

DATED

7th July

2022

MID SUFFOLK DISTRICT COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

ROBERT COLLISON ALSTON & (3)  
JOHN STUART PAWSEY AS  
TRUSTEES OF THE D I ALSTON  
WILL TRUST

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Planning Obligation by Deed of Agreement under  
Section 106 of the Town and Country Planning Act  
1990 relating to land East of Hockey Hill,  
Wetheringsett Cum Brockford, Suffolk (relating to  
outline planning application reference DC/20/04921)

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THIS AGREEMENT IS MADE this  
BETWEEN:

Ten

day of

July

2022

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road Ipswich, IP1 2BX (referred to respectively as the context requires as **"the District Council"** and until such time as it ceases to have an interest in the Site, **"the Part Owner"**);
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road Ipswich, IP1 2BX (**"the County Council"**)
- (3) **ROBERT COLLISON ALSTON** of Church Farm, Carleton Forehoe, Norwich, NR9 4AL and **JOHN STUART PAWSEY** of Shimpling Park Farm, Shimpling, Bury St Edmunds, IP29 4HY both acting as Trustees of the **D I ALSTON WILL TRUST ("the Owner")**;

Together **"the Parties"**

## INTRODUCTION

- (A) The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (B) The County Council is a local planning authority for the purposes of the Act because the District Council is also the Part Owner of the Site and is entering into this Deed to act as Enforcing Authority of the planning obligations contained in this Deed for as long as the District Council is also the Part Owner.
- (C) The County Council is also a highway authority (except for trunk roads) and the local education authority, for the purposes of the Act for the area in which the Site is situated.
- (E) The Owner is the freehold owner of part of the Site which is registered at the Land Registry with title SK261659 and the Part Owner is the freehold owner of the part of the Site which is registered at the Land Registry with title number SK316026.
- (F) The Owner submitted the Application to the District Council on 02 November 2020 and the District Council refused the Application on 14<sup>th</sup> September 2021 and the Owner has therefore submitted the Appeal for determination by the Secretary of State or an Inspector appointed by him.
- (G) The Appeal will be considered by an Inspector. In the event that the Inspector of the Secretary of State decides to uphold the Appeal and grant Planning Permission the Parties agree that subject always to Clause 3.3 below Planning Permission should be granted subject to the planning obligations contained in the Schedules to this Deed

- (H) Subject always to Clause 3.3 below this Deed is entered into for the purposes of providing planning obligations binding the estate and interest of the Owner and the Part Owner in the Site under Section 106 of the Act in the event that Planning Permission is granted on Appeal
- (I) The District Council and the County Council are 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 PART

### 1. DEFINITIONS

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

<b>“Act”</b>	the Town and Country Planning Act 1990 (as amended);
<b>“Affordable Housing”</b>	subsidised housing that will be available to persons who cannot afford to buy or rent housing generally available on the open market in accordance with and defined in Annex 2 of the National Planning Policy Framework (July 2021) (as amended or replaced)
<b>“Affordable Housing Commuted Sum”</b>	The sum calculated in accordance with the District Council’s affordable housing policies to be paid to the District Council to spend on Affordable Housing within the administrative district of the District Council in the event that the Owner is unable to dispose of the Affordable Housing in accordance with Schedule 2;
<b>“Affordable Housing Contribution”</b>	The sum of sixty-eight thousand three hundred and forty two pounds and forty pence (£68,342.40) to be paid to the District Council to spend on Affordable Housing within the administrative district of the District Council;

<b>“Affordable Housing Nomination Agreement”</b>	an agreement substantially in the form set out in Schedule 6 (subject to such amendments as may be reasonably required by the Registered Provider 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;
<b>“Affordable Housing Scheme”</b>	A written scheme approved by the District Council as part of the reserved matters application identifying the location, of each Affordable Housing Unit (unless otherwise agreed in writing with the District Council);
<b>“Affordable Housing Table”</b>	The table at Part 3 of Schedule 2 setting out the type tenure and mix of the Affordable Housing Units.
<b>“Affordable Housing Units”</b>	means the Dwellings identified in the Affordable Housing Table which shall be provided on the Site pursuant to the Planning Permission to be Occupied as Affordable Housing in accordance with the Affordable Housing Scheme and the Affordable Housing Table and for the avoidance of doubt and unless otherwise agreed in writing with the District Council will have a tenancy of Affordable Rent and shall be Occupied by persons allocated in accordance with 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 Affordable Housing Unit shall be construed accordingly;
<b>“Affordable Rent”</b>	means Affordable Housing Units made available by a Registered Provider as low cost rental accommodation (as defined by Section 69 of the Housing and Regeneration Act 2008) with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable or the local housing rate allowance;

<b>“Appeal“</b>	the planning appeal reference APP/W3520/W/22/3292871 against the District Council's refusal of the Application.
<b>“Application“</b>	the application for outline planning permission to develop the Site in accordance with the application plans and other materials submitted to the District Council for the Development bearing the District Council's reference number DC/20/04921;
<b>“Chargee of the Registered Provider”</b>	Any mortgagee or chargee of a Registered Provider's interest or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or charge and the term “Chargee” shall be construed accordingly;
<b>”Chargee’s Duty“</b>	the tasks and duties set out in Schedule 2, Part 2, Paragraph 6;
<b>”Choice Based Lettings Scheme”</b>	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 property 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;

