

DATED

4th August

2022

MID SUFFOLK DISTRICT COUNCIL	(1)
SUFFOLK COUNTY COUNCIL	(2)
RICHARD SCOTT STYLES	(3)
DENBURY HOMES LIMITED	(4)

Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 relating to Land East of Aspall Road, Debenham Suffolk, IP14 6QA (relating to planning application reference DC/21/02982)

THIS AGREEMENT IS MADE this 4th day of August 2022

BETWEEN:

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road Ipswich, IP1 2BX ("the District Council");
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich IP1 2BX ("the County Council");
- (3) **RICHARD SCOTT STYLES** of Ulveston Hall, Debenham, Stowmarket, IP14 6BW ("the Owner");
- (4) **DENBURY HOMES LIMITED** (Co. Reg. No 2162164) whose registered office Westley, Bury St Edmunds, IP33 3WD ("the Developer");

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 and by whom the obligations contained in this Deed are enforceable.
- (B) The County Council is the local highway authority (except for trunk roads) and the local education authority, and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations in this Deed are enforceable.
- (C) The Owner is the freehold owner of the Site which is registered at the Land Registry with Title Number SK351447.
- (D) The Developer has an interest in the Site by way of an Estate Contract dated 18 May 2021.
- (E) The Developer has submitted the Application to the District Council on 21st May 2021 for the Development.
- (F) The District Council has resolved to grant planning permission for the Development pursuant to the Application subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed which will take effect following a grant of the Planning Permission for the Development.
- (G) The District Council and the County Council enter into this Deed content that the requirements of the District Council's and the County Council's policies are met and that any objections by the District Council or the County Council to the grant of

planning permission on the basis of those policies are overcome whilst noting that the District Council's policies would be satisfied by the provision of 18.9 Affordable Housing Units and that the provision of the nineteenth (19th) Affordable Housing Unit rounded up to a full number under the terms of this Deed is an additional benefit provided voluntarily by the Owner and is not being taken into account as a material consideration when the District Council determines the Application.

- (H) The District Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

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

"1990 Act"	the Town and Country Planning Act 1990 as amended;
"2008 Act"	The Housing and Regeneration Act 2008;
"Affordable Housing"	housing for sale or rent for those persons whose needs are not met by the market in accordance with and defined in Annex 2 of the National Planning Policy Framework (February 2021) (as amended or replaced);
"Affordable Housing Commuted Sum"	The contribution calculated in accordance with Schedule 7 to be paid by the Owner if the circumstances in paragraphs 6-7 of Schedule 2 apply;
"Affordable Housing Nomination Agreement"	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;

"Affordable Housing Scheme"	<p>the scheme agreed with the District Council as detailed in Schedule 2 Part 2 of this Deed which:</p> <p>(a) identifies the tenure and plot numbers of the Affordable Housing Units;</p> <p>(b) provides that not less than 35% of the Dwellings constructed within the Development shall be Affordable Housing Units;</p> <p>(c) includes the Affordable Housing Table;</p> <p>(d) includes the Planning Layout Plan showing the precise location of the Affordable Housing Units unless otherwise agreed in writing with the District Council;</p>
"Affordable Housing Table"	<p>The table at Part 2 of Schedule 2 setting out the type and tenure mix of the Affordable Housing Units;</p>
"Affordable Housing Units"	<p>Means nineteen (19) Dwellings to be provided on the Site in the location as detailed on the Planning Layout Plan (or such other plan agreed in writing with the Council) -as Affordable Housing pursuant to the Planning Permission and the Affordable Housing Scheme-of which fourteen (14) Dwellings shall be Affordable Rent Dwellings 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 District Council is a party or otherwise nominated by the District Council pursuant to the Deed as varied from time to time and five (5) Dwellings shall be let as Shared Ownership Dwellings and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or other subsequent scheme) unless otherwise agreed in writing with the District Council and "Affordable Housing Unit" shall be construed accordingly;</p>
"Affordable Rent"	<p>means housing made available by a Registered Provider as low cost rental accommodation (as defined by the 2008 Act Section 69) with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable or the local housing allowance rate;</p>

"Application"	means the application for full planning permission to develop the Site in accordance with the plans and other materials submitted to the District Council for the Development bearing the District Council's planning application reference number DC/21/02982;
"Chargee of the Registered Provider"	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 appointed pursuant to the relevant provisions of the Housing and Planning Act 2016 of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee;
"Chargee's Duty"	the tasks and duties set out in Schedule 2, Part 2, paragraph 5;
"Choice Based Lettings Scheme"	an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme relates to apply for a selection of suitable 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;
"CIL Regulations"	the Community Infrastructure Levy Regulations 2010 (as amended);

“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the 1990 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 and the temporary display of site notices or advertisements and “Commencement”, “Commence Development” and “Commencement Date” shall be construed accordingly;
“Completion of Development”	The date when the Development is capable of beneficial occupation and use;
“Development”	The development of fifty four (54) Dwellings (including nineteen (19) Affordable Housing Units) and the creation of vehicular and pedestrian access, public open space, infrastructure and landscaping;
“Dwelling“	any dwelling (including a house flat maisonette or bungalow and including Shared Ownership Dwellings Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly;
“Fields in Trust Guidelines“	Guidance for Outdoor Sport and Play updated in 2015 which includes recommendations on the provision of amenity and natural green space;
“Highway Improvements Contribution“	Means the sum of £15,000 (Fifteen Thousand Pounds) Index Linked;
“Homes England“	means 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;

