

DATE 21st February

2023

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

(3) CHRISTOPHER PARKER AND CAROLINE COCKERILL

(4) ANN PARKER

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

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relating to

**Land at Townsend Nurseries Snow Hill Clare Suffolk**

West Suffolk Council  
West Suffolk House  
Western Way  
Bury St. Edmunds  
Suffolk

DATE 21st February

2023

**PARTIES:**

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **CHRISTOPHER PARKER** of 102 Aldenham Road Bushey Hertfordshire WD23 2EX and **CAROLINE COCKERILL** of 4 Bullace Tree Lane Roberttown West Yorkshire WF15 7PF (as the executors under the Will of Barry John Parker dated 10 April 2017 (the "Will")) (hereinafter called the "**First Owners**")
- (4) **ANN PARKER** of Townsend House Snowhill Clare Sudbury Suffolk CO10 8QE (hereinafter called the "**Second Owner**")

**INTRODUCTION**

- A The Council is 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
- B The County Council is the local education authority the local library and waste 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 First Owners are the freehold owners of the First Property being that part of the Site which is registered together with other land at HM Land Registry under title number SK221407 and shown hatched blue on the Plan and the Second Owner is the freehold owner of the Second Property being that part of the Site which is registered at HM Land Registry under title number SK396952 and shown cross-hatched black on the Plan

- D The Owners have submitted the Application and the Council has resolved to grant planning permission for the Development pursuant to the Application subject to the prior completion of this Deed intended to regulate the Development and to secure the planning obligations contained in this Deed
- E The Council and the County Council enter into this Deed to the intent that the requirements of the Council's and the County Council's policies are met and that any objections by the Council or the County Council to the grant of planning permission on the basis of those policies are overcome
- F The Council and the County Council consider and the Owners acknowledge that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed
- G The Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

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 who cannot afford to rent or buy housing generally available on the open market in accordance with Annex 2 of the NPPF
"Affordable Housing Contribution"	the sum to be calculated in accordance with the West Suffolk Council Affordable Housing SPD November 2019 and agreed by the Council and Owners (as part of reserved matters approval as required by the Planning Permission) if 30% results in a fraction (such as 30% of 18 = 5.4) the fraction (such as 0.4)

	will be calculated into a financial sum
"Affordable Housing Units"	thirty per cent (30%) of eighteen (18) of the Dwellings to be delivered in accordance with the Tenure Mix
"Affordable Rent"	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% of the equivalent local market rent
"Application"	the outline application for planning permission to develop the Site received by the Council on the 19 October 2021 and bearing the Council's reference number DC/21/2094/OUT
"BCIS Index"	the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto
"BCIS Indexed"	the increase in any sum referred to in the Second Schedule and the Third Schedule by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 10 of this Deed
"Chargee"	any mortgagee or chargee of the Registered Provider or the owner of the Affordable Housing Units or any receiver or manager (including 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 (however appointed) including a housing administrator
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried

out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance demolition work archaeological 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 "Commenced" and "Commence Development" shall be construed accordingly

"Completion of Development"	the date that the last Dwelling is first Occupied
"Development"	the development of the Site in accordance with the Planning Permission for up to 20 dwellings
"Dwelling"	a dwelling (including a house flat or bungalow and including both Open Market Dwellings and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwelling" and "Dwellings" shall be construed accordingly
"First Property"	that part of the Site shown hatched blue on the Site Plan
"Homes England"	the independent regulator for affordable housing in England (formerly known as Homes and Communities Agency) or such other organisation or body that replaces it
"Late Payment Interest"	interest at four (4) per cent per annum above the base lending rate of the Bank of England from time to time
"Library Contribution"	four thousand one hundred and seventy-six pounds (£4,176) BCIS Indexed
"Nomination Agreement"	a deed of agreement dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the related



Affordable Housing Units substantially in the form of the draft in the Sixth Schedule

"NPPF"

National Planning Policy Framework dated 20 July 2021 or any replacement or subsequent revision thereto

"Occupation"

beneficial occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied and "Occupy" shall be construed accordingly

"Open Market Dwellings"

those Dwellings that are not Affordable Housing Units

"Owners"

the First Owners and the Second Owner together

"Planning Permission"

the outline planning permission subject to conditions as may be granted by the Council pursuant to the Application and subsequent planning permissions for the Development granted pursuant to Section 73 of the Act

"Protected Tenant"

any tenant who:

(a) has exercised the right to acquire pursuant to the Housing Act 1996 the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Unit (as defined in the Second Schedule)