<b>“Commencement of Development”</b>	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition 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; any underground works, construction of access road (whether temporary or permanent), and the temporary display of site notices or advertisements and “Commencement”, “Commence Development” and “Commencement Date” shall be construed accordingly;
<b>“Completion of Development”</b>	the date that the last Dwelling is first Occupied;
<b>“Decision Letter”</b>	the decision letter issued by the Inspector or the Secretary of State confirming whether or not the Appeal is allowed;
<b>“Development”</b>	the residential development of the Site of up to fourteen (14) no Dwellings (including four (4) no affordable dwellings) garaging, construction of access and associated parking (access, layout and scale to be considered) as set out in the Application;
<b>“Dwelling”</b>	any dwelling (including a house flat maisonette 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;
<b>“Enforcing Authority”</b>	the County Council until such time the District Council ceases to have an interest in the Site after which time it means the District Council;



<b>“Homes England” or “HE”</b>	The non-departmental public body responsible for creating thriving communities and funding new affordable homes in England or such other organisation as may from time to time take on those functions.
<b>“Index”</b>	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation;
<b>“Index Linked”</b>	the increase in any sum referred to in this Deed by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 12 of this Deed;
<b>“Inspector”</b>	an Inspector appointed by the Secretary of State to determine the Appeal;
<b>“Interest”</b>	Interest at four (4) per cent above the base lending rate of the Bank of England from time to time;
<b>“Market Housing Unit”</b>	any Dwelling which is for general market housing for sale or rent on the open market and which is not an Affordable Housing Unit and Market Housing Units shall be construed accordingly;
<b>“Notice of Actual Commencement”</b>	notice in writing to advise of the actual Commencement Date;
<b>“Notice of Expected Commencement”</b>	notice in writing to advise of the expected Commencement Date;
<b>“Occupation” and “Occupied”</b>	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and “Occupy” shall be construed accordingly;
<b>“Plan”</b>	the site location plan attached to this Deed
<b>“Planning Permission”</b>	The outline planning permission (with some matters reserved) subject to conditions which may be granted by the District Council pursuant to the Application;



<b>“Practical Completion“</b>	means the completion of a Dwelling to a standard which is wind and watertight and fit for habitation in terms of heating, plumbing, electrics and sanitation and "Practically Complete" shall be construed accordingly;
<b>“Protected Person”</b>	<p>any person who:</p> <p>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 Housing Unit;</p> <p>b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;</p> <p>c) any person who has staircased the equity in their Shared Ownership Dwelling to 100%;</p> <p>d) any successor in title to paragraph a- c above;</p>
<b>“Registered Provider“ or “RP“</b>	an organisation which is a Registered Provider of social housing defined in section 80(2) of the Housing and Regeneration Act 2008 or other provider registered in accordance with the provisions of chapter 3 of the Housing and Regeneration Act 2008 and whom has been approved by the District Council in writing;
<b>“Rental Dwelling“</b>	means an Affordable Housing Unit which is to be let at an Affordable Rent or social rent and is let on the Registered Provider's standard form of letting in accordance with the terms of this Deed by a Registered Provider and "Rental Dwellings" shall be construed accordingly;
<b>“RPI Index“</b>	the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation 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

<b>“RPI Indexed”</b>	The increase in any sum referred to in this Deed as RPI Indexed by an amount equivalent to the increase in the RPI Index to be calculated in accordance with Clause 12 of this Deed
<b>“Secretary of State“</b>	The Secretary of State for Communities and Local Government or any other minister for the time being entitled to exercise the powers given under sections 77, 78 and 89 of the Act;
<b>“Secondary School Transport Contribution“</b>	A contribution of £18,075 (eighteen thousand and seventy five pounds) RPI Index linked payable to the County Council for use towards Secondary School Transport Costs; for the purpose of transporting secondary school children from the Development to the nearest secondary school
<b>“Site“</b>	the land described in the Schedule 1 against which this Deed may be enforced as shown edged red for identification purposes only on the Plan;
<b>“Working Days”</b>	Means any day Monday to Friday inclusive except bank or public 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 paragraph sub-paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause paragraph sub-paragraph schedule or recital in this Deed;
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner;
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise;
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that act or directive for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that act or 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 person deriving title through or under that party and in the case of the District Council and in the case of the County Council any successor to its statutory functions;
- 2.7 The headings are for reference only and shall not affect construction;
- 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 in writing between the Owner and the District Council;
- 2.9 Save for the obligations contained in Part 2 of Schedule 2 which shall continue to be binding and enforceable against individual purchasers, owners, occupiers, lessees or their mortgagees of Affordable Housing Units subject to the provisions contained therein the covenants restrictions and requirements contained in this Deed shall not be enforceable against: -
- (a) those persons who purchase (including purchasers by way of long lease) any Dwelling for Occupation by themselves or their lessees tenants or individuals of the Dwellings; or
  - (b) any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services;
- 2.10 Any covenant by the Owner or the Part 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 agreement is a Deed 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 and upon the Part Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Enforcing Authority for as long as the District Council is a Part Owner of the Site and by the District Council as local planning authority against the Owner and its successors in title following the disposal by the Part Owner of its interest in the Site;
- 3.3 If any of the provisions of this Deed are found by the Secretary of State (or by the Inspector) not to comply with regulation 122 of the Community Infrastructure Levy

Regulations 2010 they shall be cancelled and of no effect, but such cancellation shall not affect the validity or enforceability of the remaining parts of this Agreement