"Index"	All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (where the context makes this clear) the Retail Price Index being the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the District Council and the Owner or the County Council and the Owner;
"Index Linked"	the increase or decrease in any sum referred to in Schedule 2 and Schedule 3 by an amount equivalent to the increase or decrease in the Index to be calculated in accordance with clause 13 of this Deed;
"Interest"	Interest at four (4) per cent above the minimum lending rate of the Bank of England from time to time;
"Management Company"	a company or body who will take over responsibility for the future maintenance of the Open Space in perpetuity and for the avoidance of doubt may include a residents' association established for this purpose, a private limited company or other organisation primarily for the benefit of the general public;
"Market Housing Unit"	any Dwelling which is for general market housing for sale or rent on the open market and which is not an Affordable Housing Unit;
"Open Space Nominated Body"	Means the body responsible for the management and maintenance of the Open Space being either: a) a Management Company; b) Debenham Parish Council; or such other body as the District Council may elect and "Open Space Nominated Bodies" shall be construed accordingly;
"Notice of Actual Commencement"	notice in writing to advise of the actual Commencement Date;

"Notice of Expected Commencement"	notice in writing to advise of the expected Commencement Date;
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be construed accordingly;
"Open Space "	the areas of open space on the Site which are for informal or (if laid out) formal recreational use by the public as shown on the Open Space Areas Plan to be provided in accordance with the Open Space Specification; the total area of the open space to accord with the minimum standards of the Fields in Trust Guidelines;
"Open Space Areas Plan"	Means a plan to be submitted to the District Council for approval indicating the location of the Open Space;
"Open Space Specification"	means the specification for delivery of the Open Space including the specifications plans and drawings showing but not limited to the layout and design of the Open Space, the phasing and timing of the delivery of the Open Space including details of any proposed play areas and equipment landscaping, paths and access arrangements, street furniture and fencing together with details of the proposed future management regime for the Open Space to be agreed in writing by the District Council in accordance with Part 3 of Schedule 2;

“Open Space Transfer“	<p>A transfer of the Open Space to be approved in writing by the District Council and which inter alia shall contain the following provisions:</p> <p>a) The Owner shall transfer the fee simple estate free from encumbrances save those set out in the title;</p> <p>b) All easements and rights necessary in relation to access for the benefit of the Open Space;</p> <p>c) Any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;</p> <p>d) Restrictive covenants by the Open Space Nominated Body or the Open Space Nominated Bodies;</p> <p>(i) Not to use or permit the Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open and play space as defined in this Deed and shown on the approved Open Space Areas Plan;</p> <p>(ii) Not to use or permit the Open Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development;</p>
“Plan“	the plan of the Site edged in red attached to this Deed marked Site Location Plan with Drawing Number 001;
“Planning Layout Plan“	the plan showing the development mix and the location of the Dwellings on the Site edged in red attached to this Deed marked Drawing Number DEB1-003-Rev G or other such plan to be agreed in writing with the District Council;
“Planning Permission“	The full planning permission subject to conditions which may be granted by the District Council pursuant to the Application or such further application referred to in clause 9;
“Practical Completion“	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;

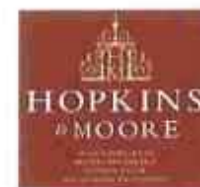


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Notes:
Detailed site plan showing proposed development.
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Rev. Date. Drawn



PLANNING

Project:	001
Aspell Road, Debenham:	001
Drawing:	1-1210-00-00
Site Location Plan:	LS
Plot Numbers:	LS
	10-11-20



KEY

[Green]	Green Space
[Orange]	Hard Pavement
[Light Green]	Soft Pavement
[Blue]	Water

Plot Area Summary

Plot No.	Plot Area (sqm)	Plot Area (sqm)	Plot Area (sqm)
1	1,200	1,200	1,200
2	1,200	1,200	1,200
3	1,200	1,200	1,200
4	1,200	1,200	1,200
5	1,200	1,200	1,200

Table 1: Building Details

Plot No.	Building Name	Plot Area (sqm)	Building Area (sqm)	Building Height (m)	Building Type
1	Plot 1 Building	1,200	1,200	1.5	Residential
2	Plot 2 Building	1,200	1,200	1.5	Residential
3	Plot 3 Building	1,200	1,200	1.5	Residential
4	Plot 4 Building	1,200	1,200	1.5	Residential
5	Plot 5 Building	1,200	1,200	1.5	Residential

Table 2: Building Details

Plot No.	Building Name	Plot Area (sqm)	Building Area (sqm)	Building Height (m)	Building Type
6	Plot 6 Building	1,200	1,200	1.5	Residential
7	Plot 7 Building	1,200	1,200	1.5	Residential
8	Plot 8 Building	1,200	1,200	1.5	Residential
9	Plot 9 Building	1,200	1,200	1.5	Residential
10	Plot 10 Building	1,200	1,200	1.5	Residential

Table 3: Building Details

Plot No.	Building Name	Plot Area (sqm)	Building Area (sqm)	Building Height (m)	Building Type
11	Plot 11 Building	1,200	1,200	1.5	Residential
12	Plot 12 Building	1,200	1,200	1.5	Residential
13	Plot 13 Building	1,200	1,200	1.5	Residential
14	Plot 14 Building	1,200	1,200	1.5	Residential
15	Plot 15 Building	1,200	1,200	1.5	Residential

