

DATED

27th April

2023

MID SUFFOLK DISTRICT COUNCIL (1)

-and-

SUFFOLK COUNTY COUNCIL (2)

-and-

JOHN HENRY DIAPER and DAVID JAMES DIAPER (3)

-and-

CREST NICHOLSON OPERATIONS LIMITED (4)

SECTION 106 AGREEMENT

relating to land to the north-west of Stowupland Road, Stowmarket,
Suffolk, IP14 5A (known as Diapers Farm)

WE CERTIFY THIS TO
BE A TRUE COPY OF
THE ORIGINAL
Birketts LLP 271423
BIRKETTS LLP
14-14B PRINCES STREET, IPSWICH IP1 1QJ

THIS AGREEMENT is made on this 27th day of April 2023

BETWEEN:

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the District Council"); and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council"); and
- (3) **JOHN HENRY DIAPER** of 5 Old Mill Court, Bardwell, Bury St. Edmunds, IP31 1BG and **DAVID JAMES DIAPER** of Relics, Long Thurlow Road, Badwell Ash, Bury St. Edmunds, IP31 3HZ trading as J W Diaper & Sons ("the Owners"); and
- (4) **CREST NICHOLSON OPERATIONS LIMITED** (Co. Regn. No. 01168311) of 500 Dashwood Lang Road, Bourne Business Park, Addlestone, Surrey, KT15 2HJ ("the Developer").

BACKGROUND

- (A) For the purposes of the 1990 Act (as defined herein), the District Council and the County Council are the local planning authorities for the area within which the Site (as defined herein) is located and are the authorities entitled to enforce the obligations set out in this Agreement. The County Council is also the local education authority, the local highway authority (except for trunk roads), a local waste authority and the authority with responsibility for the provision of library services in the County of Suffolk.
- (B) The Owners are the freehold owners of the Site and which ownership is registered at HM Land Registry with the Title Numbers SK346988 and SK350060.
- (C) The Developer is the owner of a charge registered against the Site and which charge is recorded in: (a) the Charges Register for the Title Number SK346988 (at the entries numbered 1 and 2), and (b) the Charges Register for the Title Number SK350060 (at the entries numbered 1 and 2).
- (D) The Developer has submitted the Planning Application (as defined herein) to the District Council and the District Council has resolved to grant the Planning Permission (as defined herein) subject to the Owners and the Developer first entering into this Agreement.

- (E) The District Council is satisfied that the planning obligations contained in this Agreement meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) in that they: (i) are necessary to make the Development acceptable in planning terms; (ii) are directly related to the Development; and (iii) fairly and reasonable relate in scale and kind to the Development.
- (F) The Parties (as defined herein) have entered into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the District Council and (where appropriate) the County Council against the Owners and their successors in title including the Developer.

1. **OPERATIVE PROVISIONS**

1.1 In this Agreement, the following words and expressions have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990, as amended;

"BCIS Index" means the Building Cost Information Service Index or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Parties;

"BCIS Index Linked " means the increase in any sum referred to in Schedules 1 and 5 by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 12 of this Agreement;

"Commencement Date" means the date that Commencement of Development occurs;

"Commencement of Development"

means, subject to clause 3.2 herein, the carrying out pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act and the use in this Agreement of the terms **"Commence the Development"** or **"Commence Development"** or **"Commenced"** shall be construed accordingly;

"Development"

means the development set out in the Planning Application and which development comprises the construction of two hundred and fifty eight (258) dwellings along with the provision of new public open space, landscaping, access and associated infrastructure;

"Dwellings"

means the residential dwellings (within use class C3) constructed as part of the Development (including a house bungalow flat or maisonette) and the use in this Agreement of the term **"Dwelling"** shall be construed accordingly;

"Market Dwellings"

means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings defined in Schedule 2 hereof;

"NPPF"

means the National Planning Policy Framework first published in March 2012 and last updated in July 2021;

"Notice A"

means a written notice confirming the proposed Commencement Date;

"Notice B"	means a written notice confirming that Commencement of Development has taken place;
"Occupation"	<p>means beneficial occupation for the purposes permitted by the Planning Permission and shall not include:</p> <p>(a) any occupation associated with the construction of the Development including daytime occupation by workmen involved in the construction of the Development; and</p> <p>(b) in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security operations</p> <p>and the use in this Agreement of the terms "Occupy" or "Occupied" or "Occupancy" or "Occupiers" shall be construed accordingly;</p>
"Parties"	means together the District Council, the County Council, the Owners and the Developer;
"Planning Application"	means the planning application (to which application the District Council applied the reference DC/21/03287/FUL) seeking FULL planning permission for the Development;
"Planning Permission"	means the planning permission granted by the District Council for the Development and which planning permission is subject to conditions;
"RPI Index"	means the "All Items" index figure of the Index of Retail Prices published by the Office for

National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Parties;

- "RPI Index Linked"** means the increase in any sum referred to in Schedules 3, 4 and 5 by an amount equivalent to the increase in the RPI Index to be calculated in accordance with Clause 12 of this Agreement;
- "Site"** means the land to the north-west of Stowupland Road, Stowmarket, Suffolk, IP14 5A and which land is identified as being the land shown edged in red on the Site Plan;
- "Site Plan"** means the drawing numbered LP.01 Rev A (dated 14.09.20 and marked 'Location Plan') a copy of which is annexed hereto;
- "Site Layout Plan"** means the drawing numbered CSL.01 Revision S, a copy of which is annexed hereto;
- "Working Days"** means any day which is not a Saturday, a Sunday, a bank or public holiday in England.

