the remaining 50% of the Early Years Education Contribution BCIS Indexed to the County Council prior to first Occupation of more than 75% of the Dwellings.
- 6 Subject to paragraph 7 of this Part 1 of Schedule 3, the Owner covenants not to Occupy or permit Occupation of more than 75% of the Dwellings prior to payment of the remaining 50% of the Early Years Education Contribution BCIS Indexed to the County Council.
- 7 Where the maximum number of Dwellings to be constructed pursuant to the Planning Permission is increased after Commencement of Development the sum due to be paid under paragraphs 5 and 6 of this Part 1 of Schedule 3 shall be increased accordingly in proportion to the number of additional Dwellings.

Part 2

Early Years Education Land Provision

- 1 Provided the County Council has not previously served notice on the Owner that it does not require Early Years Education Land the Owner covenants to agree the location of the Early Years Education Land with the County Council (both parties acting reasonably and agreement not to be unreasonably withheld) prior to the first reserved matters application submitted pursuant to the Planning Permission save that the location of the Early Years Education Land can be altered with the agreement of the Owner and the County Council both acting reasonably.
- 2 If the County Council fails within one month of submission of the location of the Early Years Education Land to respond to the Owner and provided that the location of the Early Years Education Land is broadly in accordance with location marked "New Nursery" on the Illustrative Site Layout Plan the Owner shall be entitled to assume deemed approval of the location of the Early Years Education Land.
- 3 Provided the County Council has not previously served notice on the Owner that it does not require the Early Years Education Land the Owner covenants to reserve the Early Years Education Land for a period from the date of this Deed until the end of the Reservation Period and subject to paragraphs 6 and 7 of this Part 2 of Schedule 3 to:
 - 3.1 complete the Early Years Education Land Transfer to the County Council or if so directed by the County Council to the County Council's Nominee as soon as reasonably possible following receipt of a notice in writing from the County Council (which may be served at any time within the Reservation Period) but on condition that the County Council or the County Council's Nominee is in a position to commence development of the Early Years Facility within a reasonable period (not exceeding two years) from the date of transfer
 - 3.2 transfer without unreasonable delay the Early Years Education Land for a consideration not exceeding in total the sum of one pound (£1) sterling and otherwise on such reasonable terms consistent with the intended use as the Early Years Facility as shall be agreed between the parties to that transfer and for the avoidance of doubt the Owner shall as a minimum transfer the Early Years Education Land in the condition required by the Early Years Education Land Transfer and Education Site Specification

- 4 From the date of this Deed until the end of the Reservation Period and for the duration thereof the Owner hereby covenants not to use or allow or permit any works or activities to be carried out on the Early Years Education Land that may render the Early Years Education Land unsuitable for use as a Early Years Facility in any way.
- 5 The Owner shall allow the County Council and or the County Council's Nominee or agents access to the Early Years Education Land (once location agreed between the Owner and County Council in accordance with this Deed) or any alternative land identified by the Owner as being suitable to be the Early Years Education Land with or without vehicles plant and machinery for the purposes of investigation or verification that the Early Years Education Land is suitable for the Early Years Facility and to verify that the Owner has complied with its obligations to fully service the Early Years Education Land PROVIDED THAT they comply at all times with the provisions set out in clause 10 (Rights of Entry) of this Deed.
- 6 In the event that the County Council spends the Early Years Education Contribution on an Early Years Facility not located on the Site or makes a contractual commitment to do so the obligation to reserve and /or transfer the Early Years Education Land to the County Council shall cease absolutely and in the event that the Early Years Education Land has already been transferred to the County Council the same shall be transferred back to the Owner at the same consideration of One pound (£1.00) and free of restrictions as to future use.
- 7 In the event that the notice in writing from the County Council referred to in paragraph 3 of this part 2 of Schedule 3 has not been served by the end of the Reservation Period, the obligations in this Deed in relation to the Early Years Education Land shall fall away.

Part 3

Notices

- 1 The Owner shall serve the County Council with: (i) the Notice of Expected Commencement not less than five (5) Working Days before the date that the Owner expects Commencement of Development to occur; and (ii) within fifteen (15) Working Days of Commencement of Development having occurred, the Notice of Actual Commencement in order to confirm that Commencement has occurred.
- 2 The Owners shall give the County Council no less than one (1) month's written notice of the anticipated date for the Occupation of the first Dwelling.
- 3 The Owners shall within fifteen (15) Working Days give written notice to the County Council following:
 - 3.1 the date of Occupation of the first (1st) Dwelling;
 - 3.2 the date of Occupation of 25% of the Dwellings;
 - 3.3 the date of Occupation of 50% of the Dwellings;
 - 3.4 the date of Occupation of 75% of the Dwellings;
 - 3.5 Practical Completion of Development; and
 - 3.6 Completion of Development.

SCHEDULE 4

DISTRICT COUNCIL'S COVENANTS

The District Council hereby covenants with the Owner as follows:

- 1 The District Council shall use all sums paid under this Deed for the purposes specified in this Deed.
- 2 At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
- 3 If requested to do so in writing to pay to the Owners such amount of any payment made by the Owners to the District Council under this Agreement which has not been expended or committed for expenditure (whether by contract or otherwise) or transferred to a third party in accordance with the provisions of this Agreement within ten (10) years of the date of receipt by the District Council of such payment.
- 4 The District Council shall use reasonable endeavours to respond to the Owner's submission of the Affordable Housing Scheme and Open Space Specification and Open Space Plan within forty-five (45) Working Days of receipt.

SCHEDULE 5

COUNTY COUNCIL'S COVENANTS

Part 1

Education Contributions

- 1 The County Council covenants to use or pass on to a third party the Early Years Education Contribution for the provision or enhancement of an Early Years Facility serving the Development which may be constructed on the Early Years Education Land or in an alternate location reasonably serving the Development.

- 2 Subject to paragraph 3 of this Schedule 4 of this Deed the County Council shall if requested to do so in writing after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year pay to any person such amount of the Early Years Education Contribution paid by that person in accordance with the provisions of this Deed which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued on the amount to be repaid at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.002% then no interest shall be payable for that period by any party to this Deed. Such payment shall be made within twenty-eight (28) Working Days of such request.

- 3 Where the County Council has transferred the Early Years Education Contribution received under Part 1 of Schedule 2 of this Deed to a third party, the period of twenty-eight (28) Working Days set out in paragraph 2 of this Schedule 4 shall only commence following receipt by the County Council from the third party of any amount of the Early Years Education Contribution which has not been committed or expended by the third party.

- 4 Subject to paragraph 5 of this Schedule 4 if any part of the Early Years Education Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten (10) years from Completion of Development within a further period of one (1) year notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent or committed to.

- 5 The County Council shall not be required to comply with paragraph 4 of this Schedule 4 until the County Council has received from the third party full details of what the said monies were spent on or committed to by the third party where after such notice required by paragraph 2 of this Schedule 4 shall be provided by the County Council within twenty-eight (28) Working Days of receipt of full details from the third party.