

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

relating to Land off St Andrews Place and  
Waterhead Lane, St Andrews Place, Melton Suffolk

Dated:

7 NOVEMBER

2022

EAST SUFFOLK COUNCIL (1)

AND

SUFFOLK COUNTY COUNCIL (2)

AND

PETER WILLIAM WARBURG(3)

REF DC/20/1831/OUT

APPEAL REF: APP/X3540/W/22/3300310

DATE

7 NOVEMBER

2022

## PARTIES

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road Melton Suffolk IP12 1RT ("the Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP7 2BX ("the County Council")
- (3) **PETER WILLIAM WARBURG** of The Studio, Priors Hill Road, Aldeburgh, Suffolk IP15 5EP ("the Owner")

## INTRODUCTION

1. The 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 in this Deed are enforceable.
2. The County Council is a local planning authority for the purposes of the Act and the Highway Authority for the area in which the Site is located and by whom the obligations in this Deed are enforceable.
3. The Application was submitted by Mr Dawson (the Applicant) and validated by the Council on 19 May 2020
4. The Application was refused by the Council on 2 March 2022
5. The Applicant has submitted the Appeal
6. The Owner is the freehold owner of the Site under Land Registry title number SK221722
7. The Site lies within the area to which the Local Plan applies. The Council and the Owner 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.

NOW THIS DEED WITNESSES AS FOLLOWS:

## OPERATIVE PART

### 1. DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings and shall be read in conjunction with the definitions set out in the Third Schedule:

**"Act"** the Town and Country Planning Act 1990 as amended;

**"Appeal"** Means the appeal submitted on the 1 June 2022 by the Applicant to the Secretary of State for Levelling Up, Housing and Communities following the refusal of the Application by the Council and allocated reference number APP/X3540/W/22/3300310

<b>"Application"</b>	the application for outline planning permission validated by the Council on 19 May 2020 for the Development and allocated reference number DC/20/1831/OUT
<b>"Commencement of Development"</b>	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of 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, site clearance, erection of any temporary means of enclosure, temporary access for construction works, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;
<b>"Consumer Prices Index"</b>	the consumer prices index published by the Central Government or any subsequent indices replacing the same;
<b>"Completion of the Development"</b>	the date that the last Dwelling is first Occupied
<b>"Development"</b>	the development of the Site for an Outline Application with Some Matters Reserved - Residential development of up to 55 dwellings, with access off St Andrews Place
<b>"Dwelling"</b>	any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission;
<b>"Index"</b>	All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or any subsequent indices of the same;
<b>"Index Linked"</b>	means the increase in any sum referred to in this Deed by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 11 of this Deed;
<b>"Interest"</b>	interest at four per cent above the base lending rate of the Bank of England from time to time;



<b>"Local Plan"</b>	the East Suffolk Council – Suffolk Coastal Local Plan adopted 23 September 2020;
<b>"Occupation" and "Occupied"</b>	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
<b>"Pedestrian Link Contribution"</b>	Means the sum of £10,000 (ten thousand pounds) Index Linked for use towards the provision of a pedestrian link through Melton Railway Station forecourt area from the existing footway to the Melton Railway Station platform entrance
<b>"Plan"</b>	the plan labelled "Location Plan" attached to this Deed;
<b>"Planning Permission"</b>	The outline planning permission subject to conditions which may be granted by the Secretary of State pursuant to the Appeal
<b>"RPI Index"</b>	the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Council, the County Council and the Owner;
<b>"RPI Indexed"</b>	The increase in any sum referred to in this Deed as RPI Indexed by an amount equivalent to the increase in the RPI Index to be calculated in accordance with clause 11 of this Deed;
<b>"Secondary School Contribution"</b>	Means the sum of £184,562 (one hundred and eighty-four thousand five hundred and sixty-two pounds) Index Linked towards the provision of a new secondary school at Brightwell Lakes
<b>"Section 73 Consent"</b>	means a planning permission granted pursuant to Section 73 of the TCPA 1990 which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the TCPA 1990 was granted;
<b>"Section 106 Officer"</b>	the officer so designated by the Council and any notice required to be served on the Section 106



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0 50 100 150m  
SCALE - 1:2500 @ A4



65604

Client  
Warburg Dawson Partnership

Project  
Waterhead Lane, Melton

Title  
Location plan

Drawing Ref.	Revision
4465-0105	P02

Scale - unless otherwise stated	Status	Issued For
1:2500 @A4	SD	

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Officer must be sent or delivered to the Council at the address aforesaid marked for the attention of the Section 106 Officer;

**"Site"**

the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Plan;

**"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, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause or paragraph of or 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 interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or Directive or deriving validity from it.
- 2.6 Any 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 Council and the County Council the successors to their respective statutory function.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party as set out below:
  - (i) Council: as given in this Deed; and
  - (ii) County Council: as given in this Deed; and
  - (iii) Owner: as given in this Deed

**3. LEGAL BASIS**

- 3.1 This Deed is made pursuant to section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.

- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the Act and are enforceable by the Council and the County Council as local planning authority against the Owner and its successors in title.
- 3.3 Insofar as any of the covenants contained in this Deed are not planning obligations within section 106 of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 The covenants, restrictions and requirements contained in 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 The obligations set out within this Deed are conditional upon:
- (i) the grant of the Appeal; and
  - (ii) the Commencement of Development.
- 4.2 The provisions set out in clauses 8.14, 8.15, 8.16 and 16 this Deed shall take effect immediately upon completion of this Deed.