1.2 In this Agreement:

- 1.2.1 the clause or Schedule headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a part or paragraph are to a part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:

- 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in England as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
- 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Agreement include the successors in title of that party. In addition, references to the District Council and the County Council includes any successor local planning authority exercising planning powers under the 1990 Act or any successor authority exercising statutory powers in respect of matters concerning education and/or highways and/or transportation;
- 1.2.6 "including" means "including, without limitation";
- 1.2.7 any covenant by the Owners and/or the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 words importing the singular meaning where the context so admits shall include the plural meaning and vice versa;
- 1.2.9 words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and firms and all such words shall be construed interchangeably in that manner;
- 1.2.10 words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to cause permit or allow infringement of the restriction;
- 1.3 The Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. EFFECT OF THIS AGREEMENT

- 2.1 This Agreement is a Deed and is made pursuant to the provisions of Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act, the covenants contained in the Schedules to this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council and (where appropriate) the County Council.
- 2.2 To the extent that any of the covenants contained in this Agreement are not planning obligations within the meaning of the 1990 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.
- 2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the District Council and/or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 The covenants in this Agreement will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owners and/or the Developer to that statutory undertaker.
- 2.5 The covenants in this Agreement will not be enforceable against individual purchasers or lessees or Occupiers of the individual Dwellings or their mortgagees or successors in title to either the purchaser or lessee or Occupier or mortgagee, save in respect of the restriction on occupation in paragraph 2.7 of Schedule 2 which shall apply to the Affordable Housing Dwellings.
- 2.6 The covenants in this Agreement will not be enforceable against any Approved Body or their mortgagee, chargee (including any receivers appointed by a mortgagee who are not in possession) save for the obligations in Schedule 2 which shall remain binding.
- 2.7 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.

3. COMMENCEMENT DATE

- 3.1 The obligations set out in this Agreement are conditional upon:

3.1.1 The grant of the Planning Permission; and

3.1.2 the Commencement of Development

save for the provisions set out at clauses 2.1 to 2.7 (inclusive), 3.1, 3.2, 4.1 to 4.17 (inclusive) 5, 6, 7 and 11 within this Agreement which shall take effect on the date of this Agreement.

3.2 For the purposes of this Agreement only the Commencement Date and Commencement of Development will not be triggered by any of the following operations:

3.2.1 archaeological or site investigations or surveys;

3.2.2 site or soil surveys or site decontamination;

3.2.3 the clearance of the Site including any works of demolition;

3.2.4 works connected with groundworks;

3.2.5 works for the provision or diversion of drainage or mains services to prepare the Site for development;

3.2.6 erection of fencing or boarding;

3.2.7 erection of boards advertising the Development (including the erection of advertising hoardings);

3.2.8 the construction of a temporary site compound or temporary marketing suite that does not form a structure or part of a structure that will become a Dwelling after its use as a temporary marketing suite;

3.2.9 construction of temporary access roads.

4. OBLIGATIONS OF THE PARTIES

4.1 The Owners so as to bind the Site hereby covenant with the District Council and the County Council to comply with the obligations set out in the Schedules to this Agreement.

4.2 The Owners hereby covenant with the District Council and the County Council to provide the District Council and the County Council with: (a) a Notice A not less than

twenty (20) Working Days before the expected Commencement Date; and (b) a Notice B not more than five (5) Working Days after the Commencement Date.

- 4.3 The District Council and the County Council hereby covenant with the Owners to comply with their obligations set out in the Schedules to this Agreement.
- 4.4 The District Council and the County Council hereby covenant with the Owners to act reasonably, properly and diligently in exercising any discretion and in discharging their respective functions under this Agreement. In particular, where any agreement, approval, authorisation, consent or other similar affirmation is required from the District Council or the County Council under the terms of the Agreement, the District Council and the County Council will not unreasonably withhold or delay such agreement, approval, authorisation, consent or other similar affirmation PROVIDED ALWAYS that such agreement, approval, authorisation, consent or other similar affirmation may only be given in writing and only prior to the act or event to which it applies (unless otherwise agreed by the District Council or the County Council as appropriate).
- 4.5 Any covenant by the Owners not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.
- 4.6 Any obligation that prohibits the Owners from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owners to positively carry out those certain events by no later than the number of Occupations set out therein unless the context otherwise requires.
- 4.7 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs except to the extent that they have caused or contributed to that breach, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.7 nor shall the granting of any legal easements constitute an interest for the purposes of this Clause 4.7.
- 4.8 No compensation shall be payable by the District Council or the County Council to any party to this Agreement or their successors in title and assigns arising from the

terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owners and/or the Developer and at no cost to the District Council or the County Council.

- 4.9 Representatives of the District Council and/or the County Council may enter upon the Site at any reasonable time upon reasonable written notice (and immediately in the event of an emergency) to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with subject to complying with all health and safety and security requirements required by the Owners or Developer as appropriate Provided That this right shall cease and determine in relation to any Dwelling on first Occupation of that Dwelling.
- 4.10 Any agreement, covenant or obligation contained herein by any of the Parties which comprise more than one person or entity shall be joint and several and where any agreement, covenant or obligation is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately.
- 4.11 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the Parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement.
- 4.12 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent seal signature execution or approval of the owner, lessee or occupier of any Dwelling or their mortgagee or chargee or any person deriving title from them shall not be required to vary any part of this Agreement.
- 4.13 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

- 4.14 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement and such VAT is irrecoverable then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 4.15 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the District Council as such and the District Council covenants with the Owners that it will note on the local land charges register when compliance with all of the said obligations has occurred.
- 4.16 That in the event that the Owners fail to serve any of the notices that they are required by the provisions of this Agreement to serve then the District Council and/or the County Council (as appropriate) shall be entitled to payment of the various financial contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of a financial contribution and the time period for the return of any unspent financial contribution shall be extended accordingly.
- 4.17 Any of the financial contributions payable by the Owners in accordance with this agreement that are paid late will attract a daily interest rate of four percent (4%) above the Bank of England base rate on the amount due from the day that it is due until the day that it is paid.