PLANNING

Project Information

Project Name: [Project Name]

Project Location: [Project Location]

Project Date: [Project Date]

Project Status: [Project Status]

Project Details

Project Area: [Project Area]

Project Budget: [Project Budget]

Project Team: [Project Team]

Project Notes

[Project Notes]

"Protected Person"	<p>any person who:</p> <ul style="list-style-type: none"> a) has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; 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; c) any person who has staircased the equity in their Shared Ownership Dwelling to 100%; d) any successor in title to paragraph a- c above;
"Reasonable Consideration"	Offer prices from a Registered Provider which give the Owner a reasonable consideration having regard to current market conditions in the disposal of Affordable Housing of a similar type and location by a Registered Provider on a grant free basis via Section 106 Agreements;
"Registered Provider" or "RP"	an organisation which is a Registered Provider of social housing or other provider registered in accordance with the provisions of chapter 3 of the 2008 Act and whom has been approved by the District Council in writing, for the avoidance of doubt this could include the District Council;
"Rental Dwelling"	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;
"Shared Ownership Dwellings"	Dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed Eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in Homes England's capital funding guide;

"Shared Ownership Lease"	<p>a lease in a form approved by Homes England or where there is no such form in a form approved by the District Council such lease to provide for the following:</p> <ul style="list-style-type: none"> - not more than 75% and not less than 10% of the equity (or such other percentages the District Council may agree) shall be initially sold to the purchaser by the Registered Provider; - power to the purchaser to increase their ownership up to 100% if they so wish; - an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the District Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England;
"Site"	the land shown edged red for identification purposes only on the Plan and described in Schedule 1 against which this Deed may be enforced;
"Working Days"	Means any day Monday to Friday inclusive except bank or public holidays 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 shall include any modification, extension or re-enactment of that Act of Parliament 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 the County Council their respective successor or successors in title to their relevant statutory functions;
- 2.7 Any covenant by the Owner or the Developer 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;
- 2.8 The headings are for reference only and shall not affect construction;
- 2.9 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 the Developer District Council and the County Council;
- 2.10 None of the covenants contained in this Deed on the part of the Owner shall be enforceable against:-
- 2.10.1 those persons who purchase (including purchasers by way of long lease) any Dwelling for Occupation by themselves or their lessees tenants or individuals or their mortgagees of the Dwellings; or
- 2.10.2 any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services;
- 2.11 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

3. LEGAL BASIS

- 3.1 This agreement is a Deed made pursuant to section 106 of the 1990 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 or the Developer under this Deed create planning obligations pursuant to section 106 of the 1990 Act and are enforceable by the District Council in respect of the matters set out in the Schedule 2 and by the County Council in respect of the matters set out in the Schedule 3 against the Owner and its successors in title;

3.3 This Deed is a Deed and may be modified or discharged in part or in total at any time after the date of this Deed by Deed between the Parties in the form of a Deed.

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 of Schedule 2 and Part 1 of Schedule 3 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) (b) when any appeal(s) is or are finally determined;

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

(a) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

(b) when any appeal(s) is or are finally determined.

5. THE OWNER'S COVENANTS AND THE DEVELOPER'S COVENANTS

5.1 The Owner covenants with the District Council so as to bind the Site and each and every part thereof as set out in Schedule 2;

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

5.3 The Developer covenants with the District Council and the County Council to comply with its covenants at clauses 7.1 and 7.2 and agree to be bound by the terms of this Deed on becoming an owner of the Site as a successor in title to the Owner but shall otherwise have no liability under this Deed.

6. DISTRICT COUNCIL'S AND COUNTY COUNCIL COVENANTS

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

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

7. MISCELLANEOUS

7.1 The Developer shall pay to both the District Council and to the County Council on completion of this Deed their reasonable legal costs incurred in the negotiation, preparation and execution of this Deed;

- 7.2 The Developer covenants to pay to the County Council on or before completion of this Deed_a contribution of £412.00 (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.
- 7.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999;
- 7.4 This Deed shall be registered as a local land charge by the District Council;
- 7.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner or the Developer from the District Council or 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 Executive Director of Growth, Highways and Infrastructure 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;
- 7.6 The Owner agrees declares and covenants both with the District Council to observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Deed and further shall indemnify the District Council for any expenses or liability arising to the District Council in respect of breach by the Owner or any obligation contained herein save to the extent that any act or omission of the District Council its employees or agents has caused or contributed to such expenses or liability;
- 7.7 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;
- 7.8 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;
- 7.9 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;

- 7.10 This Deed shall not be binding on any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site;
- 7.11 This Deed shall be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission only in respect of any restriction on Occupation and use and likewise against those deriving title from them;
- 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 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority;
- 7.14 The Owner covenants from the date that this Deed takes effect to allow the District Council and its respectively duly authorised officers or agents at all reasonable times to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed;
- 7.15 The Owner agrees 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;
- 7.16 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the District Council or the County Council;
- 7.17 The Owner covenants and warrants to the District Council and the County Council that they have the full power to enter into this Deed and there is no other person other than the Developer whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

8. WAIVER

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

9. **SECTION 73**

- 9.1 If the Planning Permission is subject to an application under Section 73 of the 1990 Act for the removal or amendment of any condition attached to the Planning Permission or if a condition is varied or released following an appeal under Section 78 of the 1990 Act then the obligations or provisions in this Deed shall be deemed to bind the varied planning permission resulting from such application 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 1990 Act will be required to secure relevant planning obligations relating to the new planning permission (acting in its absolute discretion).