#### **5. THE OWNERS COVENANTS**

- 5.1 The Owner hereby covenants with the Council as set out in the Third Schedule so as to bind the Site and each and every part thereof.
- 5.2 The Owner hereby covenants with the County Council as set out in the Fourth Schedule so as to bind the Site and each and every part thereof.
- 5.3 The Owner covenants and warrants to the Council and the County Council it is the freehold owner of the Site and has the capacity to enter into this Deed.

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

- 6.1 The Council hereby covenants with the Owner as set out in the Fifth Schedule.

#### **7. THE COUNTY COUNCIL COVENANTS**

- 7.1 The County Council hereby covenants with the Owner as set out in the Sixth Schedule.

#### **8. MISCELLANEOUS**

- 8.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.2 This Deed shall be registrable as a local land charge by the Council.
- 8.3 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the 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 Council by the Head of Planning Services (or the officer of the Council fulfilling such functions) or officer acting under his hand and given on behalf of the County Council by the Executive Director of Growth, Highways and Infrastructure and any notices shall be deemed to have been



properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

- 8.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.5 Insofar as any clause or paragraph 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.
- 8.6 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.
- 8.7 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 interest in the Site or that part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.8 This Deed shall not be enforceable against an individual purchaser or owner-occupier or tenant of a Dwelling (except in respect of Paragraph 4 of the Third Schedule) constructed pursuant to the Planning Permission or any mortgagee or chargee of any individual purchaser, owner-occupier or tenant of a Dwelling or any person deriving title from any such person.
- 8.9 Nothing in this Deed shall be enforceable against 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.
- 8.10 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.
- 8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its function as a local authority.
- 8.12 The Owner covenants from the date that this Deed takes effect to allow the Council or the County 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.
- 8.13 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council or the County Council.
- 8.14 The Owner covenants to pay the Council's and the County Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.
- 8.15 The Owner covenants to pay the Council's monitoring fee of £816 on or before completion of this Deed



8.16 The Owner covenants to pay to the County Council on or before completion of this Deed a contribution of £1236 (no VAT) towards the County Council's reasonable and proper administration costs of monitoring performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Deed

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

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

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

**PROVIDED THAT**

(i) nothing in this clause shall fetter the discretion of the Council in determining any application(s) under Section 73 of the Act;

(ii) to the extent that any of the obligations in this Deed have already been discharged at the date that any Section 73 is granted they shall remain discharged for the purposes of the Section 73 Consent; and

(iii) if the Council considers that the obligations contained in this Deed shall be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.

**9. WAIVER**

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

**10. CHANGE IN OWNERSHIP**

The Owner agrees with the Council and the County Council to give each of them independently written notice within fourteen days (14) of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice quoting the Council's reference DC/20/1831/OUT 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. INDEXATION**

Any sum referred to in the Third Schedule and the Fourth Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index or RPI Index

(as the context dictates) from the date hereof until the date on which such sum is payable using the application of the formula  $A = B \times C/D$  where:

- 11.1 A is the sum payable under this Deed;
- 11.2 B is the original sum calculated as the sum payable;
- 11.3 C is the Index or RPI Index (as the context dictates) for the month two (2) months before the date on which the sum is payable;
- 11.4 D is the Index or RPI Index (as the context dictates) for the month two (2) months before the date of this Deed; and
- 11.5 C/D is greater than one.

## **12. INTEREST**

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

## **13. VAT**

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

## **14. DISPUTE PROVISIONS**

- 14.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall, if the dispute cannot be resolved amicably between the relevant Parties within 20 Working Days of written notification of the said dispute, be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.
- 14.4 The expert shall be required to give notice to each of the said parties requiring them to submit to him, within ten Working Days of notification of his appointment, written submissions and



supporting material and the other party will be entitled to make a counter written submission within a further ten Working Days.

- 14.5 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

**15. JURISDICTION**

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

**16. 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.

**17. COUNTERPARTS**

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

## FIRST SCHEDULE

### Details of the Owner's Title, and Description of the Site

The freehold land of St Andrews Place and Waterhead Lane, St Andrews Place, Melton, Suffolk within registered title number S221722 shown edged red for indicative purposes only on the Plan and known as the Site.



**SECOND SCHEDULE**  
**Details of the Application**

Application Number	DC/20/1831/OUT
Application Type	Outline Application
Date Application Validated	19 May 2020
Location	Land off St Andrews Place & Waterhead Lane, St Andrews Place, Melton Suffolk
Proposal	Outline application with some matters reserved – Residential development of up to 55 dwellings, with access St Andrews Place
Applicant	Mr Dawson – Warburg Dawson Partnership

**THIRD SCHEDULE**  
**The Owner Covenants with the Council**

**1. DEFINITIONS**

**"Additional First Homes Contribution"**

means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with clause 2.7, or 4.8 or 4.9 of this Schedule, the lower of the following two amounts:

- (a) 30% of the proceeds of sale; and
- (b) the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the disposal of the First Home other than as a First Home;

**"Affordable Dwellings"**

means 1 in every 3 of the Dwellings to be made available as Affordable Housing comprising of:

- i). 50% Affordable Dwellings for Rent;
- ii). 25% Shared Ownership Dwellings; and
- iii). 25% First Homes

the exact number, location and tenure as set out in the Affordable Housing Table

**"Affordable Dwellings for Rent"**

means Affordable Dwellings let at a monthly or weekly rental figure that does not exceed 80% of the market rent inclusive of service charges or the local housing allowance rate or at such other rent as may be agreed in writing by the Council with rent increases during the term of



any individual tenancy being limited to increases in the Consumer Prices Index from the date of this Deed plus 1% or any subsequent limit placed upon Registered Providers by the HCA or Central Government;

**"Affordable Housing"**

means housing that will be available to Eligible Persons and as defined in Annex 2 of the National Planning Policy Framework (2021) (as amended and which for the avoidance of doubt shall include First Homes) whose needs are not met by the market and eligibility is determined with regard to local incomes and local house prices (unless otherwise agreed in writing with the Council);