- 3.4 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.
- 3.5 If the District Council agrees following an application under Section 73 of the Act to vary or be released from any condition contained in the Planning Permission or if a condition is varied or released following an appeal under Section 78 of the Act the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission unless the District Council in determining the application for the new planning permission indicate that consequential amendments are required to this Deed to reflect the impacts of the Section 73 application, when a separate deed under Section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission.
- 3.6 Nothing in this Agreement shall entitle any of the other parties or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of either Robert Collison Alston or John Stuart Pawsey or against any assets for the time being vested in them which are not assets of the D I Alston Will Trust
- 3.7 The obligations which the said Robert Collison Alston or John Stuart Pawsey undertake can only be enforced against them in their capacity as trustees of the D I Alston Will Trust

#### **4. CONDITIONALITY**

- 4.1 The planning obligations contained in the Schedules to this Deed are conditional upon:

4.1.1 the grant of the Planning Permission; and

4.1.2 the Commencement of Development

the remainder of this Deed and paragraphs 1 and 2 of Part 1 Schedule 2 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 Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner shall not

undertake any further works to implement the Planning Permission following the issue of such proceedings;

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 Owner this Deed 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 Deed will apply in full.

4.3 Wherever in this Deed 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 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 AND THE PART OWNER'S COVENANTS**

5.1 The Owner and the Part Owner hereby covenant with the District Council and (for so long as the District Council is also the Part Owner) the Enforcing Authority as set out in Schedule 2 so as to bind the Site and each and every part thereof;



- 5.2 The Owner and the Part Owner hereby covenant with the County Council as set out in Schedule 3 so as to bind the Site and each and every part thereof;

6. **DISTRICT COUNCIL'S AND COUNTY COUNCIL'S COVENANTS**

- 6.1 The District Council hereby covenants with the Owner as set out in Schedule 4;
- 6.2 The County Council hereby covenants with the Owner and the Part Owner as set out in Schedule 5;

7. **MISCELLANEOUS**

- 7.1 The Owner shall pay to the District Council on completion of this Deed its reasonable legal costs properly incurred in the negotiation, preparation and execution of this Deed;
- 7.2 The Owner shall pay to the County Council on completion of this Deed its reasonable legal costs properly incurred in the negotiation, preparation and execution of this Deed;
- 7.3 The Developer covenants to pay to the County Council on or before completion a contribution of £412 (Four Hundred and Twelve Pounds) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed.
- 7.4 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999;
- 7.5 This Deed shall be registered as a local land charge by the District Council;
- 7.6 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or from the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council by the Chief Planning Officer or officer acting under his hand and given on behalf of the County Council by the Director of Growth, Highways and Infrastructure and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party;
- 7.7 The Owner and the Part Owner agrees declares and covenants with the District Council and the County Council to observe and perform the conditions restrictions and other matters mentioned herein



- 7.8 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed;
- 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 (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development;
- 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 where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it;
- 7.11 Nothing in this Deed shall affect, 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);
- 7.12 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 a local authority;
- 7.13 The Owner and the Part Owner agree that any rights to claim compensation arising for any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived;
- 7.14 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the District Council;
- 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 their exercise of their functions as a local authority;
- 7.16 The Owner and the Part Owner covenant and warrant to the District Council and to the County Council that they have the full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

- 7.17 The District Council shall indemnify the County Council against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the County Council arising out of or in connection with the enforcement of the obligations made under this Deed when acting as Enforcing Authority.

8. **WAIVER**

- 8.1 No waiver (whether expressed or implied) by the District Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council or the County Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

9. **CHANGE IN OWNERSHIP**

- 9.1 The Owner and the Part Owner agree with the District Council and the County Council to give written notice of any change in ownership of any of their interests in the Site (save for disposals of individual Dwellings) occurring before all the obligations under this Deed have been discharged within twenty (20) Working Days of such transfer quoting the District Council's reference DC/20/04921 and giving details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan and a copy of the registered title and plan thereof;

10. **RIGHTS OF ENTRY**

- 10.1 At all times on not less than forty-eight (48) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of 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 18:00 on any Working 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 any 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 or the Owner's representatives, reasonable directions and all the Owner's compliance precautions, procedures and measures in place for the Site at such time in the interests of health and safety;
- 10.1.7 such employee or agent shall not be entitled to access any Dwellings that have been sold;
- 10.1.8 such employee or agent shall be accompanied at all times by the Owner's manager or person in charge at the Site or such other employee or agent of the Owner in the interests of health and safety except in the event that no such person is available (in accordance with clause 10.1.1).

## **11. DISPUTE PROVISIONS**

- 11.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) shall be referred to an independent single Expert ("the Expert");
- 11.2 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 11.1
- 11.3 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
- 11.4 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 either of the Parties to the dispute as follows:
  - 11.4.1 If the difference or question relates to the rights and liabilities of either Party to the dispute or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society; or

- 11.4.2 If the difference or question relates to highway works engineering demolition building or construction works, it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or
  - 11.4.3 If the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the 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
  - 11.4.4 if such difference or 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.
- 11.5 In the event of a reference to an Expert the Parties to the dispute agree to:
- 11.5.1 prosecute any such reference expeditiously; and
  - 11.5.2 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 either Party to the dispute may apply to the President for the time being of the Institution of Law Society, Civil Engineers, Royal Institute 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;
- 11.6 The Expert shall invite written representations from each of the Parties;
- 11.7 The Expert will have the power to consolidate proceedings or hold concurrent proceedings;
- 11.8 The findings of the Expert shall be in writing signed by the Expert;
- 11.9 The findings of the Expert shall be final and binding both on the Parties to the dispute except in the case of manifest or material error;
- 11.10 The Expert shall act as an expert and not as an arbitrator;
- 11.11 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;
- 11.12 Unless this Deed has already been terminated each of the Parties to the dispute shall in every case continue to comply with its obligations under this Deed regardless of

the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this clause 11 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed;