5. **TERMINATION OF THIS AGREEMENT**

- 5.1 This Agreement will come to an end if:
- 5.1.2 the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owners or the Developer before the Commencement Date so as to render this Agreement or any part of it irrelevant, impractical or unviable; or
- 5.1.3 the Planning Permission expires.
- 5.2 Where the Agreement comes to an end under Clause 5.1 above the District Council shall, on the written request of the Owners vacate or cancel the entry made in the local land charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

6. **NOTICES**

6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by electronic mail (save in the case of the County Council) by hand or sent by first class post, pre-paid or recorded delivery and is to be sent to the following address (or to such other address as one party may notify in writing to the others at any time as its address for service):

6.1.1 for the Owners as set out above;

6.1.2 for the Developer as set out above and (a) marked for the attention of Heather O'Sullivan Company Solicitor (Heather.O'Sullivan@crestnicholson.com) or Kevin Maguire Company Secretary (Kevin.Maguire@crestnicholson.com) and (b) quoting planning application reference DC/21/03287/FUL

6.1.3 for the District Council as set out above and all notices shall: (a) be marked to the attention of the Head of Development Management; and (b) quote the planning application reference **DC/21/03287/FUL**;

6.1.4 for the County Council as set out above and all notices shall: (a) be marked for the attention of the Executive Director of Growth, Highways and Infrastructure; and (b) quote the planning application reference **DC/21/03287/FUL**.

6.2 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.2.1 if delivered by hand, at the time of delivery;

6.2.2 if sent by post, on the second Working Day after posting; or

6.2.3 if sent by recorded delivery, at the time delivery was signed for.

6.3 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

6.4 Otherwise than in relation to individual purchasers of Dwellings the Owners and the Developer shall give to the District Council and the County Council within one month of the Owners or the Developer disposing of any part of the Site written notice of the

name and address of the person or persons to whom the Site or part thereof has been transferred.

7. **COSTS OF THIS AGREEMENT**

7.1 Upon completion of this Agreement the Developer covenants to pay to the District Council its reasonable and proper legal costs (no VAT) in connection with the preparation, negotiation and completion of this Agreement.

7.2 Upon completion of this Agreement the Developer covenants to pay to the District Council a contribution of FIVE THOUSAND THREE HUNDRED AND FORTY POUNDS (£5,340.00) (no VAT) towards the District Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Developer is required to observe and perform pursuant to the terms of this Agreement.

7.3 Upon completion of this Agreement the Developer covenants to pay to the County Council its reasonable and proper legal costs (no VAT) in connection with the negotiation and completion of this Agreement.

7.4 Upon completion of this Agreement the Developer covenants to pay to the County Council a contribution of TWO THOUSAND EIGHT HUNDRED AND EIGHTY FOUR POUNDS (£2,884) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Developer is required to observe and perform pursuant to the terms of this Agreement.

8. **DETERMINATION OF DISPUTES**

8.1 Subject to Clause 8.7 herein, if any dispute arises relating to or arising out of the terms of this Agreement (except for any dispute between the Owners and the Developer), either party may give to the other written notice requiring the dispute to be determined under this Clause 8. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute.

8.2 For the purposes of this Clause 8 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

- 8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.4.
- 8.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute).
- 8.5 The Specialist is to act as an independent expert and:
- 8.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;
 - 8.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;
 - 8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
 - 8.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

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

8.5.6 the Specialist is to use all reasonable endeavours to publish his decision within thirty (30) Working Days of his appointment.

8.6 Responsibility for the costs of referring a dispute to a Specialist under this Clause 8, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

8.7 This Clause 8 does not apply to disputes in relation to matters of law or the construction or interpretation of this Agreement which will be subject to the jurisdiction of the courts of England.

9. JURISDICTION

9.1 This Agreement is to be governed by and interpreted in accordance with the law of England; and the courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement.

10. SECTION 73

10.1 In the event that any new planning permission is granted by the District Council (or granted on appeal) pursuant to a Section 73 (of the 1990 Act) application relating to the Planning Permission and unless otherwise agreed between the parties:

10.1.1 the obligations in this Agreement shall relate to and bind any subsequent planning permission in respect of the Site granted pursuant to Section 73 of the 1990 Act; and

10.1.2 the definitions of Development, Planning Application and Planning Permission in this Agreement shall be construed to include reference to any application under Section 73 of the 1990 Act, the planning permission granted thereunder and the development permitted by such subsequent planning permission; and

10.1.3 this Agreement shall be endorsed with the following words in respect of any future Section 73 application:

"The obligations in this Agreement relate to and bind the Site in respect of which a new planning permission referenced has been granted pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended)"

PROVIDED THAT nothing in this clause shall fetter the discretion of the District Council in determining any application under Section 73 of the 1990 Act or the appropriate nature and/or quantum of Section 106 obligations in so far as they are different to those contained in this Agreement and required pursuant to a determination under Section 73 of the 1990 Act whether by way of a new agreement/deed or supplemental agreement/deed pursuant to Section 106 or Section 106A of the 1990 Act.

11. **DEVELOPER'S CONSENT AND SEPARATE COVENANT**

11.1 The Developer in its capacity as the beneficiary of the legal charge referred to in Recital C above hereby confirms that it consents to the Owners binding the Site by the giving of the covenants herein and acknowledges that once it takes possession of the Site then the Developer shall be the party responsible for the delivery and/or observance and/or performance of the covenants herein.

11.2 Save for clause 7 of this Agreement, the Developer shall have no liability under this Agreement until it acquires the freehold interest in the Site in which case it will be bound by the terms and provisions of this Agreement as a successor in title to the Owners.

11.3 The Developer acknowledges and agrees not to Commence Development of the Site until it has acquired the freehold interest of the Site.