**"Affordable Housing Scheme"**

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

- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;
- the name and registration number of the Registered Provider, where known;
- a plan and schedule indicating the number, location, tenure, plot numbers, type and size (including number of occupants each dwelling can house) of Affordable Dwellings allocated to the Affordable Housing Scheme;
- full details of the Affordable Housing mix if differing from that set out in the Affordable Housing Table (such proposal to reflect the Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Council);
- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme;

**"Affordable Housing Table"**

Means the table at clause 2.8 indicating the house types and tenure types of the Affordable Dwellings unless otherwise agreed in writing with the Council

<b>"Allocation Policy"</b>	means the policy and procedure adopted by the Council to determine the eligibility and priority for allocation of the Affordable Dwellings;
<b>"Armed Services Member"</b>	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;
<b>"Chargee"</b>	means any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;
<b>"Compliance Certificate"</b>	means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 4.2 applies the Eligibility Criteria (Local);
<b>"Discount Market Price"</b>	means a sum which is the Market Value discounted by at least 30%;
<b>"Disposal"</b>	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in an Affordable Dwelling other than:</p> <ul style="list-style-type: none"> <li>(a) a letting or sub-letting of a First Home in accordance with paragraphs 4 of this Third Schedule</li> <li>(b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner; or</li> <li>(c) an Exempt Disposal;</li> </ul>

**"Eligibility Criteria (Local)"**

and "Disposed" and "Disposing" shall be construed accordingly

means local criteria met in respect of a purchase of a First Home if:

- (a) the purchaser meets the criteria in the Local Connections Cascade (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connections Cascade); and
- (b) the purchaser meets any further local criteria in effect at the date of the relevant disposal of a First Home

it being acknowledged that at the date of this Deed the Council has only prescribed Eligibility Criteria (Local) in respect of (a);

**"Eligibility Criteria (National)"**

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

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed £80,000 or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant disposal of the First Home;

**"Eligible Person"**

means a person or persons on the housing register maintained by the Council or who is otherwise approved by the Council as being in need of separate or alternative accommodation and unable to buy housing generally available on the open market;

**"Exempt Disposal"**

means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of



intestacy following the death of the First Homes Owner

(c) Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order

(d) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 3 shall apply to such sale)

Provided that in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraphs 4;

**"First Home"**

means a Dwelling which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap;

**"First Homes Owner"**

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) the Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) the freehold a tenant or sub-tenant of a permitted letting under paragraphs 4

**"First Time Buyer"**

means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003;

**"Habitat Mitigation Contribution"**

means a contribution of £321.22 (Three Hundred and Twenty One Pounds and Twenty Two Pence) per Dwelling Index Linked payable

to the Council in accordance with this Third Schedule towards the cost of mitigating the impact of additional visitors upon European Protected Sites as a result of the Development to be used in accordance with the RAMS Strategy published evidence July 2019;

**"Homes England"**

means the non-departmental public body responsible for creating thriving communities and affordable homes in England and which is the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body that may replace it in either function;

**"Initial Sale"**

means the sale of the first share to each and any purchaser of a Shared Ownership Dwelling;

**"Local Connections Cascade"**

means the local connections criteria to be applied to each and every let or sale of an Affordable Dwelling as set out in Appendix A to this Deed

**"Market Dwellings"**

means any Dwelling which is not an Affordable Dwelling

**"Market Value"**

means the open market value as assessed by a Valuer of a Dwelling and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account any discount pursuant to this Schedule in the valuation;

**"Mortgagee"**

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire an Affordable Dwelling including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring an Affordable Dwelling;

**"Nomination Agreement"**

means an agreement in a form provided by the Council entered into by the Council and the Registered Provider in respect of rights for the Council to nominate Eligible Persons for the Affordable Dwellings for Rent in accordance

with the Allocation Policy a draft of which is appended to this Deed at Appendix B;

**"Practical Completion"**

means the stage reached when the construction of a Dwelling is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied;

**"Price Cap"**

means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed two hundred and fifty thousand pounds (£250,000) or such other amount as may be set locally or published from time to time by the Secretary of State;

**"Protected Person"**

means any person who:

a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable 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) a 100% Staircaser;

d) any successor in title to a Chargee or Mortgagee of the persons named in a) – c) above;

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

**"Reasonable Consideration"**

means offer prices from Registered Providers which give the Owners a reasonable consideration having regard to current market conditions in the disposal of Affordable Housing (excluding First Homes) of



a similar type and location by Registered Providers on a grant free basis via Section 106 Agreements;

**"Registered Provider"**  
or **"RP"**

means either:

a) a body registered as a social landlord pursuant to the provisions of the Housing Act 1996 or a housing association within the meaning of the Housing Associations Act 1985 or;

b) any person or body or entity which is registered as a provider of social housing in accordance with Section 80(2) and Chapter 3 of the Housing and Regeneration Act 2008

c) any body, organisation or company which is registered charity with the Charity Commissioners for England and Wales and approved by Homes England or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a registered social landlord;

**"SDLT"**

means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;

**"Secretary of State"**

means the Secretary of State for Levelling Up, Housing and Communities from time to time appointed and includes any successor in function;

**"Shared Ownership Dwellings"**

means those Dwellings purchased on a Shared Ownership Lease;

**"Shared Ownership Lease"**

means a lease in a form approved by Homes England or where there is no such form in a form approved by the Council such lease to provide for the following:

- not more than 75% and not less than 10% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider;

- power to the purchaser to increase their ownership up to 100%; and

- 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 the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England;

**"Valuer"**

means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer acting in an independent capacity; and

**"100% Staircaser"**

means a lessee of a Shared Ownership Dwelling or a under a Shared Ownership Lease who has exercised their right under that lease to purchase 100% of the equity in the Shared Ownership Dwelling.