(b) has exercised any statutory right to buy (including the preserved right to buy) (or any equivalent contractual right) in respect of an Affordable Housing Unit

(c) has been granted a Shared Ownership lease by a Registered Provider in respect of a

	particular Affordable Housing Unit and the purchaser has subsequently staircased and purchased from the Registered Provider all the remaining shares so that the purchaser owns the entire Affordable Housing Unit
"Registered Provider"	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 RSH under Chapter 3 of that Act and approved by the Council
"RSH"	Regulator of Social Housing
"Secondary School Contribution"	seventy-five thousand seven hundred and fifty-nine pounds (£75,759) BCIS Indexed
"Second Property"	that part of the Site shown cross hatched black on the Site Plan
"Shared Ownership"	the Affordable Housing Units to be provided by a Registered Provider by way of a Shared Ownership Lease granted to eligible households whose needs are not met by the market and where the purchaser buys an initial share in the property from the Registered Provider who retains the remainder and may charge a rent on the remainder with the purchaser being able to purchase additional shares up to 100% (staircasing)
"Shared Ownership Lease"	a lease to be granted for a term of not less than 125 years which shall substantially accord with the requirements of, and be consistent with any model shared ownership lease as approved from time to time by Homes England (or any statutory successor)
"Site"	the land (forming part of land registered with the Land Registry under title numbers SK221407 and SK396952) shown edged red on the Site Plan

"Site Plan"	the plan marked "Site Plan" attached to the First Schedule of this Deed
"Sixth Form Contribution"	twenty-five thousand two hundred and fifty-three pounds (£25,253) BCIS Indexed
"Tenure Mix"	twenty per cent (20%) Shared Ownership and eighty per cent (80%) Affordable Rent unless otherwise agreed by the Council
"Waste Contribution"	onethousand seven hundred and forty-six pounds (£1,746) BCIS Indexed
"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 more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed shall include the successors in title to that party the personal representatives of that party and any



party deriving title through or under that party and in the case of the Council and or 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 Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document
- 2.8 References to a "Site Plan" in this Deed shall be references to the plan attached to the First Schedule of this Deed bearing the relevant plan number or any amended plans as shall be agreed between the Owners the Council and the County Council
- 2.9 The obligations in this Deed shall not be enforceable SAVE in respect of part 1 of the Second Schedule dealing with the Affordable Housing Units against:
  - 2.9.1 any individual person who is the owner and/or an occupier for residential purposes of a Dwelling or any mortgagee of such a Dwelling
  - 2.9.2 any statutory undertaker or other person who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunications services or public transport services
  - 2.9.3 any Protected Tenant or such person's mortgagee or successors in title
- 2.10 The Affordable Housing obligations within the Second Schedule shall not be binding on:
  - 2.10.1 a Protected Tenant
  - 2.10.2 any successor in title or mortgagee of a Protected Tenant
  - 2.10.3 a Chargee of the whole or any part of the Affordable Housing Units or any persons deriving title through such mortgagee or Chargee or receiver PROVIDED THAT:
    - 2.10.3.1 such mortgagee or Chargee or receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a

period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses and

2.10.3.2 if such disposal has not completed within the three-month period the mortgagee Chargee or receiver shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing obligations within the Second Schedule which provisions shall determine absolutely

2.11 The headings are for reference only and shall not affect construction

2.12 Any covenant by the Owners not to do an act or thing shall be deemed to include an obligation not knowingly to permit or suffer such act or thing to be done by another person

2.13 Unless otherwise specifically provided in this Deed the liabilities of that First Owners shall apply and relate only to or in respect of that part of the Site comprising the First Property and the liabilities of the Second Owner shall apply and relate only to or in respect of that part of the Site comprising the Second Property

2.14 The Parties hereto hereby agree and declare that the liability of the First Owners shall notwithstanding anything to the contrary in this Deed be limited in aggregate to the assets from time to time held under the Will.

### **3. LEGAL BASIS**

3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers

3.2 The covenants restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities against the Owners and their successors in title

- 3.3 This Deed shall only be capable of being varied by a supplemental deed between the Parties hereto or their respective successors in title or assigns made under section 106A of the Act

#### **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 and clauses 2.13 2.14 7.3 7.4 7.5 7.6 7.10 9 12 13 14 18 and 19 (relating to legal and monitoring costs change in ownership right of entry dispute resolution jurisdiction limitation of liability and delivery) 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 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 thence-forward 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:

4.3.1.1 when permission to apply for judicial review has been refused and no further application can be made

4.3.1.2 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

4.3.1.3 when any appeal(s) is or are finally determined

4.3.2 proceedings under Section 288 of the Act are concluded:

4.3.2.1 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

4.3.2.2 when any appeal(s) is or are finally determined

## **5. THE OWNERS COVENANTS**

5.1 The Owners covenant with the Council as set out in the Second Schedule

5.2 The Owners covenant with the County Council as set out in the Third Schedule

## **6. THE COUNCIL'S AND THE COUNTY COUNCIL'S COVENANTS**

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

6.2 The County Council covenants with the Owners as set out in the Fifth Schedule

## **7. MISCELLANEOUS**

7.1 The Owners shall act in good faith and shall co-operate (acting reasonably) both with the Council and the County Council to facilitate the discharge and performance of all of the Owner's obligations contained herein and the Owners shall comply with any reasonable requests either of the Council and or the County Council and their duly authorised officers or agents to have access to any reasonable part or all of the Site where safe to do so (on prior written reasonable notice to the Owners and subject to the Council or the County Council (as the case may be) making good all physical damage caused to the Site as soon as practicable and to the Owners' reasonable satisfaction to ascertain whether the terms of this



Agreement or the Planning Permission are or have been complied with subject to complying with all health and safety and/or security requirements required by the Owners or by any developer carrying out the Development or any requests to provide documentation within the Owner's possession (at the Owners expense) for the purposes of properly monitoring compliance with the Owners' obligations contained herein

- 7.2 The Owners agree declare and covenant both with the Council and the County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein and on their part to be observed or performed and shall not make any claim for compensation in respect of any condition restriction or provision imposed on them by this agreement and further shall indemnify the Council and the County Council for any expenses or liability arising directly to the Council and the County Council in respect of breach by the Owners of any obligation of the Owners contained herein save to the extent that any act or omission of the Council or the County Council its employees or agents has caused or contributed to such expenses or liability
- 7.3 The Owners covenant to pay to the Council on or before completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed up to a maximum of £1,750.00
- 7.4 The Owners covenant to pay to the County Council on or before completion of this Deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed up to a maximum of £[ ]
- 7.5 The Owners further covenant to pay to the Council five hundred pounds (£500) and to pay the County Council five hundred pounds (£500) on or before completion of this Deed towards the costs of reporting and monitoring the obligations contained in this Deed
- 7.6 This Deed shall be registered as a local land charge by the Council and the Council covenants with the Owners to note on the local land charges register when compliance with the obligations herein contained has been observed
- 7.7 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owners from either the Council or the County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such consent approval or expression of



satisfaction shall be given promptly on behalf of the Council by the Assistant Director of Growth or officer acting under his/her hand and on behalf of the County Council by the Executive Director of Growth Highways and Infrastructure or duly appointed successor or officer acting under his/her hand

- 7.8 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 7.9 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.10 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires by effluxion of time prior to the Commencement of the Development or is modified (without the consent of the Owner) and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed
- 7.11 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or the part of the Site where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or part thereof) will constitute an interest for the purposes of this clause
- 7.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 7.13 The Owners agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived
- 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 Owners and at no cost to either the Council or the County Council

- 7.15 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority
- 7.16 The Owners covenant and warrant to the Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein

## **8. WAIVER**

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

## **9. CHANGE IN OWNERSHIP**

The Owners agree with the Council and the County Council to give each of them independently written notice of any transfer in ownership of any freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer and to give details of the transferee's full name and registered office (if a company) or usual address (if not) together with the area of the Site or unit of occupation 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. INDEXATION**

All sums referred to in the Second Schedule and the Third Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index (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:

- 10.1 A is the sum payable under this Deed
- 10.2 B is the original sum calculated as the sum payable
- 10.3 C is the BCIS Index for the month two (2) months before the date on which the sum is payable
- 10.4 D is the BCIS Index for the month two (2) months before the date of this Deed and
- 10.5 C/D is greater than 1

## **11. INTEREST**

If any payment due under this Deed is not paid on time Late Payment Interest will be payable from the date payment is due to the date of payment

## **12. VAT**

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

## **13. NOTICES**

- 13.1 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 13.2
- 13.2 The address for any notice or other written communication in the case of each of the Parties to this Deed shall be as follows

The Council	The Director of Planning & Growth West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU
The County Council	The Executive Director of Growth Highways and Infrastructure Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX
The Owners	(Christopher Parker) 102 Aldenham Road Bushey Hertfordshire WD23 2EX and (Caroline Cockerill) 4