10. **CHANGE IN OWNERSHIP**

- 10.1 The Owner agrees with the District Council and the County Council to give each of them immediate individual written notice of any change in ownership of its interest in the Site (save for disposals of individual Dwellings) occurring before all the obligations under this Deed have been discharged such notice quoting the District Council's reference DC/21/02982 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 the title number or numbers thereof.

11. **RIGHTS OF ENTRY**

- 11.1 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:

11.1.1 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);

11.1.2 such entry shall be effected between 08:00 and 18:00 on any Working Day;

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

- 11.1.4 such employee or agent may take photographs measurements and levels;
- 11.1.5 such employee or agent may not remain on the Site for any longer than is reasonably necessary for carrying out a proper inspection;
- 11.1.6 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;
- 11.1.7 such employee or agent shall not be entitled to access any Dwellings that have been sold;
- 11.1.8 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 11.1.1);
- 11.1.9 for the avoidance of doubt the provisions of this clause 11 shall be in addition to and does not prejudice the powers conferred on the District Council or the County Council by Sections 169A, 169B and 169C of the 1990 Act.

12. DISPUTE PROVISIONS

- 12.1 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");
- 12.2 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 under clause 12.1;
- 12.3 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;
- 12.4 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:
 - 12.4.1 difference or question relates to the rights and liabilities of either the Parties 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
- 12.4.2 difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or
- 12.4.3 difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Parties but in default of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
- 12.4.4 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;
- 12.5 In the event of a reference to an Expert the Parties to the dispute agree to:
- 12.5.1 prosecute any such reference expeditiously; and
- 12.5.2 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;
- 12.6 The Expert shall invite written representations from each of the Parties;
- 12.7 The Expert will have the power to consolidate proceedings or hold concurrent proceedings;
- 12.8 The findings of the Expert shall be in writing signed by the Expert;
- 12.9 The findings of the Expert shall be final and binding both on the Parties to the dispute except in the case of manifest, material error;
- 12.10 The Expert shall act as an expert and not as an arbitrator;

12.11 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;

12.12 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 12 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed;

12.13 Nothing in the provisions of this clause 12 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

13. INDEXATION

Any sum referred to in Schedule 2 shall be increased or decreased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times C/D$ where:

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

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

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

C/D is Not less than 1.

14. 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.

15. VAT

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

16. NOTICES

16.1 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 16.2;

- 16.2 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	Richard Scott Styles, Ulveston Hall, Debenham, Stowmarket, IP14 6BW
The Developer	Denbury Homes Limited, Westley, Bury St Edmunds, IP33 3WD

17. SATISFACTION OF ANY OF THE PROVISIONS OF THIS AGREEMENT

- 17.1 Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the District Council as the case may be 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.

18. APPROVALS

- 18.1 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.

19. COMMUNITY INFRASTRUCTURE LEVY

- 19.1 The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 (as amended) the obligations imposed in this Deed are:

- 19.1.1 necessary to make the Development permitted pursuant to the Application acceptable in planning terms;

19.1.2 directly related to the Development permitted pursuant to the Application;
and

19.1.3 fairly and reasonably related in scale and kind to the Development permitted pursuant to the Application.

20. 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.

21. 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).

22. JURISDICTION

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

23. 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.

24. COUNTERPARTS

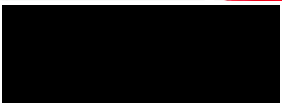
This Deed may be executed in any number of separate identical counterparts which on completion shall be construed together as one Deed.

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:)



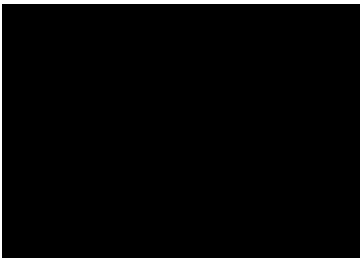
Authorised Signat



The Common Seal of)
SUFFOLK COUNTY COUNCIL)
was hereunto affixed)
in the presence of)



.....
Autho



Executed as a Deed by
RICHARD SCOTT STYLES

in the presence of:



Witness Signature:

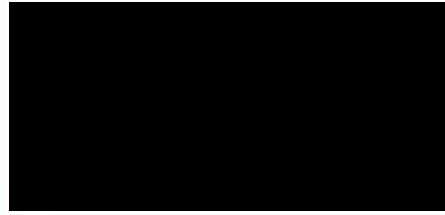
Witness Name:

Witness Address:

Witness Occupation:

JAMES DINWIDDY
PARTNER
BIRKETTS LLP
PROVIDENCE HOUSE
141-145 PRINCES STREET
IPSWICH IP1 1QJ

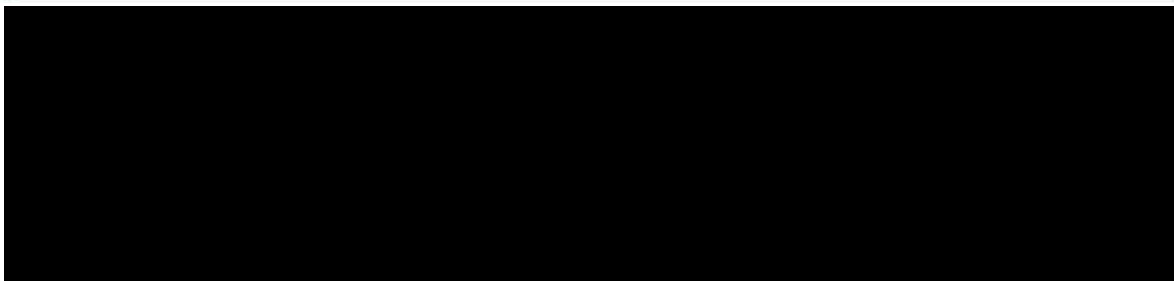
Executed as a Deed by
DENBURY HOMES
LIMITED in the presence
of:



Attorney's signature:



Birketts LLP, as attorney
for Denbury Homes
Limited



SCHEDULE 1

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

The Freehold land shown edged with red on the Plan and being land known as land east of Aspoll Road, , Debenham Stowmarket IP14 6QA and is registered at the Land Registry under title number SK351447.

SCHEDULE 2

THE OWNER COVENANTS WITH THE DISTRICT COUNCIL

Part 1

1. The Owner shall give the District Council Notice of Expected Commencement not less than seven (7) days before the date that the Owner expects Commencement of the Development to occur and (ii) within twenty-one (21) 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 two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling to be Occupied:
 - 2.2 The date of Occupation of the first Dwelling;
 - 2.3 The date of Occupation of the eighteenth (18th) of the Market Housing Units;
 - 2.4 The date of Occupation of nine (9) of the Affordable Housing Units;
 - 2.5 The date of Occupation of nineteenth (19th) of the Affordable Housing Units;
 - 2.6 The date of Occupation of twenty eight (28th) of the Market Housing Units;
 - 2.7 The date of Occupation of the final Dwelling;
 - 2.8 Completion of the Development.

Part 2

Affordable Housing

1. The Owner covenants only to Commence Development in compliance with the Affordable Housing Scheme as described in this Deed and that any amendments, revisions or substitutions to the Affordable Housing Scheme will be approved by the District Council in writing 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.

The Affordable Housing Table

This table forms part of the Affordable Housing Scheme unless otherwise agreed in writing with the District Council

Property Type	Number of Dwellings	Tenure	Plot	Size (square metres)
1 bed 2 person flats/apartments	6	Affordable rented	<u>38,39,40,41,42,43</u>	50sqm
2 bed 4 person houses	1	Affordable rented	17	86sqm
2 bed 4 person houses	5	Affordable rented	13,14,15,18, 44	79sqm
3 bed 5 person houses	2	Affordable rented	45,46	93sqm
2 bed 4 person houses	2	Shared Ownership	9,10,	79sqm
2 bed 4 person houses	1	Shared Ownership	16	86sqm
3 bed 5 person houses	2	Shared ownership	11,12	93sqm

1. The Owner shall endeavour to agree with the District Council on the identity of the Registered Provider 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;
- 1.1 Subject to paragraph 5- 6 inclusive below the Owner shall not:
 - 1.1.1 Occupy or permit the Occupation of more than seventeen (17) of the Market Housing Units until nine (9) 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;

1.1.2 Occupy or permit the Occupation of more than twenty –eight (28) of the Market Housing Units until all of the remaining 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.

2. Any transfer to a Registered Provider of the Site on which the Affordable Housing Units will be constructed shall be:
 - 2.1 With vacant possession;
 - 2.2 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);
 - 2.3 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;
 - 2.4 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;
 - 2.5 Subject to a requirement to enter into the Affordable Housing Nomination Agreement with the District Council.
3. The Shared Ownership Dwellings shall only be Occupied by persons allocated in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and the Affordable Rent 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 Schedule 2 which confers nomination rights on the District Council unless otherwise agreed by the District Council in writing.
4. 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

5. The Affordable Housing provisions in this Deed shall not be binding on Chargee of a Registered Provider PROVIDED THAT:

5.1 The Chargee of a Registered Provider shall first give prior written notice to the District Council of its intention to dispose of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

if such disposal has not completed within the three (3) month period, and the District Council has not responded indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way to safeguard it/them as Affordable Housing Unit(s) then the Chargee of a Registered Provider shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely PROVIDED THAT at all times the rights and obligations in this paragraph 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;

5.2 If a Registered Provider is unable to make an acceptable offer to purchase the Affordable Housing Units within three (3) months from the date of Practical Completion of the Affordable Housing Units despite the Owner's reasonable endeavours to do so the Owner shall:

5.2.1 Notify the District Council three (3) months prior to the Practical Completion of the Affordable Housing Units;

5.2.2 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 3 of this part of this Schedule;