## **2. AFFORDABLE HOUSING**

- 2.1 The Owner covenants not to Commence Development until the Affordable Housing Scheme has been agreed in writing with the Council
- 2.2 The Owner covenants that no more than 40% of the Market Housing Units shall be Occupied (save unless otherwise agreed with in the Council) until the Council has been notified of the name and registration number of the proposed Registered Provider and a contract has been entered into for the transfer of the Affordable Dwellings (save for any Affordable Dwellings to be sold directly by the Owner) unless otherwise agreed in writing with the Council
- 2.3 The Owner covenants that no more than 60% of the Market Housing Units shall be Occupied until the Affordable Dwellings have been constructed in accordance with the Planning Permission made ready for residential Occupation and either transferred to a Registered Provider or marketed for sale to First Time Buyers in accordance with the terms of this Deed
- 2.4 The Owner covenants that from the date of Practical Completion the Affordable Dwellings shall not be used other than for the purposes of Affordable Housing for Eligible Persons or First Time Buyers unless otherwise agreed in writing with the Council.
- 2.5 In the event that a Registered Provider cannot be found for any of the Affordable Dwellings (which are not First Homes) throughout England despite the Owner's reasonable endeavours to do so the Owner will be required to prove to the Council's satisfaction (the Council at all times acting reasonably) that demand from Registered Providers has not been forthcoming for Reasonable Consideration.



2.5.1 If the Council is satisfied that demand from Registered Providers has not been forthcoming for Reasonable Consideration the Council will enter into written negotiations with the Owner to seek an agreed way forward that does not disadvantage the Owner whilst maximising the provision of Affordable Housing.

2.6 If after three calendar months of the transfer of the Affordable Dwellings (which are not First Homes) to the Registered Provider there remains any such Affordable Dwellings not leased or sold and the Registered Provider can provide evidence to the Council's satisfaction there are no prospective occupants the Registered Provider shall be free to seek written agreement of the Council to convert those Affordable Dwellings to an alternative form of affordable housing defined within Annex 2 to the National Planning Policy Framework (February 2021) (or any amended or subsequent national planning policy that may be published by the Government from time to time).

2.7 Nothing in this Third Schedule shall be binding on a Protected Person or any Mortgagee or Chargee of a Protected Person or any receiver appointed by such Mortgagee or Chargee or any person deriving title from any such person.

#### Mortgagee Protection Clauses

2.8 The Affordable Housing obligations in this Third Schedule shall not apply to any Mortgagee or Chargee (or any receiver (including an administrative receiver appointed by such Mortgagee or Chargee) or any other person appointed under any security documentation to enable such Mortgagee or Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwellings or any individual First Home or any persons or bodies deriving title through such Chargee, Mortgagee or Receiver PROVIDED THAT:

2.8.1 such Chargee or Receiver of an Affordable Dwelling for Rent or Shared Ownership Dwelling shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the affordable dwellings 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

2.8.2 if such disposal of the Affordable Dwelling for Rent or Shared Ownership Dwellings has not completed within the three month period, the Chargee or Receiver shall be entitled to dispose of the Affordable Rented Dwellings or Shared Ownership Dwellings free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

2.8.3 such Mortgagee or Receiver of a First Home first give written notice to the Council of its intention to Dispose of the relevant Dwelling; and

2.8.4 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First Home subject only to clause 2.7.5 at its full Market Value

2.8.5 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant



- security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution
- 2.8.6 following receipt of notification of the Disposal of the relevant First Home the Council shall:
- (a) forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 4.5 of the Third Schedule; and
  - (b) apply all such monies received towards the provision of Affordable Housing within East Suffolk

## 2.9 Affordable Housing Table

House Type	Tenure	Number of Affordable Dwelling
1 Bed House	Affordable Rent	3
2 bed House	Affordable Rent	4
3 Bed House	Affordable Rent	2
1 Bed House	Shared Ownership	2
2 Bed House	Shared Ownership	2
3 Bed House	Shared Ownership	1
1 Bed House	First Home	1
2 Bed House	First Home	2
3 Bed House	First Home	1

## 3. Affordable Dwellings for Rent and Shared Ownership Dwellings

- 3.1 The Registered Provider shall enter into a Nominations Agreement with the Council and shall not let dispose or otherwise permit the Occupation of any of the Affordable Dwellings for Rent until such Nominations Agreement has been entered into.
- 3.2 On the first and any subsequent letting of an Affordable Dwelling for Rent the Council will (unless otherwise agreed in writing) nominate eligible applicants in accordance with the Allocation Policy and Nomination Agreement (priority will go to applicants who have a Local Connection as defined in and in accordance with the Local Connections Cascade at Appendix A).
- 3.3 The Registered Provider shall not Dispose of any Interest in any of the Affordable Dwellings for Rent other than by way of an assured tenancy or an assured shorthold tenancy under the Housing Act 1988 (or any form of residential tenancy prescribed by statute in substitution for or

In addition to those) PROVIDED THAT nothing in this paragraph shall be deemed to prohibit the sale of the Affordable Dwellings individually or together (in any numerical combination) as one transaction (whether or not subject to any tenancy) to a RP nor prevent any Registered Provider from charging the Affordable Dwellings in whole or part.