	Bullace Tree Lane Roberttown West Yorkshire WF15 7PF and (Ann Parker) Townsend House Snow Hill Clare Sudbury Suffolk CO10 8QE
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13.3 Any notice or other written communication to be given by either the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County Council by a duly authorised officer of the Council or the County Council as appropriate

13.4 The Owners covenant to inform the Council and the County Council by way of written notice within seven (7) days following:

13.4.1 Commencement of Development

13.4.2 Occupation of the first (1st) Dwelling

13.4.3 Occupation of fifty per cent (50%) of Dwellings

13.4.4 Completion of Development

#### **14. DISPUTE RESOLUTION**

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

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

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

14.3.1 if the difference or question relates to the rights and liabilities of any Dispute Party or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society



14.3.2 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

14.3.3 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 Dispute Parties but in default of agreement appointed at the request of any Dispute Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors or

14.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Dispute Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute

14.4 The Expert is to act as an independent expert and:-

14.4.1 each Dispute Party may make written representations within fifteen (15) Working Days of his appointment and will copy the written representations to the other Dispute Parties;

14.4.2 each Dispute Party is to have a further fifteen (15) Working Days to make written comments on the other's representations and will copy the written comments to the other Dispute Parties;

14.4.3 the Expert is to be at liberty to call for such written evidence from the Dispute Parties and to seek such legal or other expert assistance as he or she may reasonably require;

14.4.4 the Expert is not to take oral representations from the Dispute Parties without giving those parties the opportunity to be present and to give evidence and to cross-examine each other;

14.4.5 the Expert is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and to give reasons for his decision; and

14.4.6 the Expert is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment



- 14.5 Responsibility for the costs of referring a dispute to an Expert under this clause 14, including costs connected with the appointment of the Expert and the Expert's own costs but not the legal and other professional costs of any Dispute Parties will be decided by the Expert or failing such decision will be shared equally between the Dispute Parties
- 14.6 The award shall be final and binding both on the Dispute Parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be
- 14.7 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause but without prejudice to the rights and obligations of the Parties in relation to the termination of the Deed
- 14.8 This clause 14 does not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which will be subject to the jurisdiction of the courts of England

## **15. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED**

Where in the opinion of the Owners any of the provisions of this Deed have been satisfied the Owners shall be entitled to apply to the Council or the County Council for confirmation to that effect and upon the Council or County Council being satisfied that the relevant Deed obligation and/or covenant as the case may be has been satisfied the Council or the County Council shall forthwith issue confirmation to such effect

## **16. APPROVALS**

Where any matters are approved by the Council under the terms of this Deed further amendments thereof if approved by the Council shall replace those previously approved

## **17. COMMUNITY INFRASTRUCTURE LEVY**

The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 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

**18. JURISDICTION**

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

**19. 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  
WEST SUFFOLK COUNCIL**

was affixed in the presence of:



[Redacted Signature]  
Authorised Officer

**COMMON SEAL OF  
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:



[Redacted Signature]  
Authorised Officer

**EXECUTED as a DEED BY  
CHRISTOPHER PARKER**



In the presence of:-

Witness name

[Redacted]

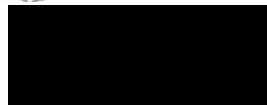
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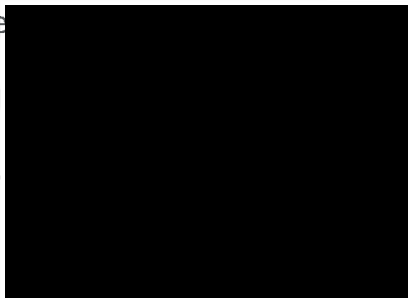


**EXECUTED as a DEED BY  
CAROLINE COCKERILL**

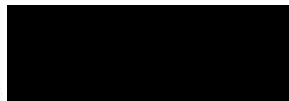


In the presence of:-

Witness name



Witness Address

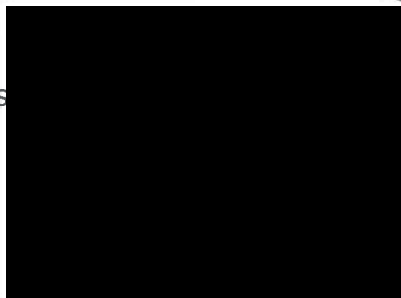


**EXECUTED as a DEED BY  
ANN PARKER**

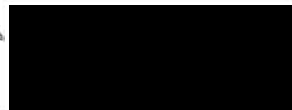


In the presence of:-

Witness name:



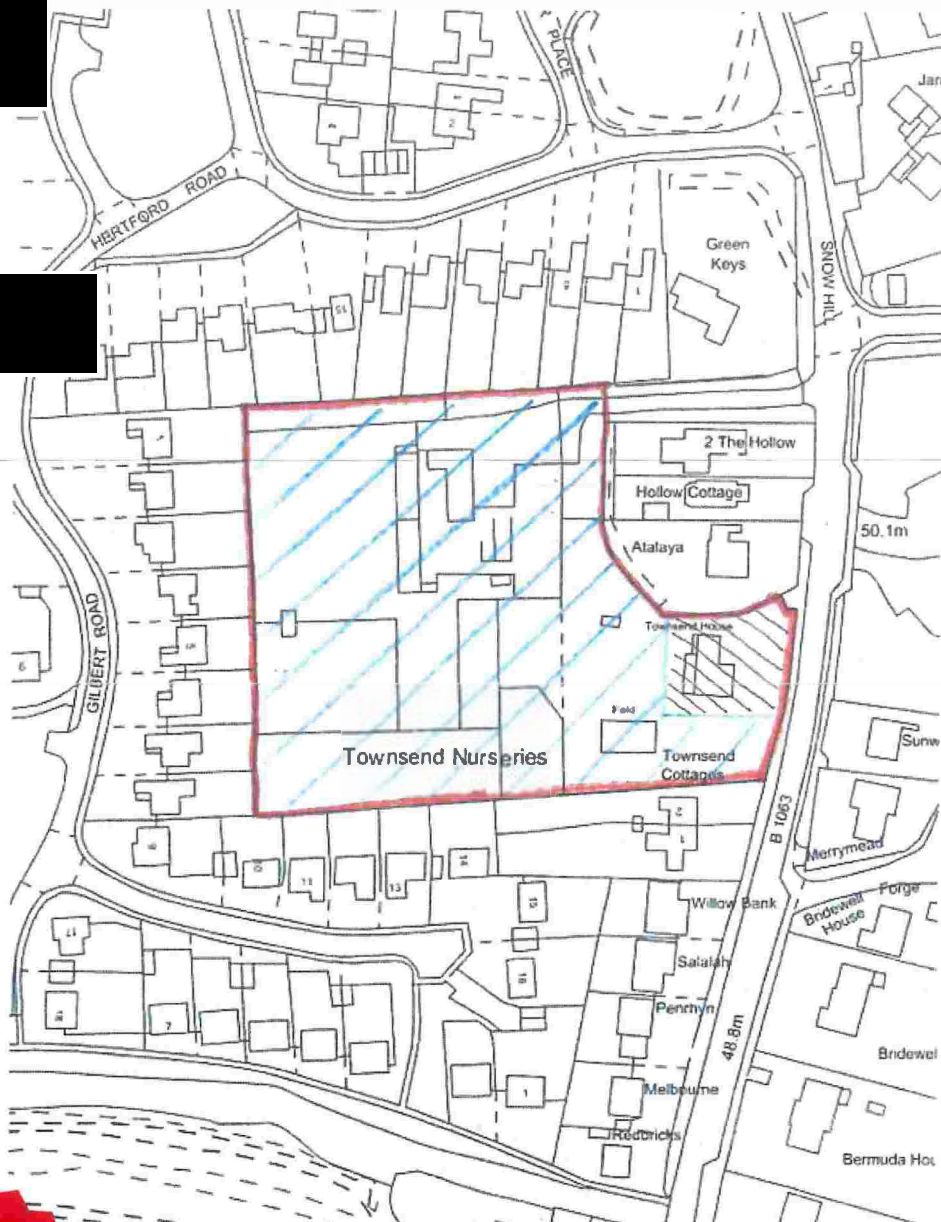
Witness Address



## FIRST SCHEDULE

The Land shown for identification purposes edged red on the Site Plan comprising of the First Owners' land forming part of the land registered at the Land Registry under title number SK221407 and shown hatched blue on the Site Plan and the Second Owner's land registered at the Land Registry under title number SK396952 and shown cross-hatched black on the Site Plan