12. **INDEXATION**

12.1 Save for the Public Open Space Maintenance Contribution which is referred to in Schedule 4 of this Agreement which will be index linked from the date that such contribution sum has been agreed by the Owners and the District Council) any sum referred to in Schedules 1, 3, 4 and 5 of this Agreement (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index or RPI Index (as appropriate) and (unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

- 12.1.1 A is the sum payable under this Agreement;
- 12.1.2 B is the original sum calculated as the sum payable;
- 12.1.3 C is the BCIS Index or RPI Index as appropriate for the month 2 months before the date on which the sum is payable;
- 12.1.4 D is the BCIS Index or RPI Index as appropriate for the month 2 months before the date of this Deed; and
- 12.1.5 C/D is greater than 1

13. **COUNTERPARTS**

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

14. **EXECUTION**

IN WITNESS whereof the Parties hereto have executed this Agreement as a Deed on the day and year first before written

SCHEDULE 1

COUNTY COUNCIL CONTRIBUTIONS

1. In this Schedule 1 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Early Years & Childcare Contribution" means the sum of Three Hundred and Sixty Nine Thousand One Hundred and Forty Four Pounds (£369,144.00), BCIS Indexed Linked to be applied by the County Council solely towards the Early Years & Childcare Purposes;

"Early Years & Childcare Purposes" means the use of the Early Years & Childcare Contribution towards the building of a new facility in Stowmarket on the strategic allocation known as 'Stowmarket North – The Ashes' or alternative provision serving the Development for the education of children up to age 5 including those with special educational needs and including the reimbursement of capital funding made by the District Council or the County Council in anticipation of payment of the Early Years & Childcare Contribution;

"Education Contribution" means together the Early Years & Childcare Contribution, the Primary School Contribution, the Secondary School Contribution and the Sixth Form Contribution;

"Household Waste Contribution" means the sum of Twenty Nine Thousand One Hundred and Fifty Four Pounds (£29,154.00), RPI Index Linked to be applied by the County Council solely towards the Household Waste Purposes;

"Household Waste Purposes"	means the use of the Household Waste Contribution towards new, enhanced or improved provision serving the Development;
"Libraries Contribution"	means the sum of Fifty Five Thousand Seven Hundred and Twenty Eight Pounds (£55,728.00), RPI Index Linked to be applied by the County Council solely towards the Libraries Purposes;
"Libraries Purposes"	means the use of the Libraries Contribution towards the enhancement and improvement of Stowmarket Library serving the Development;
"Primary School Contribution"	means the sum of One Million One Hundred and Forty Eight Thousand Four Hundred and Forty Eight Pounds (£1,148,448.00) BCIS Index Linked to be applied by the County Council solely towards the Primary School Purposes;
"Primary School Purposes"	means the use of the Primary School Contribution for the provision of primary school places serving the Development (whether previously forward funded or not) and, in particular, for provision at Grace Cook Primary School;
"Secondary School Contribution"	means the sum of Eight Hundred and Eight Thousand Three Hundred and Fifty Pounds (£808,350.00), BCIS Index Linked; to be applied by the County Council solely towards the Secondary School Purposes;
"Secondary School Purposes"	means the use of the Secondary School Contribution for the provision of secondary school places serving the Development (whether previously forward funded or not)

and, in particular, for provision at Stowmarket High School as already agreed with the Department for Education (including reimbursing the Department for such forward funding) and/or Stowupland High School;

“Sixth Form Contribution”

means the sum of One Hundred and Ninety Thousand and Two Hundred Pounds (£190,200.00), BCIS Index Linked; to be applied by the County Council solely towards the Sixth Form Purposes;

“Sixth Form Purposes”

means the use of the Sixth Form Contribution for the provision of sixth form places serving the Development (whether previously forward funded or not) and, in particular, for provision at Stowupland High School and/or Stowmarket High School;

2. The Owners hereby covenant with the District Council and the County Council, as follows:
 - 2.1 Not to Occupy (or allow cause or permit the Occupation of) more than forty (40) Dwellings unless or until at least forty percent (40%) of the Education Contribution has been paid to the County Council.
 - 2.2 To pay at least forty percent (40%) of the Education Contribution to the County Council before the Occupation of more than forty (40) Dwellings.
 - 2.3 Not to Occupy (or allow, cause or permit the Occupation of) more than one hundred and forty (140) Dwellings unless and until:
 - 2.3.1 a further forty percent (40%) of the Education Contribution has been paid to the County Council; and
 - 2.3.2 the Household Waste Contribution has been paid to the County Council; and
 - 2.3.3 the Libraries Contribution has been paid to the County Council.

- 2.4 To pay the following to the County Council before the Occupation of more than one hundred and forty (140) Dwellings:
- 2.4.1 a further forty percent (40%) of the Education Contribution; and
 - 2.4.2 the Household Waste Contribution; and
 - 2.4.3 the Libraries Contribution.
- 2.5 Not to Occupy (or allow, cause or permit the Occupation of) any more than one hundred and eighty (180) Dwellings unless and until a further (and final) twenty percent (20%) of the Education Contribution has been paid to the County Council.
- 2.6 To pay a further (and final) twenty percent (20%) of the Education Contribution to the County Council before the Occupation of more than one hundred and eighty (180) Dwellings.
3. The County Council hereby covenants with the Owners, as follows:
- 3.1 To provide a written form of receipt for payment of each tranche of the Education Contribution.
 - 3.2 To place each tranche of the Education Contribution when received into an interest-bearing account with a clearing bank and to ensure that Education Contribution is applied exclusively towards the Early Years & Childcare Purposes and the Primary School Purposes and the Secondary School Purposes and the Sixth Form Purposes, as appropriate.
 - 3.3 To provide a written form of receipt for payment of the Household Waste Contribution.
 - 3.4 To place the Household Waste Contribution when received into an interest-bearing account with a clearing bank and to ensure that Household Waste Contribution is applied exclusively towards the Household Waste Purposes.
 - 3.5 To provide a written form of receipt for payment of the Libraries Contribution.
 - 3.6 To place the Libraries Contribution when received into an interest-bearing account with a clearing bank and to ensure that Libraries Contribution is applied exclusively towards the Libraries Purposes.
 - 3.7 To pay any part of the Education Contribution, Household Waste Contribution, Libraries Contribution, remaining unspent or uncommitted after ten years from the

date of first Occupation of the final Dwelling (including interest applied at the Bank of England base rate minus two basis points compounding annually at financial year end) to the party who paid such contribution within 28 Working Days of receipt of a written request made within one year of the tenth anniversary of the date of first Occupation of the final Dwelling for the repayment of any such unspent monies