The Owner will notify the Council within 28 days of the transfer of any Affordable Dwellings to a Registered Provider of the plot number, street address, house type, size and tenure of each dwelling and date of transfer

**3.4 In the event that 100% of a Shared Ownership Dwelling is purchased:**

- 3.4.1 the net proceeds from the final sale of the Shared Ownership Dwelling are to be ringfenced by the Registered Provider for 5 years for the provision of Affordable Housing within the East Suffolk District, and should the owner of the Shared Ownership Dwelling wish to sell it he must notify the Registered Provider and allow the Registered Provider to purchase the Shared Ownership Dwelling back in the first instance at Market Value;
- 3.4.2 in the event the Registered Provider purchases the Shared Ownership Dwelling in accordance with this clause at 3.4.1, the Shared Ownership Dwelling will be marketed as such subject to the terms of this deed; and
- 3.4.3 In the event the Registered Provider declines to purchase the Shared Ownership Dwelling or fails to notify the owner of the Shared Ownership Dwelling of its intention to make an offer to purchase the dwelling within twenty-eight days of the notification as specified in this clause at 3.4.1, then the owner of the Shared Ownership Dwelling may sell it on the open market free from the terms of this Deed.

**4. FIRST HOMES**

- 4.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
  - 4.1.1 the Eligibility Criteria (National); and
  - 4.1.2 the Eligibility Criteria (Local).
- 4.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 4.1.2 shall cease to apply.
- 4.3 Subject to paragraphs 4.6 to 4.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.
- 4.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:
  - 4.4.1 the Council has been provided with evidence that:
    - (a) the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 4.2 applies meets the Eligibility Criteria (Local);
    - (b) the Dwelling is being Disposed of as a First Home at the Discount Market Price; and
    - (c) the transfer of the First Home includes:
      - (i) a definition of the "Council" which shall be East Suffolk Council;



- (ii) a definition of "First Homes Provisions" in the following terms:  
"means the provisions set out in clause[s] [ ] of the S106 Agreement a copy of which is attached hereto as the Annexure."
- (iii) A definition of " S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) the Council [and] (2) [and (3) ]
- (iv) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the First Home or any part of it other than in accordance with the First Homes Provisions
- (v) a copy of the First Homes Provisions in an Annexure

4.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 4.3 and 4.4.1(a) have been met.

4.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by East Suffolk Council of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT or their conveyancer that the provisions of paragraphs 5 and 6 (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

4.6 The owner of a First Home (which for the purposes of this clause shall include the Owner and any First Homes Owner) may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

4.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 4.1 and 4.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 4.3 and 4.4.1(a); or

4.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 4.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.

4.7 Upon receipt of an application served in accordance with paragraph 4.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.



- 4.8 If the Council is satisfied that either of the grounds in paragraph 4.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 4.6 that the relevant Dwelling may be Disposed of:
- 4.8.1 to the Council at the Discount Market Price; or
  - 4.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home
- and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 4.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.
- 4.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 4.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 4.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 4.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.
- 4.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 4.8 or 4.9 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.
- 4.11 Upon receipt of the Additional First Homes Contribution the Council shall:
- 4.11.1 within twenty eight (28) days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 9.5 where such restriction has previously been registered against the relevant title; and
  - 4.11.2 apply all monies received towards the provision of Affordable Housing.
- 4.12 Any person who purchases a First Home free of the restrictions in the Third Schedule of this Deed pursuant to the provisions in paragraphs 4.9 and 4.10 shall not be liable to pay the Additional First Homes Contribution to the Council.
- 4.13 Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 4.14–4.16 below.
- 4.14 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 4.15 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting

or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) –(f) below:

- a. the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- b. the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- c. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- d. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- e. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- f. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

4.16 A letting or sub-letting permitted pursuant to paragraph 4.14 or 4.15 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

4.17 Nothing in this paragraph 6 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation (except where other local policy restrictions apply) provided that the First Home remains at all times the First Home Owner's main residence.

**5. HABITAT MITIGATION CONTRIBUTION**

- 5.1 The Owner covenants to provide written notification of Commencement of Development to the Section 106 Officer within 10 Working Days
- 5.2 The Owner covenants to pay the Habitat Mitigation Contribution to the Council prior to Commencement of Development.
- 5.3 The Owner covenants not to Commence or permit the Development of any Dwelling until the Habitat Mitigation Contribution been paid to the Council.



**Fourth Schedule**  
**The Owner's Covenants with the County Council**

**Part 1**

1. The Owner covenants to inform the County Council by way of written notice within seven (7) days following:
  - a. Commencement of Development
  - b. First Occupation of the first (1<sup>st</sup>) Dwelling
  - c. First Occupation of the twenty-second (22<sup>nd</sup>) Dwelling
  - d. Completion of the Development

**Part 2**

**Secondary School Contribution**

2. The Owner covenants with the County Council as follows:
  - a. To pay 50% (fifty percent) of the Secondary School Contribution to the County Council prior to first Occupation of the first (1<sup>st</sup>) Dwelling; and
  - b. To pay a further 50% (fifty percent) of the Secondary School Contribution to the County Council prior to first Occupation of the twenty-third (23<sup>rd</sup>) Dwelling; and
  - c. Not to Occupy any Dwelling unless and until 50% (fifty percent) of the Secondary School Contribution has been paid in full to the County Council; and
  - d. Not to Occupy more than twenty-two (22) Dwellings unless and until a further 50% (fifty percent) of the Secondary School Contribution has been paid in full to the County Council

**Part 3**

**Pedestrian Link Contribution**

3. The Owner covenants with the County Council as follows:
  - a. To pay the Pedestrian Link Contribution to the County Council prior to first Occupation of the first (1<sup>st</sup>) Dwelling; and
  - b. Not to Occupy or permit first Occupation of any Dwellings unless and until the Pedestrian Link Contribution has been paid in full to the County Council

## FIFTH SCHEDULE

### COUNCIL COVENANTS

1. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. The Council shall use the Habitat Mitigation Contribution for the purposes set out in the Deed within ten (10) years from receipt PROVIDED THAT nothing shall prevent the Council from paying any part of the Habitat Mitigation Contribution to a person, body or company that may be responsible for the carrying out of the work as set out in this Deed.
3. The Council shall if requested to do so in writing after the expiry of TEN (10) years of the date that the Habitat Mitigation Contribution was paid within ONE (1) year pay to any such person such amount of the Habitat Mitigation Contribution paid by that person in accordance with the provisions of this Deed which have not been committed or expended by the Council, such payment to be made within TWENTY EIGHT (28) working days of such a request together with any interest thereon.