- 5.2.3 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 2 of this part of this Schedule; and
- 5.2.4 offer the Affordable Housing Units to the District Council to be purchased by the District Council as Affordable Housing;
- 5.3 if the District Council makes an acceptable offer for Reasonable Consideration to the Owner (within three (3) months of written invitation) for the Affordable Housing Units then the Owner shall not Occupy or permit Occupation of more than eighty per cent (80%) of the Market Housing Units until the Owner has provided the District Council with a freehold transfer document unconditionally released for completion;
- 5.4 if the District Council does not make an acceptable offer for Reasonable Consideration to the Owner (within three (3) months' of written invitation) to purchase all or part of the Affordable Housing Units or the District Council indicates that it does 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 instead shall pay:
- 5.4.1 50% of the Affordable Housing Commuted Sum payable in relation to such to the District Council as calculated in accordance with Schedule 7 prior to Occupation of more than 50% of the Market Housing Units; and
- 5.4.2 The final 50% of the Affordable Housing Commuted Sum payable in relation to the District Council as calculated in accordance with Schedule 7 prior to Occupation of more than 80% of the Market Housing Units in lieu of the provision of Affordable Housing;
6. In the circumstances prescribed by paragraph 5.4.1 above the Owner shall not Occupy more than 50% of the Market Housing Units until 50% of the Affordable Housing Commuted Sum has been paid to the District Council;
- 6.1 in the circumstances prescribed by paragraph 5.4.2 above the Owner shall not Occupy more than 80% of the Market Housing Units until 100% of the Affordable Housing Commuted Sum has been paid to the District Council. Upon receipt of the written confirmation from the District Council referred to in paragraph 5.4 the provisions of this paragraph 1- 6 of part 2 of this Schedule 2 shall no longer be applicable in respect of those Dwellings that were proposed to be the Affordable Housing Units and the Owner shall be free to dispose of the said Dwellings as Market Housing Units.

Part 3
Open Space

1. The Owner hereby covenants with the District Council that prior to Commencement of Development to submit the Open Space Areas Plan and the Open Space Specification to the District Council for approval in writing and such approval not to be unreasonably withheld or delayed.
- 1.1 The Owner covenants not to Commence the Development unless and until the Open Space Areas Plan and the Open Space Specification have been approved by the District Council in writing such approval not to be unreasonably withheld or delayed;
- 1.2 The Owner hereby covenants with the District Council not to permit the Occupation of any more than the number of Dwellings specified in the Open Space Specification until the Open Space has been provided in accordance with the approved Open Space Areas Plan and the Open Space Specification;
- 1.3 The Owner covenants to serve written notice on the District Council requesting confirmation of the Open Space Nominated Body prior to the first Occupation of the Site and the District Council shall confirm the Open Space Nominated Body within twenty eight (28) days of receipt of the Owner's written request;
- 1.4 The Owner covenants to lay out the Open Space in accordance with the approved Open Space Specification and in accordance with the Open Space Areas Plan. Following the laying out and landscaping of the Open Space in accordance with the Open Space Specification and the Open Space Areas Plan the Owner further covenants with the District Council at their own cost to properly maintain and manage the Open Space in accordance with the Open Space Specification, the Open Space Areas Plan and the Planning Permission until the date of the Open Space Transfer has been completed;
- 1.5 The Owner covenants to arrange a meeting with the District Council's Corporate Manager for Public Realm or his representative (or other officer discharging his function) to establish that the works including landscaping specified in this Schedule have been satisfactorily carried out;
- 1.6 The Owner covenants to carry out remedial works and to maintain to the satisfaction of the District Council's Corporate Manager for Public Realm or his representative (or other officer discharging his function) for a period of twelve (12) months commencing on 1st April following the date of written approval by the District Council's Corporate Manager for Public Realm or his representative (or other officer discharging his function) that the said landscaping and laying out have been satisfactorily completed;

- 1.7 The Owner covenants to carry out any planting works and replacement planting due to losses in the following planting season to the satisfaction of the District Council and carry out such minor additions to the landscaping as required by the District Council that may have become necessary following use of the Open Space by the general public;
- 1.8 The Owner shall on the expiration of the 12 month maintenance period referred to in paragraph 1.6 of this Schedule, transfer the freehold or part thereof as agreed in writing by the District Council to the Open Space Nominated Body and such transfer to include such items as necessary and outlined in the Open Space Transfer and shall for the avoidance of doubt include a covenant that the Open Space shall thereafter be retained and maintained in accordance with the approved Open Space Areas Plan the Open Space Specification and the Planning Permission for the benefit of the general public and:
- 1.9 If the Open Space Nominated Body is the Management Company the Owner shall transfer the Open Space to the Management Company for the sum of One Pound (£1) within twelve (12) months of Occupation of the last Dwelling in accordance with the Open Space Transfer; or
- 1.10 If the Open Space Nominated Body is Debenham Parish Council or another body agreed in writing by the District Council the Owner shall transfer the Open Space to Debenham Parish Council or the other body agreed in writing with the District Council together with the Open Space Maintenance Contribution subject to Indexation to be agreed in writing by the District Council as part of the submission of the Open Space Specification within twelve (12) months of Occupation of the last Dwelling in accordance with the Open Space Transfer;
- 1.11 Until such time as the Open Space is transferred the Owner shall retain liability for the maintenance of the Open Space in accordance with the Open Space Specification;
- 1.12 Following completion of the Open Space it shall (in perpetuity):
- 1.13 Not be used for any purpose other than for the provision of public open space for the benefit of members of the public;
- 1.14 Be maintained and managed in a clean and tidy condition and free of defects and in accordance with the Open Space Specification;
- 1.15 Not to be built on or allowed to be built on any building on the Open Space, subject to any reasonable restrictions imposed in the interest of public safety or for the ancillary use of the public open space.