SCHEDULE 2

AFFORDABLE HOUSING

1. In this Schedule 2 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Affordable Housing Construction Standard" means the construction standard to be applied to the Affordable Housing Dwellings, and which construction standard shall be either Category M4(2) or Category M4(3)(2)(a) or Category M4(3)(2)(b) as appropriate and as set out within the Affordable Housing Plan;

"Affordable Housing Dwellings" means the Affordable Rented Dwellings and any Shared Ownership Dwellings, and the use in this Schedule 2 of the term **"Affordable Housing Dwelling"** shall be construed accordingly;

"Affordable Rented Dwellings" means the sixty five (65) Dwellings to be used exclusively for the purposes of Affordable Rented Housing, subject to the terms of this Schedule 2, and the use in this Schedule 2 of the term **"Affordable Rented Dwelling"** shall be construed accordingly;

"Affordable Rented Housing" means housing that is: (a) let at a rent that is at least twenty percent (20%) below the local market rent for similar housing in the same location which may be increase annually by no more than CPI +1% or such other amount as may be prescribed by Homes England "Rent Standard Guidance" or any successor document and (b) owned and managed by an Approved Body; and (c) let to Persons in Housing Need;

"Affordable Housing Plan" means the Site Layout Plan (which sets out the precise location of the Affordable Housing

Dwellings, the type of the Affordable Housing Dwellings (i.e. if they are Affordable Rented Dwellings or Shared Ownership Dwellings), and the size of each of the Affordable Housing Dwellings)_but in addition the Affordable Housing Plan must confirm: (a) the Affordable Housing Construction Standard to be applied to each of the Affordable Housing Dwellings; and (b) that the Affordable Housing Dwellings comply with the nationally described space standards;

“Approved Body“

means any registered provider as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by Homes England pursuant to Chapter 2 of that Act and which registered provider is:

- (a) approved by the District Council; and
- (b) regulated by Homes England;

and the use in this Schedule 2 of the term **“Approved Bodies“** shall be construed accordingly

And for the avoidance of doubt an Approved Body could include the District Council;

“Building Regulations“

means the Building Regulations 2010, as amended;

“Category M4(2)“

means category M4(2) of the Building Regulations;

“Category M4(3)(2)(a)“

means category M4(3)(2)(a) of the Building Regulations;

"Category M4(3)(2)(b)"	means category M4(3)(2)(b) of the Building Regulations;
"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 (each "a Receiver") of the whole or any part of the Affordable Housing Dwellings;
"Choice Based Lettings Scheme"	means an integrated electronic and manual information system which enable 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;
"CPI"	means the Consumer Price Index;
"Homes England"	means the public body set up to fund and regulate the provision of Affordable Housing (as described in Annex 2 (Glossary) of the NPPF) in England and any successor body;
"Housing Administrator"	has the meaning ascribed to it in Section 101 of the Housing and Planning Act 2016;
"Nominations Agreement"	means an agreement (or agreements) entered into by the District Council and the Approved Body to:

(i) regulate the initial letting and subsequent letting of the Affordable Rented Dwellings and for the avoidance of any doubt the Nominations Agreement must provide that: (a) the District Council is to have 100% nomination rights for all initial lets; and (b) all subsequent lets are via the Choice Based Letting Scheme; and (c) all initial and subsequent lets shall be subject to a local connection criteria.

(ii) regulate the initial purchases and subsequent purchases of the Shared Ownership Dwellings and for the avoidance of any doubt the Nominations Agreement must provide that: (a) the District Council is to have 100% nomination rights for all initial purchases; and (b) all initial and subsequent purchases shall be subject to a local connection criteria.

And for the further avoidance of any doubt, the Nominations Agreement for the Affordable Rented Dwellings and/or the Shared Ownership Dwellings shall be in accordance with the District Council's standard template included hereto at Appendix 5 unless: (a) the District Council notifies the Owner or the Approved Body that the standard template has been updated; or (b) the District Council agrees in writing to amendments to the standard template;

"Persons in Housing Need"

means a person or persons registered on the District Council's Choice Based Lettings Scheme and the use in this Agreement of the term **"Person in Housing Need"** shall be construed accordingly;

"Protected Tenant"

means any tenant who has:

(a) exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 Act or any statutory provision for the time being in force (or any equivalent contractual right including the preserved right to buy) in respect of a particular Affordable Rented Dwelling; or

(b) exercised any statutory right to buy (or any equivalent contractual right including the preserved right to buy) in respect of a particular Affordable Rented Dwelling; or

(c) exercised a contractual right to acquire a one hundred percent (100%) interest in the lease of a Shared Ownership Dwelling

and for the avoidance of any doubt the term **"Protected Tenants"** shall include successors in title to the tenant referred to above;

"Reasonable Consideration"

means offer prices from an Approved Body which gives the Owners a reasonable consideration having regard to current market conditions in the disposal of the Affordable Housing Dwellings of a similar type and location by Approved Bodies on a grant free basis via section 106 agreements;

"Regulator of Social Housing"

means the public body set up to fund and regulate the provision of Affordable Housing (as defined in the NPPF) in England and any successor body;