## SIXTH SCHEDULE

### COUNTY COUNCIL COVENANTS

#### Part 1

1. The County Council shall use the Secondary School Contribution it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed
2. If requested to do so in writing after the expiry of 10 (ten) years of the Completion of the Development within a further period of 1 (one) year to pay to any person such amount of the Secondary School 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 the England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED that the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
3. When the Secondary School Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of 10 (ten) years of the Completion of the Development within a further period of 1 (one) year notify the Owner that such monies have been spent or committed such notice to include full details or what the said monies were spent on or committed to.

#### Part 2

1. The County Council shall use the Pedestrian Link Contribution it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed
2. If requested to do so in writing after the expiry of ten (10) years of the Completion of the Development within a further period of one (1) year to pay to any person such amount of the Pedestrian Link 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. When the Pedestrian Link Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owner after the expiry of ten (10) years of the Completion of the Development within a further period of one (1) year notify the Owner 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



THE COMMON SEAL of

EAST SUFFOLK COUNCIL  
was affixed in the presence of:

.....Authorised Officer

.....Authorised Officer

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



uthorised Officer

65604



SIGNED AS A DEED BY THE SAID

PETER WILLIAM WARBURG

In the presence of:

## Appendix A Local Connections Cascade

### 1 Affordable Dwellings for Rent

- 1.1 The Affordable Rental Dwellings are to be allocated to a person nominated by the Council in line with its Allocation Policy who is considered by them or it to be in need of such accommodation and unable to compete in the normal open market for property. Before nominating an applicant the Council will be satisfied that the applicant
- a. Has continuously lived in Melton for the preceding 5 years, OR
  - b. Has continuously had a principal place of work in Melton for the preceding 5 years OR
  - c. Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived in Melton for the preceding 5 years, OR
  - d. Due to a lack of suitable accommodation was forced within the preceding 5 years to move away from Melton
- 1.2 If there are no persons who qualify under paragraph 7.1.1 above the Affordable Dwelling shall be allocated to person nominated by the Council who
- a. Has continuously lived within 10 miles of the Site for the preceding 5 years, OR
  - b. Has continuously had a place of work within 10 miles of the Site for the preceding 5 years OR
  - c. Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within 10 miles of the Site for the preceding 5 years, OR
  - d. Due to a lack of suitable accommodation was forced within the preceding 5 years to move away from within 10 miles of the Site
- 1.3 (ii) If there are no persons who qualify under paragraph 1.1 and 1.2 above the Affordable Dwelling shall be re-advertised to the district of East Suffolk and where after re-advertising there are no persons who qualify under the paragraphs above the Affordable Dwelling shall be allocated to a person nominated by the Council who is considered by it to be in need of such accommodation and who is unable to compete in the normal open market for property in East Suffolk
- 1.4 Where there is a mutual exchange the Registered Provider may let the Affordable Dwelling to any incoming tenant who satisfies the local connection criteria at paragraphs 1.1 to 1.3 above

### 2 Affordable Dwellings for sale

- 2.1 On advertising the first Disposal of a Shared Ownership Dwelling or First Home the Dwelling shall be marketed for sale for the first 3 months to persons who:
- a. Have continuously lived within Melton for the preceding 5 years, OR
  - b. Have continuously had a principal place of work within Melton the preceding 5 years OR
  - c. Have parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within Melton the preceding 5 years, OR
  - d. Due to a lack of suitable accommodation were forced within the preceding 5 years to move away from Melton

PROVIDING THAT if after 2 months of marketing no offer has been received from persons who comply with 2.1 a-d the dwelling may be sold to persons who comply with 2.2 a-d.



- 2.2 On subsequent Disposals of a Shared Ownership Dwelling or First Home, it shall be marketed for sale for the first 3 months to persons who:
- a. Have continuously lived within the District of East Suffolk for the preceding 5 years, OR
  - b. Have continuously had a principal place of work within the District of East Suffolk for the preceding 5 years OR
  - c. Have parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within the District of East Suffolk for the preceding 5 years, OR
  - d. Due to a lack of suitable accommodation were forced within the preceding 5 years to move away from the District of East Suffolk.
- 2.3 If there are no purchasers who qualify under paragraph 2.1 or 2.2 above within 3 months of marketing the Affordable Dwelling it may be sold free of Local connections restrictions.