- 11.13 Nothing in the provisions of this clause 11 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

## **12. INDEXATION**

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

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

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

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

C/D is greater than 1

## **13. INTEREST ON PAYMENTS**

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. VAT**

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

## **15. NOTICES**

- 15.1 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 15.2;



- 15.2 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, IP1 2BX
The County Council	The Executive Director of Growth, Highways and Infrastructure, Suffolk County Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
The Owner	Robert Collison Alston of Church Farm, Carleton Forehoe, Norwich, NR9 4AL and John Stuart Pawsey of Shimpling Park Farm, Shimpling, Bury St Edmunds, IP29 4HY as Trustees of the D I ALSTON WILL TRUST

16. **SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT**

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 for a certificate to that effect and upon the District Council (acting reasonably) being satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the District Council shall forthwith issue a certificate to such effect.

17. **APPROVALS**

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

18. **LAND OUTSIDE THE OWNER'S CONTROL**

Nothing in this Deed shall require the performance of any obligation whatsoever in, over or under land outside the ownership or control of any Party to this Deed.

19. **FUTURE MORTGAGEES**

The obligations in this Deed shall not be enforceable against any mortgagee or chargee of the whole or any part of the Site from time to time or any person deriving title from such mortgagee or chargee unless and until any such party takes possession of the Site (or any part of it to which such obligation relates) in which case it shall be liable as if it were a successor in title to the Owner in relation to the Site (or



the relevant part of it) PROVIDED THAT neither any mortgagee nor chargee nor person deriving title from such mortgagee or chargee shall be liable for any breach of the obligations contained in this Deed unless committed at a time when that person is in possession of the Site (or any part of the Site to which such obligation relates).

**20. JURISDICTION**

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

**21. 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.

*[Faint, illegible text, possibly a signature or stamp]*

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 hereunto affixed )  
In the presence of: )



Authorised Signatory's Full  
Name: **NIGEL DULIN**

Authorised Signatory

Executed as a Deed by )  
**ROBERT COLLISON** )  
**ALSTON** as Trustee of )  
The **DI Alston Will Trust** )  
in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

Executed as a Deed by )  
**JOHN STUART PAWSEY** as )  
Trustee of The **DI Alston Will** )  
**Trust** in the presence of:

Witness Signature:

Witness Name:

Witness Address:

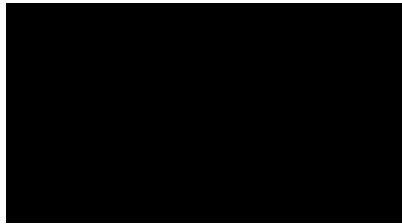
Witness Occupation:

The Common Seal of )  
**SUFFOLK COUNTY** )  
**COUNCIL** )

was hereunto affixed

In the presence of:

Authorised Signatory's Full  
Name:



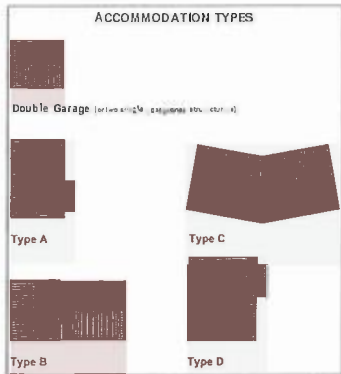
Authorised Signatory:

## **SCHEDULE 1**

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

The Freehold land being The Cedars, Cedars Hill, Brockford, Stowmarket, IP14 5PQ and registered at the Land Registry under title number SK261659 and the freehold land being land and buildings at Hockey Hill, Wetheringsett, Stowmarket forming part of the land registered at the Land Registry under title number SK316026 and shown edged with red on the Plan

SITE DETAILS	
Area Of The Site	0.9ha
Number Of Units	54
Number Of Beds	32 (accommodating 54 people)

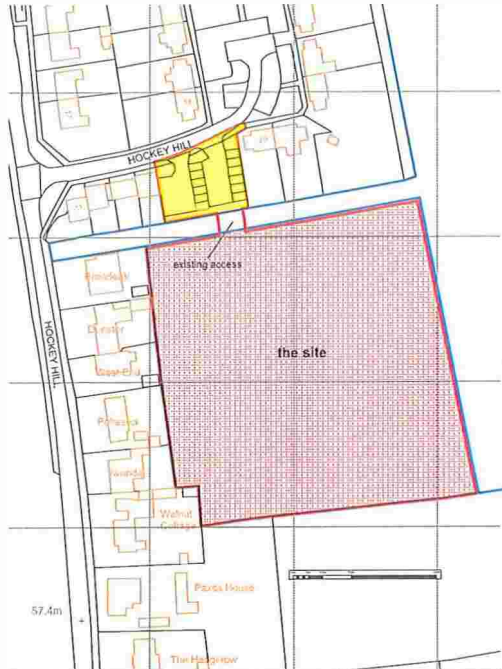
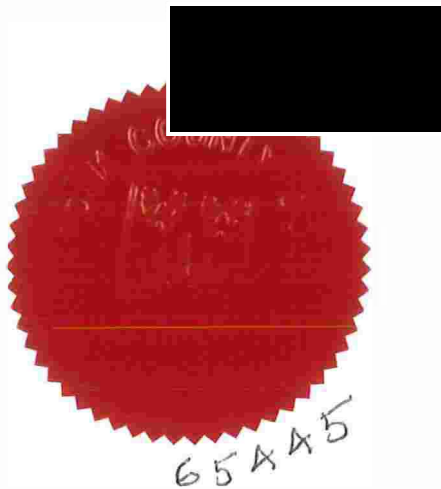