## SITE PLAN





## **SECOND SCHEDULE**

### **THE OWNERS COVENANT WITH THE COUNCIL:**

#### **1. AFFORDABLE HOUSING UNITS**

- 1.1 To transfer all freehold or leasehold interest in the Affordable Housing Units to a Registered Provider and pay the Affordable Housing Contribution if required to the Council prior to the Occupation of fifty per cent (50%) of the Open Market Dwellings
- 1.2 Not to Occupy or permit Occupation of more than forty-nine per cent (49%) of the Open Market Dwellings unless and until the Affordable Housing Units have been constructed and the Owner has transferred all freehold or leasehold interest in those Affordable Housing Units to a Registered Provider and (if required) has paid the Affordable Housing Contribution to the Council
- 1.3 To ensure the transfer referred to in Paragraph 1.1 of this Second Schedule to the Registered Provider and their successors in title will contain a covenant to enter into a Nomination Agreement with the Council for those Affordable Housing Units prior to Occupation of those Affordable Housing Units
- 1.4 To ensure the conditions on which the Affordable Housing Units to be transferred to a Registered Provider shall be transferred shall include but not be limited to the following:
  - 1.4.1 to have good freehold title
  - 1.4.2 be on terms that at the date of the transfer the following are (unless otherwise agreed by the Registered Provider) provided or are transferred together with adequate and appropriate rights up to a point immediately adjacent to the boundary of the Affordable Housing Units:
    - 1.4.2.1 an adoptable road constructed to base course and subject to an agreement under Section 38 of the Highways Act 1980
    - 1.4.2.2 adoptable public sewers and drains subject to an agreement under Section 104 of the Water Industry Act 1991
    - 1.4.2.3 water electricity telecommunications and infrastructure with sufficient capacity to serve each Affordable Housing Unit and



1.4.2.4 such necessary rights as the Owners may reasonably require to be excepted and reserved

1.5 Subject to clause 2.10 to ensure the Affordable Housing Units shall not be used for any purpose other than as Affordable Housing Units

### **THIRD SCHEDULE**

#### **THE OWNERS COVENANT WITH THE COUNTY COUNCIL**

##### **1. LIBRARY CONTRIBUTION**

- 1.1 To pay to the County Council the Library Contribution prior to the first Occupation of fifty per cent (50%) of the Dwellings
- 1.2 Not to Occupy or permit Occupation of more than forty-nine (49%) of the Dwellings until the Library Contribution has been paid to the County Council

##### **2. SECONDARY SCHOOL AND SIXTH FORM CONTRIBUTIONS**

- 2.1 To pay to the County Council the Secondary School Contribution and of the Sixth Form Contribution prior to the first Occupation of fifty per cent (50%) of the Dwellings
- 2.2 Not to Occupy or permit Occupation of more than forty-nine per cent (49%) of the Dwellings until the Secondary School Contribution and of the Sixth Form Contribution have all been paid to the County Council

##### **3. WASTE CONTRIBUTION**

- 3.1 To pay to the County Council the Waste Contribution prior to the first Occupation of fifty per cent (50%) of the Dwellings
- 3.2 Not to Occupy or permit Occupation of more than forty-nine (49%) of the Dwellings until the Waste Contribution has been paid to the County Council

## **FOURTH SCHEDULE**

### **THE COUNCIL COVENANTS WITH THE OWNERS:**

#### **1. AFFORDABLE HOUSING CONTRIBUTION**

- 1.1 To use the Affordable Housing Contribution if received on a project or projects that help address the demand within the Council area for Affordable Housing
- 1.2 If requested to do so in writing after the expiry of ten (10) years from the date of the Completion of Development within a further period of one (1) year to pay within one month of such request to any person specified in such request such amount of the Affordable Housing Contribution paid by that person which has not been committed or expended by the Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 1.3 When the Affordable Housing Contribution paid to the Council pursuant to this Deed has been spent or committed the Council shall upon written request by the Owners after the expiry of ten (10) years from the date of the 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 on or committed to

## **FIFTH SCHEDULE**

### **THE COUNTY COUNCIL COVENANTS WITH THE OWNERS:**

#### **1. LIBRARY CONTRIBUTION**

- 1.1 To use the Library Contribution towards the provision of lending stock to enhance and improve IT equipment and associated materials for a library service and improve existing library provision within the vicinity of the Development
- 1.2 If requested to do so in writing after the expiry of ten (10) years from the date of the Completion of Development within a further period of one (1) year to pay within one month of such request to any person specified in such request such amount of the Library Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 1.3 When the Library 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 the date of the 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 on or committed to
- 1.4 Provide a written form of receipt to the Owners for payment of the Library Contribution on receipt of the Library Contribution

#### **2. SECONDARY SCHOOL AND SIXTH FORM CONTRIBUTIONS**

- 2.1 To use the Secondary School Contribution for the improvement and enhancement (including increasing the pupil admission number) of secondary school provision at the catchment secondary schools
- 2.2 To use the Sixth Form Contribution for the improvement and enhancement (including increasing the pupil admission number) of sixth form school provision at the catchment secondary schools
- 2.3 If requested to do so in writing after the expiry of ten (10) years from the date of the Completion of Development within a further

period of one (1) year to pay within one month of such request to any person specified in such request such amount of the Secondary School Contribution or the Sixth Form Contribution (as the case may be) paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable

- 2.4 When the Secondary School Contribution or the Sixth Form 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 of from the date of the 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 on or committed to
- 2.5 Provide a written receipt to the Owners for payment of each of the Secondary School Contribution and/or the Sixth Form Contribution on receipt of each of them

### **3. WASTE CONTRIBUTION**

- 3.1 To use the Waste Contribution to pay towards the cost of relocating the existing recycling centre serving the Development
- 3.2 If requested to do so in writing after the expiry of ten (10) years from the date of the Completion of Development within a further period of one (1) year to pay within one month of such request to any person specified in such request such amount of the Waste Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 3.3 When the Waste 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 of the 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 on or committed to



- 3.4 Provide a written receipt to the Owners for payment of the Waste Contribution on receipt of the Waste Contribution

**SIXTH SCHEDULE**  
**DRAFT NOMINATION AGREEMENT**

DATED \_\_\_\_\_ 2022

(1) **WEST SUFFOLK COUNCIL**

And

(2) **XXXXXX**

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**NOMINATION AGREEMENT**

Relating to Land at XXXX

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West Suffolk Council  
West Suffolk House,  
Western Way,  
Bury St Edmunds,  
Suffolk. IP33 3YU

## BETWEEN

(1) **WEST SUFFOLK COUNCIL** West Suffolk House, Western Way, Bury St Edmunds, Suffolk IP33 3YU ("the Council") and

(2) **XXXXXX** of ("the Association")

WHEREBY IT IS AGREED as follows:-

1. Particulars

1.1 The Scheme : The construction works to be carried out to provide **XX (XX)** dwellings at **XXXX**, Suffolk.

1.2 Dwellings : **XXXX (XX)** affordable dwellings erected pursuant to the Scheme

1.3 Registered Provider : Means either the Association or another Registered Provider of social housing within the meaning of Section 80(1) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator of Social Housing under section 111 of that Act.

1.4 Rented : Has the same meaning as the tenures provided for by Schedule 4 Part 3 in the Section 106 Agreement

1.5 Rented Dwellings : **XXXX (XX)** dwellings **XX** X 1 bed flat (plots **XXXX**) **XX** x 2 bed house (plots **XXXX**) **XX** x 3 bed house, (plots **XXXXXX**) **XX** x 4 bed house (plots **XXXX**) erected pursuant to the Scheme which are to be provided for a Rented tenure (unless otherwise agreed by the Council in accordance with the Section 106 Agreement) to be owned and managed

by the Association and provided to the Council for nomination rights. If the rented dwellings are delivered as Affordable Rent the rents shall not exceed the Local Housing Allowance (and the "Affordable Rented Dwelling" shall be construed accordingly)

- 1.6 Shared Ownership Dwellings : **XXXX (XX)** dwellings erected pursuant to the Scheme **(XX x 2** bedroom house (Plots **XXXX ) X x 3** bedroom house (plots **XXXXX**) ) which are to be provided for Shared Ownership tenure (unless otherwise agreed by the Council in accordance with the Section 106 Agreement) (and "Shared Ownership Dwelling" shall be construed accordingly)
- 1.7 Shared Ownership : Has the same meaning as the tenures provided or by **XXXXXX** in the Section 106 Agreement
- 1.8 Initial Lets : means the first tenancy of each newly constructed Rented Dwelling
- 1.9 Initial Sale : Means the initial sale by the Registered Provider of each newly constructed Shared Ownership Dwelling
- 1.10 Subsequent Sales sale : means the subsequent of a Shared Ownership Dwelling following Initial Sale
- 1.11 Help to Buy Agent : BPHA Limited, Bedford Heights, Manton Lane, Bedford. MK41 7BJ or any other Help To Buy Agent party to and acting in

accordance with the Service Level Agreement

1.12 Service Level Agreement

: An agreement made between the Association and the Help to Buy Agent dated 19/12/2014 for the governance of procedures and performance standards of the Help to Buy Agent and the Registered Provider in their roles in enabling any affordable housing scheme or any subsequent service level agreement made between the Registered Provider and the Help to Buy Agent for the same provision.

1.13 Chargee

: means any mortgagee or chargee of the Association 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.

1.14 Voids

: means an Rented Dwelling which does not have a tenancy and any void period shall be measured in calendar days between the date of termination of the previous tenancy, or repossession, and the start date of a new tenancy.