DATED

2018

(name) (1)

and

EAST SUFFOLK COUNCIL (2)

# NOMINATION AGREEMENT

Relating to Affordable Dwelling(s) for Rent

At

(name of scheme)

THIS NOMINATION AGREEMENT is made the

day of

201

BETWEEN:

- 1) .....of registered in England by the Financial Conduct Authority under the Co-operative and Community Benefit Societies Act 2014 (Register Number 32427R) (the Registered provider) [or such other Registered Provider as may be approved by East Suffolk Council]  
  
and
- 2) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road, Melton, Woodbridge, IP12 1RT ('the Council')

1. **Definitions**

In this Deed:

"Affordable Dwelling(s) for Rent" means Dwellings on the Development to be made available as Affordable Housing let at a monthly or weekly rental figure that does not exceed:-

(a) 80% of the local market rent inclusive of service charges; or

(b) (if lower) the local housing allowance rate; or

(c) with rent increases during the term of any individual tenancy being limited to increases in the Consumer Price Index from the date of this Nomination Agreement plus 1% or any subsequent relevant limit placed upon Registered Providers by the Regulator or Central Government;

"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

"Allocation Policy" means the policy and procedure that the Council has adopted to determine eligibility and priority for Affordable Dwellings for Rent

"Chargee" means any mortgagee or charge of a Registered Provider or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 by such mortgagee or chargee or any other person appointed by a mortgagee or chargee under its security documentation for the purpose of enforcing its mortgage or charge or any administrator (howsoever appointed) including a housing administrator

"Choice Based Lettings" - means the process used to advertise Affordable Dwellings for Rent in the Council area or any system that replaces it.

"Development" means the Development as defined in the Section 106 Agreement to which this Nominations Agreement is appended

"Effective Date" means the date that the application form is received by the Partner Organisation (PO), except in the following situations:

- i. When an applicant is moved from one band to a higher band, their new effective date will be the date that their circumstances changed or when the PO is advised of this;
- ii. Where an applicant receives priority on medical or welfare grounds, their effective date will be the date that they the application for the award is received by the PO;
- iii. Where an applicant has been accepted as homeless their effective date will be the date that they applied as homeless unless they already qualify for Band B with an earlier date;
- iv. Where a woman is pregnant and the baby will make her eligible for a larger property, her effective date for the larger property will be the date that the baby is born

"Initial Let" means the first tenancy or lease of a newly constructed and previously unoccupied Affordable Dwelling(s) for Rent in accordance with Section 199 of the Housing Act 1996 as amended by Section 315 of the Housing and Regeneration Act 2008

"Landlord(s)" means a person or persons who are required to use the Council's Choice Based Lettings process

"Nominee" or "Nominees" means a person named in the Shortlist nominated by the Council to the Registered Provider who qualify for a tenancy in accordance with the Registered Provider's letting criteria (details of which have been provided to the Council prior to the date of such nominations) to be the tenant of an Affordable Dwelling(s) for Rent.

"Partner Organisation" or "PO" means each of the eight District and Borough Councils participating in the current Choice Based Lettings scheme



"Property" means the land [ ] shown edged red on the plan attached hereto

"Registered Provider" or "RP" means a 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 under Chapter 3 of that Act

"Regulator" –Homes England (formerly the Homes and Communities Agency) or any body that replaces its role as regulator of Registered Providers

"Shortlist" means the list of applicants (as may be updated from time to time) to be supplied by the Council in line with the Allocation Policy and procedures giving the names of person(s) who the Council considers to be eligible for this size of property and have a local connection (as determined by the Council/or as determined in the Section 106 Agreement for the Property and who has been assessed as being in housing priority

"Tenancy Agreement" means an introductory/probationary tenancy, assured shorthold, assured or secure tenancy agreement in a form prepared by the Registered Provider and in line with an approved policy that meets the requirements of the Regulator.

"Vacancy Notice" means a written notice given by the Registered Provider to the Council the function of such notice being the notification to the Council by the Registered Provider that the construction and fitting out of the Affordable Dwelling(s) for Rent is completed and the Affordable Dwelling(s) for Rent is ready to be advertised through choice based letting or let through any subsequent agreed letting procedure. The notice shall be in a form agreed by the parties.

"Void" means an Affordable Dwelling(s) for Rent which is vacant otherwise than as a result of the tenant having

(a) Moved to other accommodation either by transfer or decant provided by the Registered Provider; or

(b) Moved to other accommodation under a reciprocal arrangement provided by another Registered Provider registered with the Regulator under the Housing Act 1996 or Housing and Regeneration Act 2008

"Void Notice" means a written notice given by the Registered Provider to the Council the function of such notice being the notification to the Council by the Registered Provider that the Affordable Dwelling(s) for Rent is available to be advertised through Choice

Based Lettings or let through any subsequent agreed letting procedure. The notice shall be in a form agreed by the parties.

## **2 Enabling Provisions**

This Agreement is made pursuant to Section 111 of the Local Government Act 1972 Section 33 (1)(b) of the Local Government (Miscellaneous Provisions) Act 1982 and Section 1 of the Localism Act 2011 and all other enabling powers

## **3 Procedure**

The parties agree that the Registered Provider shall give the Council nomination rights for each and every Initial Let and Void and the following procedure shall apply to the nomination of persons in respect of the Affordable Dwellings(s) for Rent.

### **3.1 Initial lets**

3.1.1 The Registered Provider shall give the Council **not less than 4 months'** written notice of the date when the Affordable Dwelling(s) for Rent will be ready for Occupation

3.1.2 The Registered Provider shall serve a Vacancy Notice on the Choice Based Lettings system detailing the **date available for Occupation** in respect of the Affordable Dwelling(s) for Rent at the point when it wishes the Affordable Dwelling(s) for Rent to be advertised. This will be in line with agreed advertising cycles which form part of the Allocation Policy.

3.1.3 The Council shall arrange for the Affordable Dwelling(s) for Rent to be advertised. Within 2 Working Days of the bidding cycle closing the Council shall serve upon the Registered Provider a Shortlist. The Nominees will be prioritised in line with their housing need and banding priority and effective date. The Council may agree to delegate the shortlisting to the Registered Provider and as required, verification of relevant applicant information.