ACCOMMODATION SCHEDULE			
Plot No.	Design Ref.	Description	Approx. Floor Area
Plot One	Type A	105p detached house	135m <sup>2</sup> two storey
Plot Two	Type A	105p detached house	135m <sup>2</sup> two storey
Plot Three	Type A	105p detached house	135m <sup>2</sup> two storey
Plot Four	Type A	105p detached house	135m <sup>2</sup> two storey
Plot Five	Type B	204p semi detached house	85m <sup>2</sup> two storey
Plot Six	Type B	204p semi detached house	85m <sup>2</sup> two storey
Plot Seven	Type B	204p semi detached house	85m <sup>2</sup> two storey
Plot Eight	Type B	204p semi detached house	85m <sup>2</sup> two storey
Plot Nine	Type C	105p semi detached house	70m <sup>2</sup> single storey
Plot Ten	Type C	105p semi detached house	70m <sup>2</sup> single storey
Plot Eleven	Type D	105p detached house	95m <sup>2</sup> single storey
Plot Twelve	Type D	105p detached house	95m <sup>2</sup> single storey
Plot Thirteen	Type D	105p detached house	95m <sup>2</sup> single storey
Plot Fourteen	Type D	105p detached house	95m <sup>2</sup> single storey

\* denotes affordable housing

PARKING SCHEDULE			
Design Ref.	No. Of Units	Spaces	Total
Type A	4	4	16
Type B	4	2	8
Type C	2	2	4
Type D	4	2	8
Visitors	1	4	4
Visitors (disabled)	1	1	1
Total			45
MSDC	1	5	5
MSDC (disabled)	1	2	2
Total			7
GRAND TOTAL			52

site plan scale 1:500



site location plan scale 1:1250

ThurlowArchitects

the studio  
61 Hardwick Lane  
Bury St Edmunds  
Suffolk, IP33 2B  
t: 01284 706805  
info@thurlowarchitects.co.uk  
www.thurlowarchitects.co.uk

RIBA A  
2 Places

Client:

D.J. Abston Will Trust Ltd

Project:

Land to East of the Key Hill  
Wetheringset-cum Backford  
Suffolk, IP14 5PN

Drawing title:

Site Layout and Location Plan

Project No:

7374

Design:

001

Rev:

C

Drawn:

m/k

Scale:

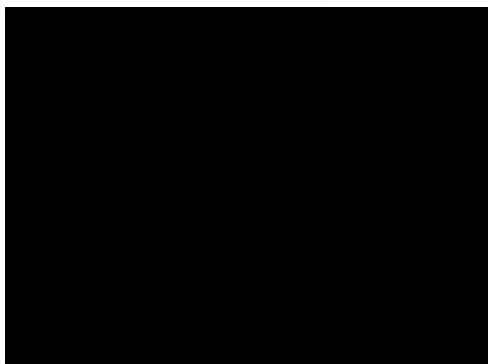
stated

Date:

Oct 20

Drawing Status:

Planning



## **SCHEDULE 2**

### **THE OWNER COVENANTS WITH THE DISTRICT COUNCIL**

#### **Part 1**

1. The Owner shall give the District Council:
  - (i) Notice of Expected Commencement not less than five (5) Working Days before the date that the Owner expects Commencement of the Development to occur; and
  - (ii) within fifteen (15) Working Days of Commencement of Development Notice of Actual Commencement in order to confirm Commencement has occurred.
2. The Owner shall give the District Council no less than fifteen (15) Working Days' written notice of the anticipated date of first Occupation of the first Dwelling.
3. The Owner shall within five (5) Working Days give written notice to the District Council of the following:
  - 3.1 The date of Occupation of the first Dwelling
  - 3.2 The date of Occupation of the final Dwelling
  - 3.3 Completion of the Development

#### **Part 2**

##### **Affordable Housing**

1. The Development shall consist of the Affordable Housing Units as set out in the Affordable Housing Table unless otherwise agreed in writing with the District Council.
2. The Owner covenants not to Commence Development until the Affordable Housing Scheme has been submitted to and approved by the District Council in writing PROVIDED THAT an amended, revised or substituted Affordable Housing Scheme may be approved by the District Council following the Commencement of the Development and once approved by the District Council such scheme will form part of this Deed as if the same had been fully set out herein.