2. Agreement

2.1 The Association hereby grants the Council nomination rights of 100% for the Initial Lets and thereafter 75% of Voids in relation to the Rented Dwellings to be erected on the Scheme in accordance with the terms of this Deed.



PROVIDED THAT

2.1.1 Rented Dwellings– West Suffolk Council Nomination Rights

- (a) In relation to the Initial Lets of the Rented Dwellings the Association should refer to the Cambridge Sub Regional Choice Based Lettings Scheme (“Home-Link”) or any successor scheme and if no such nominations are made within ten working days of such reference then nothing in this clause shall prevent the Association from offering the Rented Dwellings to any person who the Association considers to be in need of such accommodation.
  - (b) In relation to any Rented Dwelling that becomes Void after the Initial Let the Association should refer to the Cambridge Sub-Regional Choice Based Lettings Scheme (“Home-Link”) or any successor scheme for applicants and if no such nominations are made within ten working days of such reference then nothing in this clause shall prevent the Association from offering the Rented Dwelling to any person who the Association considers to be in need of such accommodation.
  - (c) The Association shall in every case inform the Council in writing as soon as possible of the name of the tenant to whom a Rented Dwelling has been offered.
  - (d) On any disposal of the Rented Dwellings to another Registered Provider, the Association will use reasonable endeavours to ensure that the purchaser enters into an agreement with the Council in the same terms as this Agreement.
- 2.2 The Association hereby grants the Council nomination rights of 100% for the Initial Lets and thereafter 75% of any Subsequent Lets in relation to the Rented Dwellings to be erected on the Scheme in accordance with the terms of this Deed.

PROVIDED THAT

2.2.1 Shared Ownership Dwellings– West Suffolk Council Nomination Rights

- (a) In relation to Initial Sales of Shared Ownership Dwellings the Association shall upload details of the Shared Ownership Dwellings being offered for sale to the Help to Buy Agent’s website. Applicants who have been approved by the Help to Buy Agent shall then be assessed by the Association and provided they comply with specific criteria within the Section 106 Agreement the Association shall then offer for sale the Shared Ownership Dwelling to such applicant.
- (b) In the event the Help to Buy Agent is unable to provide applicants on the Initial Sales of Shared Ownership Dwellings within three months of practical completion notification given by the Association, then the Association may offer for sale the Shared Ownership Dwellings on the open market to any person the Association considers to be in need of such accommodation.
- (c) In relation to the Subsequent Sales of the Shared Ownership Dwellings the Association shall as soon as it receives notification from a shared ownership lessee that a Shared Ownership Dwelling is being offered for sale upload details of the Shared Ownership Dwelling being offered for sale to the Help to Buy Agent’s website. Applicants who have been approved by the Help to Buy Agent shall then be assessed by the Association and provided they comply with specific

criteria within the Section 106 Agreement the Association shall then direct the shared ownership lessee to sell the Shared Ownership Dwelling to such applicant.

- (d) In the event that the Help to Buy Agent is unable to provide applicants on a Subsequent Sale of the Shared Ownership Dwelling within eight weeks then the shared ownership lessee may offer for sale the Shared Ownership Dwelling on the open market to any person the Association considers to be in need of such accommodation.
- (e) On any disposal of the Shared Ownership Dwellings to another Registered Provider the Association will use reasonable endeavours to ensure that the purchaser enters into an agreement with the Council in the same terms as this Agreement.

### 3 General

- (a) The provisions of this Agreement shall not be binding on a Chargee of the whole or any part of the Shared Ownership Dwellings or any persons or bodies deriving title through such Chargee PROVIDED THAT such Chargee has complied with the requirements for disposal in the Section 106 Agreement
- (b) The Scheme is subject to an agreement made in accordance with section 106 of the Town and Country Planning Act 1990 made between the Council (1) Suffolk County Council (2) Christopher Parker and Caroline Cockerill (3) and Ann Parker (4) ("**the Section 106 Agreement**") and Reserved Matters application dated ~~xxxxxx~~ and all nominations and occupation of the Rented Dwellings and the Shared Ownership Dwellings shall comply with the provisions of those agreements.

**IN WITNESS** whereof the Council and the Association have caused their respective common seals to be hereunto affixed the day and year first before written

THE COMMON SEAL of **WEST SUFFOLK** )  
**COUNCIL** )  
was hereunto affixed as its deed in the presence of:- )  
)

.....  
Authorised Officer

.....  
Authorised Officer

THE COMMON SEAL of **XXXXXX** )  
was hereunto affixed )  
in the presence of:- )

.....  
Authorised Signatory

.....  
Authorised Signatory