3.1.4 The Shortlist to be served by the Council under clause 3.1.3 shall:

- i. Specify the appropriate category of Affordable Dwelling(s) for Rent, and
- ii. Indicate the priority for the housing of the persons named and any other relevant information using a standard pro-forma document via a generic e-mail address to the Council's Choice Based Lettings scheme

3.1.5 Upon the properties being ready to let the Registered Provider shall within five (5) Working Days of the date of receipt of the Shortlist select a Nominee from the Shortlist taking into account the priority in the order given for housing indicated by the Council



and shall use its reasonable endeavours to arrange a viewing of the Affordable Dwelling(s) for Rent and offer a Tenancy Agreement to such selected Nominee subject to any final checks as agreed in line with the Council's Allocation Policy and the Registered Provider's letting criteria

- 3.1.6 If the selected Nominee fails to accept the offer of a tenancy within one (1) Working Day of receipt of the Registered Provider's offer such selected Nominee shall be deemed to have rejected the Registered Provider's offer and the Registered Provider shall select and make an offer to another Nominee by repeating the procedure set out in clause 3.1.5
- 3.1.7 If the second selected Nominee fails to enter into a Tenancy Agreement within one (1) Working Day of receipt of the Registered Provider's offer then such second selected Nominee shall be deemed to have rejected the Registered Provider's offer and the Registered Provider shall select and make an offer to a third Nominee by repeating the procedure set out in clause 3.1.5
- 3.1.8 If such third selected Nominee fails to enter into a Tenancy Agreement within one (1) Working Day of receipt of the Registered Provider's offer then the Registered Provider will request a further Shortlist from the Council and the Council will supply this within three (3) Working Days.
- 3.1.9 If the Council is unable to supply any further Nominees the Registered Provider will request that the Affordable Dwelling(s) for Rent is re-advertised and the procedures set out in 3.1.3–3.1.8 are complied with

#### **4. Voids**

- 4.1 Should an Affordable Dwelling(s) for Rent 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 procedures set out in 3.1.2–3.1.9 shall apply except 3.1.2 which shall refer to Void Notice rather than Vacancy Notice in addition to 4.1.1:
- 4.1.1 The Registered Provider shall give the Council not less than 1 months written notice of the date when the Affordable Dwelling(s) for Rent will be ready for Occupation

#### **5. Provision of information and alteration of lists**

- 5.1 The Registered Provider shall give notification to the Council of the following events within (2) Working Days of their occurrence:



- i. a Nominee failing to view an Affordable Dwelling(s) for Rent when a viewing has been arranged
- ii. a Nominee failing to accept the offer of a Tenancy Agreement within the time limit prescribed by this Nomination Agreement
- iii. a Nominee accepting an offer of a Tenancy Agreement
- iv. Registered Provider rejecting a Nominee in accordance with Clause 5.3

5.2 Arrangements for notification to the Council will be set out in the Council's approved Allocation Policy

5.3 The Registered Provider shall have the right to interview and make enquiries of each Nominee and by serving written notice upon the Council to that effect to reject any Nominee if in the opinion of the Registered Provider the grant of an assured tenancy to such Nominee would be in contravention of the Registered Provider's registered rules or its letting criteria. The Registered Provider is required to make decisions without influence from third parties.

5.4 The Council shall notify the Registered Provider in writing of any Nominee that is withdrawn from the Shortlist

5.5 The Registered Provider must ensure that they handle all information in line with the current Data Protection Act 1998 and future general data protection regulations and procedures and the requirements of the Councils' Allocation Policy

5.6 The Council and the Registered Provider agree that the nominations rights contained in this Nomination Agreement 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 2 Working Days after posting

## **7. Chargee Provisions**

The provisions in this Agreement shall not be binding on a Chargee PROVIDED THAT:

- a) The Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Dwelling(s) for Rent ("the RP Notice"); and

- b) if the Council provides written notice to the Chargee within four weeks of receipt of the RP Notice that acceptable arrangements can be made for the transfer of the Affordable Dwelling(s) for Rent to either the Council or another Registered Provider within three calendar months of the date of the RP Notice the Chargee shall use reasonable endeavours over that period to complete a disposal of the Affordable Dwelling(s) for Rent 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
- c) if the Council does not serve the notice referred to in paragraph b) within the four week period referred to or if such disposal has not completed within the three month period the Chargee shall be entitled to dispose of the Affordable Dwelling(s) for Rent free of the restrictions set out in this Nomination Agreement

PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage.



## **8. Transfer to other Registered Providers**

- 8.1 The Registered Provider shall provide notice to the Council within five (5) Working Days of any transfer of the Affordable Dwelling(s) for Rent to a Registered Provider
- 8.2 The Registered Provider shall use its reasonable endeavours to procure that any Registered Provider to which the Affordable Dwelling(s) for Rent erected thereon are transferred otherwise than by direction of the Regulator under its statutory powers shall enter into a similar agreement mutatis mutandis with the Council simultaneously on completing the transfer of the Property

## **9. 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

## **10. Costs**

The Registered Provider agrees with the Council to pay the reasonable legal costs which the Council incurs in preparing and entering into this Nomination Agreement and the Council's reasonable costs to cover the nominations procedure. Any changes to current charges will be negotiated with all landlords who are required to let their properties in line with the Council's allocation and letting policy and procedures

## **11. Agreements and Declarations**

- 11.1 Nothing in this Nomination Agreement fetters or restricts the exercise by the Council of any of its powers
- 11.2 The obligations contained in this Nomination Agreement are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 section 33

## **12 Third Party Rights**

No provisions of this Nomination Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999



In witness whereof the parties have executed this Nomination Agreement on the day and year first before written

**THE COMMON SEAL of**

was affixed in the presence of:-

Director

Secretary

**THE COMMON SEAL of EAST SUFFOLK**

**COUNCIL**

was affixed

In the presence of:-

Authorised signatory