SCHEDULE 3
THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

PART1

NOTIFICATION

- 1. THE OWNER SHALL SERVE THE COUNTY COUNCIL WITH:**
 - 1.1 the 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
 - 1.2 within fifteen (15) Working Days of Commencement of Development having occurred, the Notice of Actual Commencement in order to confirm that Commencement has occurred.
2. The Owner shall within fifteen (15) Working Days' give written notice to the County Council following:
 - 2.1 first Occupation of the first (1st) Dwelling;
 - 2.2 Completion of the Development.

PART2

HIGHWAY IMPROVEMENT CONTRIBUTION

- 1 The Owner covenants with the County Council as follows:
 - 1.1 To pay the County Council the Highway Improvement Contribution prior to the Commencement of the Development;
 - 1.2 Not to Commence the Development or permit the Commencement of the Development until the Highways Improvement Contribution has been paid to the County Council.

SCHEDULE 4

DISTRICT COUNCIL'S COVENANTS

1. The District Council will issue the completed Planning Permission as soon as reasonably practicable following the completion of this Deed.
2. 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.
3. The District Council shall hold any sums payable under this Deed in an interest-bearing account and at the end of ten (10) years from the date of receiving the payment the District Council shall return to the party who made the payment all money in that account which has not been spent on the intended purpose as specified in this Deed.

PART 1

AFFORDABLE HOUSING

1. If 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 Mid Suffolk District Council.
2. The District Council shall if requested to do so in writing after the expiry of five (5) years of the date that the Affordable Housing Commuted Sum was paid 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.
3. If the Affordable Housing Commuted Sum paid to the District Council pursuant to this Deed was spent or committed by the District Council it shall upon written request after the expiry of five (5) years of the payment of that sum notify the party who made the payment that such monies have been spent or committed within a further period of twenty (20) Working Days' such notice to include full details of what the said monies were spent on or committed to.

SCHEDULE 5

COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner:

- 1.1 To use all the Highway Improvement Contribution it receives under the terms of this Deed for traffic management measures in the vicinity of the Development;
- 1.2 In the event that the Highway Improvement Contribution has not been committed (by an unconditional contract or by the expenditure of the monies) for the purposes for which it was paid under the terms of this Deed the County Council shall if requested to do so in writing after the expiry of five (5) years of the date of Completion of the 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 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;
- 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

DRAFT AFFORDABLE HOUSING NOMINATIONS AGREEMENT

Date:

(1) [] REGISTERED PROVIDER

(2) MID SUFFOLK DISTRICT COUNCIL

**relating to Land East of Aspoll Road, Debenham Suffolk, IP14 6QA
(planning application reference DC/21/02982)**

DRAFT AFFORDABLE HOUSING NOMINATIONS AGREEMENT

THIS DEED OF NOMINATION RIGHTS is made the _____ day of _____ 202X

BETWEEN:

(1) [] whose registered address is at [] ('the Registered Provider') and

(2) ('the District Council')

Together “the Parties”

1. Definitions

In this Deed:

- 1.1 '2008 Act' means the Housing and Regeneration Act 2008
- 1.2 'Affordable Housing' means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market;
- 1.3 'Affordable Housing Units' means the nineteen (19) dwellings all of which shall be Affordable Housing to be provided on the Property of which five (5) dwellings shall be Shared Ownership and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and fourteen (14) dwellings shall be Affordable Rent Dwellings to be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to this deed of nomination rights as varied from time to time and Affordable Housing Units shall be construed accordingly;
- 1.4 'Affordable Rent' means housing made available by a Registered Provider as low-cost rent accommodation (as defined by the 2008 Act Section 69) with a rent charged at a level up to 80% of the equivalent market rent inclusive of any service charge applicable;
- 1.5 'Chargee' means any mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever) appointed including a housing administrator appointed pursuant to the relevant provisions of the Housing and Planning Act 2016 of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee;

- 1.6 'Chargee's Duties' means the tasks and duties set out in clause 10.4 of this deed;
- 1.7 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings system;
- 1.8 'Homes England' means 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;
- 1.9 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit;
- 1.10 'Local Connection Criteria' means 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 1.10.1 to 1.10.3 inclusive:
- 1.10.1 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
- 1.10.2 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; or
- 1.10.3 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 District 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.
- 1.11 'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA;
- 1.12 'Nominee' means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the District Council as best meeting the criteria for the category of Affordable Housing Unit in respect of which the Registered Provider is to select a person from the Nomination List and offer a Tenancy Agreement;

- 1.12 'Practical Completion' means issue of a certificate of practical completion by the Registered Provider's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the Registered Provider the issue of a certificate of practical completion by that other party's surveyor;
- 1.13 'Land' means the development on land to the East side of Aspoll Road, Debenham Suffolk registered at the Land Registry under Title Number SK351447;
- 1.14 'Protected Tenant' means any Nominee who has exercised the right to acquire pursuant to the 2008 Act or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- 1.15 'Registered Provider' means a registered provider of social housing as defined in section 80(2) of the 2008 Act and listed in the register kept by The Regulator of Social Housing under Chapter 3 of Part 2 of the 2008 Act and for the avoidance of doubt this could include the District Council;
- 1.16 'the 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 Registered Provider and Others (1) and the District Council and Others (2);
- 1.16 'Shared Ownership Dwelling' means an Affordable Dwelling to be let on a Shared Ownership Lease in accordance with the terms as set out in the Homes England capital funding guide or any other such guidance as shall replace it and 'Shared Ownership Dwellings' shall be construed accordingly;
- 1.17 'Shared Ownership Lease' means a lease or sub-lease of an Affordable Dwelling granted at a premium whereby not less than ten percent (10%) and up to seventy percent (70%) of the Open Market Value on first purchase of the legal and equitable interest in the Affordable Dwelling is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% of the legal and equitable interest in the Affordable Dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease or such other figure permitted by Homes England from time to time. In the event of any shared ownership lessee staircasing up to 100% ownership; the Registered Provider must retain any capital receipt between 80% and 100% equity for re-investment in affordable housing within Mid Suffolk District;