"Shared Ownership Dwellings"

means the twenty six (26) Dwellings to be used exclusively for the purposes of Shared Ownership Housing, subject to the terms of this Schedule 2, and the use in this Schedule 2 of the

term **"Shared Ownership Dwelling"** shall be construed accordingly;

"Shared Ownership Housing" means housing 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 being in force in accordance with terms in the Regulator of Social Housing capital funding guide;

"Shared Ownership Lease" means a lease of over 125 years substantially in the form of the Regulator of Social Housing model lease from time to time where:

- (a) an initial purchase shall range from 10% to 70% of the equity dependent on the ability of the lessee to obtain finance;
- (b) there is the ability for the lessee to acquire increased levels of equity (up to 100%) in the Shared Ownership Dwelling at some time in the future;
- (c) the initial rent charged by the Approved Body shall not exceed 2.75% of the value of the equity retained by the Approved Body 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;

- (d) capital receipts received from increased equity acquisitions (referred to in '(b)' above) is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re-invest such capital receipts in Affordable Housing (as defined in the NPPF) within the administrative district of the District Council subject to any contrary requirements within the Regulator of Social Housing capital funding guide.

Part One

2. The Owners hereby covenant with the District Council, as follows:
 - 2.1 That four (4) of the Affordable Housing Dwellings shall be constructed to Category M4(3)(2)(a) or Category M4(3)(2)(b) standards and fifty percent (50%) of the remaining Affordable Housing Dwellings shall be constructed to Category M4(2) standard.
 - 2.2 Not to Commence the Development unless and until the Affordable Housing Plan has been submitted to the District Council for approval and the District Council has approved the Affordable Housing Plan in writing PROVIDED THAT an amended, revised or substituted Affordable Housing Plan may be approved by the District Council following the Commencement of the Development and once approved by the District Council such plan will form part of this Agreement as if the same had been fully set out herein.
 - 2.3 To provide the Affordable Housing Dwellings entirely in accordance with the approved Affordable Housing Plan.
 - 2.4 Not to Occupy (or allow, cause or permit the Occupation of) any more than sixty percent (60%) of the Market Dwellings unless and until at least fifty percent (50%) of the Affordable Housing Dwellings have been:
 - 2.4.1 constructed and are capable of being Occupied for their intended purpose; and
 - 2.4.2 transferred to the Approved Body for a Reasonable Consideration and for the purposes of this Schedule 2 only the expression "transferred" shall mean a transfer of the freehold interest or leasehold interest that comprises the relevant Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owners or the Developer (as appropriate) Provided Always that any transfer of the relevant Affordable Housing Dwellings to the Approved Body shall include the provisions contained in paragraphs A and B at Part Two of this Schedule 2.
 - 2.5 Not to Occupy (or allow, cause or permit the Occupation of) any more than seventy five percent (75%) of the Market Dwellings unless and until one hundred percent (100%) of the Affordable Housing Dwellings have been:
 - 2.5.1 constructed and are capable of being Occupied for their intended purpose; and

- 2.5.2 transferred to the Approved Body for a Reasonable Consideration and for the purposes of this Schedule 2 only the expression "transferred" shall mean a transfer of the freehold interest or leasehold interest that comprises the relevant Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owners or the Developer (as appropriate) Provided Always that any transfer of the relevant Affordable Housing Dwellings to the Approved Body shall include the provisions contained in paragraphs A and B at Part Two of this Schedule 2.
- 2.6.1 Not to Occupy (or allow, cause or permit the Occupation of) any of the Affordable Rented Dwellings unless and until the Approved Body has entered into a Nominations Agreement with the District Council in respect of the Affordable Rented Dwellings.
- 2.6.2 Not to Occupy (or allow, cause or permit the Occupation of) any of the Shared Ownership Dwellings unless and until the Approved Body has entered into a Nominations Agreement with the District Council in respect of the Shared Ownership Dwellings.
- 2.6.3 Not to Occupy (or allow, cause or permit the Occupation of) any of the Affordable Housing Dwellings unless and until the District Council has been provided with a plan that gives the postal addresses (including postcodes) of all of the Affordable Housing Dwellings.
- 2.7 Subject always to paragraph 2.8 of this Schedule 2 the Affordable Rented Dwellings transferred to the Approved Body shall be Occupied for no purpose other than as Affordable Rented Housing and the Shared Ownership Dwellings shall be Occupied for no purpose other than as Shared Ownership Housing.
- 2.8. It is Hereby Agreed and Declared:
- 2.8.1 the obligations and restrictions contained in this Schedule 2 shall not bind:
- 2.8.1.1 a Protected Tenant and their mortgagees and/or chargees and any receiver appointed by such mortgagees and/or chargees;
- 2.8.1.2 any person or body deriving title through or from a Protected Tenant (including any sub-tenant lender chargee or mortgagee);
- 2.8.1.3 a Chargee of the Approved Body with a charge over the whole or part of the Affordable Housing Dwellings or any persons or bodies deriving

title through such Chargee PROVIDED THAT the Chargee has first provided the District Council with notice in writing that they intend to dispose of the Affordable Housing Dwelling (or Affordable Housing Dwellings) 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 Dwellings to another Approved Body 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, costs and expenses AND if such disposal has not completed within the three (3) month period the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the obligations in Schedule 2 in this Agreement which provisions shall determine absolutely

Part Two

- A. The transfer of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession.