3. The Owner further covenants not to Commence Development until the Affordable Housing Contribution has been paid to the District Council.
4. The Owner shall endeavour 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 such agreement not to be unreasonably withheld or delayed. The Owner may Commence the Development whilst that process is ongoing but if no agreement has been reached at the expiration of the period of four (4) months following the Commencement of the Development the District Council shall be entitled to nominate a Registered Provider or other appropriate body for the purpose
5. To construct the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme to a standard of construction that meets the Nationally Described Space Standard in place at the time or such other standards as may be agreed between the District Council and the Owner.
6. Subject to paragraph 9-11 inclusive below the Owner shall not:
  - 6.1 Occupy or permit the Occupation of more than seven (7) of the Market Housing Units until two (2) of the Affordable Housing Units have been constructed and made ready for residential Occupation and have been transferred to the approved Registered Provider and written notification of such has been received by the District Council
  - 6.2 Occupy or permit the Occupation of more than thirteen (13) of the Market Housing Units until four (4) of the Affordable Housing Units have been constructed and made ready for residential Occupation and have been transferred to the approved Registered Provider and written notification of such has been received by the 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 those existing as set out in the title 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;
- 7.5 To procure a covenant in the transfer(s) of the Affordable Housing Units that the Registered Provider will enter into an Affordable Housing Nomination Agreement with the District Council within one (1) month of the date of the transfer(s) to it of the Affordable Housing Units and covenants from the Registered Provider substantially in the form set out in the remainder of this schedule.
8. The Rental Dwellings shall only be Occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or chosen pursuant to the Affordable Housing Nominations Agreement made pursuant to Paragraph 7 of this Schedule 2 which confers nomination rights on the District Council unless otherwise agreed by the District Council in writing.
9. From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
- a) any Protected Person or any mortgagee or chargee of the Protected Person or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargees; or
  - b) any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or
  - c) any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor
  - d) any successor in title of a) - c) above
10. The Affordable Housing provisions in this Deed shall not be binding on Chargee of a Registered Provider PROVIDED THAT:
- 10.1 Any Chargee shall prior to seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge give prior written notice to the District Council of its intention to dispose:
- 10.1.1 in the event that the District Council responds within one (1) month from receipt of a notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard it/them as Affordable Housing Unit(s); and

10.1.2 that such a transfer would take place within two (2) months from receipt of the notice

10.1.3 then the Chargee shall cooperate with such reasonable arrangements and use reasonable endeavours to secure such transfer

10.2 if the District Council does not serve its response to the notice served under paragraph 7.1 within one (1) month then the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule 2 Part 2 which shall from the time of the completion of the disposal cease to apply

10.3 if the District Council cannot within two (2) months of the date of service of its response under paragraph 7.1.1 secure such transfer then provided that the Chargee shall have complied with its obligations under paragraph 7.1 the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule 2 Part 2 which shall from the time of the completion of the disposal cease to apply

PROVIDED THAT at all times the rights and obligations in this paragraph 10 shall not require the Chargee of a Registered Provider to act contrary to its duties under the charge or mortgage and the District Council must give consideration to protect the interest of the Chargee of a Registered Provider in respect of monies outstanding under the charge or mortgage

11. If a Registered Provider is unable to make an acceptable offer to purchase the Affordable Housing Units within two (2) months from the date of Practical Completion of the Affordable Housing Units despite the Owner's reasonable endeavours to do so the Owner shall:

11.1 Notify the District Council no later than three (3) months prior to the date of Practical Completion of the Affordable Housing Units;

11.2 set out the reasons (together with supporting evidence) in writing why a transfer to a Registered Provider has not been entered into pursuant to paragraph 4 of this part of this Schedule;

11.3 submit any other information reasonably requested by the District Council to satisfy why the Owner has not been able to enter into a transfer with the Registered Provider pursuant to paragraph 7 of this part of this Schedule; and

11.4 offer the Affordable Housing Units to the District Council to be purchased by the District Council as Affordable Housing

11.5 If the District Council does not make an acceptable offer to the Owner (within two (2) months of written invitation) to purchase all of the Affordable Housing Units or the District Council indicates that they do not want to purchase the Affordable

Housing Units the District Council shall serve on the Owner written confirmation that the Owner shall be permitted to sell the Affordable Housing Units on the open market and shall pay an Affordable Housing Commuted Sum to the District Council within twenty eight (28) Working Days of receipt of that written confirmation from the District Council (such sum to be confirmed by the District Council and calculated in accordance with the District Council's policies as are applicable at the time of the calculation) in lieu of the provision of Affordable Housing on the Site.

11.6 Upon payment of the Affordable Housing Commuted Sum referred to in paragraph 11.5 of Part 2 of this Schedule 2 being received by the District Council the provisions of this paragraph 1- 7 of Part 2 of this Schedule 2 shall no longer be applicable in respect of those Dwellings that were the Affordable Housing Units and the Owner shall be free to dispose of the said Dwellings as Market Housing Units

### **Part 3**

#### **Affordable Housing Table**

##### **Affordable Rent Dwellings**

Number	Type	Square Metres
2	2 bed bungalow	63 sqm
2	2 bed house	86 sqm

### **SCHEDULE 3**

#### **OWNER'S COVENANTS WITH THE COUNTY COUNCIL**

1. The Owner covenants with the County Council as follows:
  - 1.1 To pay the Secondary School Transport Contribution to the County Council prior to Occupation of the first Dwelling; and
  - 1.2 Not to allow first Occupation of the first Dwelling to take place prior to payment of the Secondary School Transport Contribution to the County Council.
  - 1.3 To give to the County Council Notice of Actual Commencement within twenty-one (21) days of Commencement of Development in order to confirm Commencement has occurred.
  - 1.4 To give to the County Council not less than seven (7) Days' written notice following:
    - 1.4.1 the date of Occupation of the first Dwelling; and
    - 1.4.2 Completion of the Development

## **SCHEDULE 4**

### **DISTRICT COUNCIL'S COVENANTS**

#### **PART 1**

1. At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained within this Deed when satisfied (acting reasonably) that such obligations have been performed.