- 1.18 'Tenancy Agreement' means an assured tenancy agreement in a form prepared by the Registered Provider and containing terms which accord with the form of tenancy agreement being used by the Registered Provider from time to time for its general lettings;
- 1.19 'Vacancy Notice' means a written notice (in a form to be agreed between the Registered Provider and given by the Registered Provider to the District Council within five (5) weeks from the date of this Deed) the function of such notice being the notification to the District Council by the Registered Provider of the expected date on which the construction and fitting out of the Affordable Housing Units will be complete;
- 1.20 'Void' means an Affordable Housing Unit which is vacant otherwise than as a result of the tenant having:
- (i) moved to other accommodation either by transfer or decant provided by the Registered Provider;
 - (ii) moved to other accommodation under a reciprocal arrangement provided by another Registered Provider;
 - (iii) vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere;
- 1.21 'Void Notice' means a written notice given by the Registered Provider to the District Council (in a form to be agreed between the Registered Provider and the District Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the District Council of a Void.

2. PROCEDURE

The Parties agree that the Service Level Agreement 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.

2.1 Initial Lets

The Registered Provider hereby grants the District Council Nomination rights for 100% of the Initial Lets and thereafter 100% for Voids in relation to the Affordable Rent Dwellings. In relation to the Initial Lets of the Affordable Housing Units the following provisions shall apply:

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

2.1.2 The Registered Provider shall serve a Vacancy Notice upon the District Council in respect of an Affordable Housing Unit not earlier than ten (10) weeks prior to an Affordable Housing Unit becoming available for occupation;

2.2 Voids

Should any Affordable Housing Unit become a Void after the Initial Let or the Registered Provider has reasonable cause to believe it will become a Void then and in each case the Gateway to Homechoice SLA procedure shall apply.

3. SUPPLEMENTAL PROVISIONS RELATING TO ALLOCATING INITIAL LETS AND VOIDS

3.1 Where there are two or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.10.1 to 1.10.3 of this Nominations Agreement and subject to clause 4.2 of this Nominations Agreement preference must be given to the applicant/s who have the highest housing need according to Mid Suffolk District Council's current allocations policy;

3.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities then any such dwelling may be first offered to a person or persons with disabilities who require such accommodation even where such person(s) have a lesser Local Connection under clauses 1.10.1 to 1.10.3 of this Nominations Agreement than someone who does not have disabilities.

4. REGISTERED PROVIDER COVENANTS

The Registered Provider covenants with the District Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies:

4.1 to ensure the Affordable Housing Units comprised within the Site are used as Affordable Housing Units;

4.2 to ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or Shared Ownership Lease and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider;

4.3 the Affordable Housing Units in accordance with current Homes England requirements.

5. **ALTERATION OF LISTS**

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

6. **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.

7. **TRANSFER TO OTHER REGISTERED PROVIDER**

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

8. **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.

9. **AGREEMENTS AND DECLARATIONS**

The Parties agree:

- 9.1 Nothing in this Deed fetters or restricts the exercise by the District Council of any of its powers;
- 9.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33;
- 9.3 From the date of Practical Completion the Affordable Housing Units shall be let in accordance with the terms of this Deed save that the obligations and restrictions contained in this Deed shall not be binding on:

- 9.3.1 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
- 9.3.2 any Chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duties; or
- 9.3.3 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;

The Affordable Housing provisions shall not be binding on a Chargee PROVIDED THAT:

- (a) such Chargee shall first give written notice to the District Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal for the Affordable Housing Units to another Registered Provider or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- (b) if such disposal has not completed within the three (3) month period, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

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

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

THE COMMON SEAL OF
MID SUFFOLK DISTRICT COUNCIL

was affixed in the presence of:

)

)

)

Authorised Officer

THE COMMON SEAL OF
REGISTERED PROVIDER'S NAME

Signature of Authorised Officer

)

)

)

SCHEDULE 7

AFFORDABLE HOUSING COMMUTED SUM

Commuted Sums calculation

NDSS compliant 2 bed 4-person house @ 79 sqm

At a design and build rate of £2,000/m² for an affordable unit gives

Total design and build cost	£158,000.00
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Plot value based on the above property and taking the District Valuation Service Property market report at £600/sqm	£47,400.00
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Plus, Housing Association on costs at 7%	£11,060.00
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Plus MSDC management fee of	£500.00
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Less Housing Association acquisition price	£141,024.00
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= £75,936.00 per 2 bed house unit

The figure for 1 whole dwelling is £75,936.00

Therefore the total commuted sum required is £68,330.00 for 0.90 dwelling.