- B. The transfer deed shall contain:
 - 1. a grant by the Owners or the Developer (as appropriate) of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;

 - 2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and

 - 3. such other covenants and reservations as the Owners or the Developer (as appropriate) may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

SCHEDULE 3

HEALTHCARE AND SPORTS CONTRIBUTIONS

1. In this Schedule 3 unless the context requires otherwise the following words and expressions shall have the following meanings:

"Combs Ford Contribution" means the sum of Seventy Four Thousand Three Hundred and Fifty Pounds (£74,350.00), and which sum shall be RPI Index Linked;

"Combs Ford Contribution Purposes" means the use of the Combs Ford Contribution towards the provision of additional primary healthcare services at the Combs Ford Surgery, Combs Lane, Combs Ford, Stowmarket, Suffolk, IP14 2SY;

"NHS England" means the national commissioning authority for health services in England (or its successor body from time to time);

"Sports Facilities Contribution" means the sum of Two Hundred and Eighty Seven Thousand One Hundred and Eight Pounds (£287,108.00), and which sum shall be RPI Index Linked;

"Sports Facilities Contribution Purposes" means the use of the Sports Facilities Contribution towards: (a) increasing swimming lesson capacity and facilities at the Mid Suffolk Leisure Centre in Stowmarket (£137,845.00); and (b) improving the sports hall capacity and facilities at the Mid Suffolk Leisure Centre in Stowmarket (£125,427.00); and (c) the provision and/or improvement of 3G artificial football pitches in Stowmarket (£18,175.00); and (d) the provision and/or improvement of indoor bowls facilities in Stowmarket (£5,661.00);

"Stowhealth Contribution" means the sum of Seventy Four Thousand Three Hundred and Fifty Pounds (£74,350.00), and which sum shall be RPI Index Linked;

"Stowhealth Contribution Purposes" means the use of the Stowhealth Contribution towards the provision of additional primary healthcare services at the Stowhealth Surgery, Violet Hill House, Violet Hill Road, Stowmarket, Suffolk, IP14 1NL.

2. The Owners hereby covenant with the District Council, as follows:
 - 2.1 Not to Commence the Development unless and until the Combs Ford Contribution and the Stowhealth Contribution have been paid to the District Council.
 - 2.2 To pay the Combs Ford Contribution and the Stowhealth Contribution to the District Council before Commencement of Development.
 - 2.3 Not to Occupy (or allow, cause or permit the Occupation of) more than fifty (50) of the Dwellings unless and until the Sports Facilities Contribution has been paid to the District Council.
 - 2.4 To pay the Sports Facilities Contribution to the District Council before any more than fifty (50) of the Dwellings are Occupied.
3. The District Council hereby covenants with the Owners, as follows:
 - 3.1 To provide a written form of receipt for payment of the Combs Ford Contribution;
 - 3.2 To pay the Combs Ford Contribution to NHS England upon receipt of a document from NHS England confirming that they will:
 - 3.2.1 apply the Combs Ford Contribution exclusively towards the Combs Ford Contribution Purposes;
 - 3.2.2 provide full details of the expenditure of the Combs Ford Contribution on demand to the District Council or the Owners or the Developer (as appropriate);

- 3.2.3 return any unspent part of the Combs Ford Contribution together with interest accrued to the District Council after the expiry of seven (7) years from the date of receipt by the District Council of the Combs Ford Contribution.
- 3.3 To keep an up to date record of all payments from the Combs Ford Contribution transferred by the District Council to NHS England;
- 3.4 Following receipt of a written request (such request not to be made prior to the expiration of seven (7) years from the date of receipt by the District Council of the Combs Ford Contribution) to repay to the party who paid the Combs Ford Contribution any unspent monies of the Combs Ford Contribution held by the District Council or received by the District Council pursuant to paragraph 3.2.3 of this Schedule 3 together with interest accrued within twenty (20) Working Days of receipt of the aforementioned written request;
- 3.5 In the event that the document in the form required by paragraph 3.2 of this Schedule 3 is not received following the expiry of seven (7) years from the date of receipt of the Combs Ford Contribution by the District Council then the District Council's obligation to pay the Combs Ford Contribution to NHS England shall cease absolutely and the District Council shall refund to the party who paid the Combs Ford Contribution the unexpended contribution within twenty (20) Working Days of receipt of a written request from the Owners or the Developer (as appropriate) to do so.
4. The Owners hereby acknowledge that the District Council shall not be responsible for how the Combs Ford Contribution is utilised or in the event that NHS England does not comply with paragraph 3.2.3 of this Schedule 3 for its return above once it has transferred the Combs Ford Contribution to NHS England but without prejudice to the rights of the Owners to seek to enforce the obligations in paragraph 3.2 directly against NHS England and in which case the District Council shall provide to the Owners such assistance as it reasonably can to enforce those obligations.
- 5.1 To provide a written form of receipt for payment of the Stowhealth Contribution;
- 5.2 To pay the Stowhealth Contribution to NHS England upon receipt of a document from NHS England confirming that they will:
- 5.2.1 apply the Stowhealth Contribution exclusively towards the Stowhealth Contribution Purposes;

- 5.2.2 provide full details of the expenditure of the Stowhealth Contribution on demand to the District Council or the Owners;
 - 5.2.3 return any unspent part of the Stowhealth Contribution together with interest accrued to the District Council after the expiry of seven (7) years from the date of receipt by the District Council of the Stowhealth Contribution.
- 5.3 To keep an up to date record of all payments from the Stowhealth Contribution transferred by the District Council to NHS England;
- 5.4 Following receipt of a written request (such request not to be made prior to the expiration of seven (7) years from the date of receipt by the District Council of the Stowhealth) to repay to the party who paid the Stowhealth Contribution any unspent monies of the Stowhealth Contribution held by the District Council or received by the District Council pursuant to paragraph 5.2.3 of this Schedule 3 together with interest accrued within twenty (20) Working Days of receipt of the aforementioned written request;
- 5.5 In the event that the document in the form required by paragraph 5.2 of this Schedule 3 is not received following the expiry of seven (7) years from the date of receipt of the Stowhealth Contribution by the District Council then the District Council's obligation to pay the Stowhealth Contribution to NHS England shall cease absolutely and the District Council shall refund to the party who paid the Stowhealth Contribution the unexpended contribution within twenty (20) Working Days of receipt of a written request from the Owners to do so.
- 6. The Owners hereby acknowledge that the District Council shall not be responsible for how the Stowhealth Contribution is utilised or in the event that NHS England does not comply with paragraph 5.2.3 of this Schedule 3 for its return above once it has transferred the Stowhealth Contribution to NHS England but without prejudice to the rights of the Owners or the Developer to seek to enforce the obligations in paragraph 5.2 directly against NHS England and in which case the District Council shall provide to the Owners such assistance as it reasonably can to enforce those obligations.
- 7. The District Council hereby covenants with the Owners, as follows:
 - 7.1 To provide a written form of receipt for payment of Sports Facilities Contribution.