#### **PART 2**

### **AFFORDABLE HOUSING**

1. When the Affordable Housing Contribution is paid to the District Council the District Council shall use the monies for the provision of Affordable Housing within the administrative area of the Mid Suffolk District Council.
2. The District Council shall if requested to do so in writing after the expiry of ten (10) years of the date that the Affordable Housing Contribution was paid to repay such amount of the Affordable Housing Contribution which has not been committed or expended by the District Council in accordance with the provisions of this Deed to the party who made the payment such repayment to be made within twenty (20) Working Days of such request
3. In the event that an Affordable Housing Commuted Sum is paid to the District Council, the District Council shall use the monies for the provision of Affordable Housing within the administrative area of the Mid Suffolk District Council.
4. The District Council shall if requested to do so in writing after the expiry of ten (10) years of the date that the Affordable Housing Commuted Sum was paid to repay such amount of the Affordable Housing Commuted Sum which has not been committed or expended by the District Council in accordance with the provisions of this Deed to the party who made the payment such repayment to be made within twenty (20) Working Days of such request.



**SCHEDULE 5**  
**COUNTY COUNCIL'S COVENANTS**

The County Council covenants with the Owner:

- 1.1 To use the Secondary School Transport Contribution for the purposes specified in this Deed for which it is to be paid unless specified otherwise in this Deed.
- 1.2 In the event that the Secondary School Transport Contribution or any part of it has not been committed (by an unconditional contract or by expenditure of the monies) for the purposes for which they were paid under the terms of this Deed the County Council shall if requested to do so in writing after the expiry of ten (10) years of the date of Completion of Development, within a further period of one (1) year repay any unspent balance to the person who made such payments together with any interest accrued at the Bank of England Base Rate minus two (2) basis points compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period by any party to this Deed.
- 1.3 At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed owed to the County Council when satisfied that such obligations have been performed.

## SCHEDULE 6

Dated

2022

XXXXXXXXXXXXXXXXXXXX REGISTERED PROVIDER (1)

MID SUFFOLK DISTRICT COUNCIL (2)

**DRAFT AFFORDABLE HOUSING NOMINATIONS AGREEMENT**  
**relating to land East of Hockey Hill, Wetheringsett Cum Brockford, Suffolk**  
**( planning application reference DC/20/04921)**

S106 File ref: BM31.545

## DRAFT AFFORDABLE HOUSING NOMINATIONS AGREEMENT

THIS DEED OF NOMINATION RIGHTS is made the \_\_\_\_\_ day of \_\_\_\_\_ 2022  
BETWEEN:

- (1) **XXXXXXX** whose registered address is **XXXXXXXXXXXXXXXXXXXX**  
(‘the RP’) and
- (2) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road Ipswich  
Suffolk, IP1 2BX (‘the Council’)

## Together “the Parties”

## 1. Definitions

In this Deed:

- 1.1 'Affordable Housing' has the meaning given to it in Annex 2 of the National Planning Policy Framework dated March 2012 and revised on 19 February 2019 as may be varied from time to time or supplemental guidance policy or by law issued thereof.
- 1.2 'Affordable Housing Unit' means the 4 (four) dwellings all of which shall be Affordable Housing to be provided on the Property all of which shall be Affordable Rent Dwellings (unless otherwise agreed by the Council as part of the Affordable Housing Scheme) which shall be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the Council is a party or otherwise nominated by the Council pursuant to this Deed as varied from time to time and Affordable Housing Units shall be construed accordingly.
- 1.3 'Affordable Housing Scheme' means the affordable housing scheme to be submitted to the Council as part of the reserved matters application for written approval by the Council for the provision of Affordable Housing as part of the Development detailing:
  - i) the plots and location;
  - ii) bedroom numbers per Dwelling;

- iii) Dwelling size; and
- iv) tenure

- 1.4 'Affordable Rent' means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable
- 1.5 'Affordable Rent Dwelling' means an Affordable Housing Unit made available by a RP as low-cost rent accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent (inclusive of any service charges applicable) for a dwelling of comparable size in the same location and "Affordable Rent Dwellings" shall be construed accordingly.
- 1.6 'Chargee' means any mortgagee or chargee of the RP who is in possession or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or charge to realise its security or any administrator (howsoever appointed) including a housing administrator.
- 1.7 'Chargee's Duties' means the tasks and duties set out in Clause 12.4 of this deed.
- 1.8 'Choice Based Lettings Scheme' means 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 Lettings Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the Council is a party.
- 1.9 'Dwelling' means a dwelling (including a house flat or bungalow and including both Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
- 1.10 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings Scheme (or any replacement or similar system in place at the time)
- 1.11 'Homes England' means Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating RPs

- 1.12 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Rent Dwelling
- 1.13 'Local Connection Criteria' means an individual who immediately before taking up occupation of an Affordable Housing Unit
- 1.14.1 had his only or principal home in the district of Mid Suffolk for a continuous period of not less than two (2) years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.14.2 to 1.14.4 inclusive.
- 1.14.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than two (2) years in the district of Mid Suffolk and wishes to be near that relative or
- 1.14.3 is employed in the district of Mid Suffolk on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for two (2) years
- 1.14.4 who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called the "Availability Date") can provide satisfactory written evidence to the Council of his or her former residency in the district of Mid Suffolk for either (i) six (6) months out of the preceding twelve (12) months or (ii) three (3) years out of the preceding five (5) years and in either case such period of former residency shall end with the Availability Date
- 1.15 'Mutual Exchange' means the procedure by which a tenant may exchange their house with another council or housing association tenant
- 1.16 'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA

- 1.17 'Nominee' means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the RP as best meeting the criteria for the category of Affordable Rent Dwelling in respect of which the RP is to select a person from the Nomination List and offer a Tenancy Agreement
- 1.18 'Practical Completion' means issue of a certificate of practical completion by the RP's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the RP the issue of a certificate of practical completion by that other party's surveyor
- 1.19 'Property' means the land East of Hockey Hill, Wetheringsett Cum Brockford, Suffolk shown edged red on the plan annexed
- 1.20 'Protected Tenant' means any Nominee who 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 Housing Unit
- 1.21 'Registered Provider' and 'RP' means a registered provider of social housing as defined in section 80(2) of the Housing and Regeneration Act 2008 and listed in the register kept by Homes England under Chapter III of that Act and for the avoidance of doubt this could include the Council.
- 1.22 'Service Level Agreement' or 'SLA' means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the RP (1) and the Council (2)
- 1.23 'Tenancy Agreement' means an assured tenancy agreement in a form prepared by the RP and containing terms which accord with the form of tenancy agreement being used by the RP from time to time for its general lettings



- 1.24 'Vacancy Notice' means a written notice (in a form to be agreed between the RP and given by the RP to the Council within five (5) weeks from the date of this Deed) the function of such notice being the notification to the Council by the RP of the expected date on which the construction and fitting out of the Affordable Rent Dwellings will be complete
- 1.25 'Void' means an Affordable Rent Dwelling which is vacant otherwise than as a result of the tenant having:
- 1.25.1 moved to other accommodation either by transfer or decant provided by the RP
  - 1.25.2 moved to other accommodation under a reciprocal arrangement provided by another RP
  - 1.25.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere
- 1.26 'Void Notice' means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the Council of a void in respect of an Affordable Rent Dwelling

## **2 Enabling Provisions**

This Deed is made pursuant to the Local Government Act 1972 Section 111, Section 1 of the Localism Act 2011 as amended and all other enabling powers

### **3 Procedure**

The Parties agree that the SLA procedure to which they are signatories and the Local Connection Criteria shall apply to the nomination of persons in respect of the Affordable Housing Units

### **4 Initial Lets**

In relation to the Initial Let of an Affordable Housing Units the following provisions shall apply:

4.1.1 The RP shall give the Council not less than four (4) months' written notice of the date when all the Affordable Housing Units will be ready for occupation

4.1.2 The RP shall serve a Vacancy Notice upon the Council in respect of an Affordable Rent Dwelling not earlier than ten (10) weeks prior to an Affordable Rent Dwelling becoming available for occupation

### **5. Voids**

Should any Affordable Rent Dwelling become a Void after the Initial Let or the RP has reasonable cause to believe it will become a Void then the Gateway to Homechoice SLA procedure shall apply in each case

### **6. Supplemental provisions relating to allocating Initial Lets and Voids**

6.1 Where there are two (2) or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.14 of this Deed and thereafter subject to clause 6.2 of this Deed, preference must be given to the applicant/s who have the highest housing need according to the Council's current allocations policy

6.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities or in need of level access then any such dwelling may be first offered to a person or persons with disabilities or level access needs who require such accommodation even where such person(s) have a lesser local connection under clause 1.14 of this Deed than someone who does not have disabilities or level access need

**7. RP covenants**

The RP covenants with the Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies

- 7.1 To ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units
- 7.2 To ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent and they are all retained and managed by a RP in accordance with the objectives of such RP
- 7.3 To construct the Affordable Housing Units in accordance with Homes England's requirements

**8. Alteration of lists**

The Council and the RP agree that the nomination rights contained in this Deed may be varied from time to time by agreement in writing by the Parties

**9. Notices**

Any notice required to be served hereunder shall be sufficiently served on the Parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served two (2) Working Days after posting or in the case of electronic mailing the day such notice was transmitted by the party serving the notice

**10. Transfer to other RP**

The RP shall use reasonable endeavours to ensure that any RP to which the Property and Affordable Housing Units erected thereon are transferred otherwise than by direction of Homes England under its statutory powers shall enter into a similar deed mutatis mutandis with the Council and Gateway to Homechoice simultaneously on completing the transfer of the Property

**11 Disputes**

Where any matters fail to be agreed between the Parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the Parties or in default of agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party

**12 Agreements and declarations**

The Parties agree:

12.1 Nothing in this Deed fetters or restricts the exercise by the Council of any of its powers

12.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33

12.3 From the date of Practical Completion the Affordable Housing Units shall be let/purchased or sold in accordance with the terms of this Deed save that the obligations and restrictions contained in this Deed shall not be binding on:

12.3.1 any Protected Tenant or any mortgagee or Chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and Chargees;  
or

12.3.2 any chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duties; or

- 12.3.3 any mortgagee and any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title to either of them.
- 12.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge give not less than two (2) months' prior notice to the Council of its intention to dispose and:
- 12.4.1 in the event that the Council responds within one (1) month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee
- 12.4.2 if the Council does not serve its response to the notice within the said period of one (1) month contained in clause 12.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this Deed.
- 12.4.3 if the Council or any other person cannot within two (2) months of the date of service of its response under clause 12.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 12.4 the Chargee shall be entitled to dispose free of the restrictions set out in this deed PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

### **13. Mutual Exchanges**

The requirements of this Deed shall apply to all requests for Mutual Exchanges

AS WITNESS whereof the Parties have executed this instrument as a Deed hereto the day  
and year first above written

Signatories:

District Council

Registered Provider