- 7.2 To place the Sports Facilities Contribution when received into an interest-bearing account with a clearing bank and to ensure that Sports Facilities Contribution is applied exclusively towards the Sports Facilities Contribution Purposes.
- 7.3 Following receipt of a written request (such request not to be made prior to the expiration of seven (7) years from the date of receipt by the District Council of the Sports Facilities Contribution to repay to the party who paid the Sports Facilities Contribution any unspent monies of such contribution held by the District Council or received by the District Council pursuant to paragraph 5.3 of this Schedule 3 together with interest accrued within twenty (20) Working Days of receipt of the aforementioned written request;

SCHEDULE 4

PUBLIC OPEN SPACE

1. In this Schedule 4 the following words and expressions shall have the following meanings:

"Chartered Landscape Architect"	means a chartered member of the Landscape Institute appointed by the Owners or the Developer (as appropriate);
"Landscape Institute"	means the Landscape Institute (charity registered in England and Wales with the number 1073396) of 85 Tottenham Court Road, London W1T 4TQ;
"Landscape Plan"	means the drawing numbered CREST23224 10, a copy of which is annexed hereto at Appendix 6;
"LAP"	means a Local Area for Play, which: (a) is located within an area of public open space; and (b) is in a safe position and not hidden away; and (c) is equipped and for use primarily by children aged 6 years and under;
"Management Company"	means: <ul style="list-style-type: none">(i) a private limited company established or appointed for inter alia the purpose of managing and maintaining the Public Open Space; and/or(ii) any statutory undertakers which are to take on the management of any areas of the Public Open Space in accordance with their statutory functions; and/or(iii) any Approved Body (as defined in Schedule 2) in relation to any areas of Public Open Space to be provided in areas marked for affordable housing on the Affordable Housing Plan (as defined in Schedule 2);

- "Public Open Space "** means the areas of land within the Site and shown indicatively on the Landscape Plan comprising the public open space (including the LAP and also elements of the overall SuDS for the entire Development) which shall be laid out in accordance with the approved Public Open Space Specification to enable the Public Open Space to be used by all members of the public for informal and casual recreational use PROVIDED THAT for the avoidance of any doubt the Public Open Space does not include: (a) the Dwellings and parking areas and garden space associated with those Dwellings; (b) the estate roads; and (c) any land to be used for highway purposes including highway verges;
- "Public Open Space Completion Certificate"** means a certificate or certificates in writing relating to the Public Open Space issued by the District Council that confirms that the Public Open Space has been laid out in accordance with the approved Public Open Space Specification;
- "Public Open Space Final Certificate"** means a certificate or certificates in writing issued by the District Council that confirms that the Public Open Space has been maintained and remedial works completed to the reasonable satisfaction of the District Council;
- "Public Open Space Plan"** means a HM Land Registry compliant plan that precisely identifies the areas of Public Open Space within the Site;
- "Public Open Space Management Plan"** means a management plan prepared by the Owners or the Developer (as appropriate) to be approved in writing by the District Council for the ongoing management and maintenance of the Public Open Space (including the LAP and the element of the SuDS located within the Public Open Space) including for the avoidance of doubt provisions for the rectification of any defects in any area of the Public Open Space until the completion of the relevant transfer of the Public Open Space to either the District Council or the Management Company in accordance with this Agreement;

- "Public Open Space Maintenance Contribution"** means the sum to be calculated in accordance with the formula appended as Appendix 1 to this Agreement and which shall be BCIS Index Linked from the date that such contribution is agreed between the District Council and the Owners;
- "Public Open Space Specification"** means a specification (to be approved by the District Council in writing) prepared by or in association with a Chartered Landscape Architect for the provision of the Public Open Space (including the LAP) to include the clearing, decontamination (if necessary), fencing (if necessary), levelling/profiling (as appropriate), laying out, planting and seeding of the Public Open Space to enable the Public Open Space to be used by all members of the public for recreational activities at all times without cost, exclusion or hindrance;
- "Relevant Documents"** means the Public Open Space Plan, the Public Open Space Specification and the Public Open Space Management Plan;
- "SuDS"** means the Sustainable Drainage System included in the Development.

2. The Owners hereby covenant with the District Council:
- 2.1 To submit the Relevant Documents to the District Council before Commencement of the Development;
 - 2.2 not to Commence the Development prior to submitting the Relevant Documents to the District Council for approval;
 - 2.3 to transfer the Public Open Space to the Management Company in accordance with the provisions of this Schedule unless the District Council serves the written notice referred to in paragraph 3.3 below on the Owners;
 - 2.4 in the event that the District Council serves a written notice on the Owners pursuant to paragraph 3.3 below requesting the transfer of the Public Open Space to the District Council, the Owners will transfer the Public Open Space to the District Council in accordance with the provisions of this Schedule.

3. The District Council hereby covenants with the Owners that the District Council will:
 - 3.1 use reasonable endeavours to provide approval in writing of the Relevant Documents within three months of receipt; and
 - 3.2 in the event that the Council has not provided its approval of the Relevant Documents within three months of receipt then the Relevant Documents are deemed to have been approved by the District Council;
 - 3.3 in the event that the District Council elects to accept the transfer of the Public Open Space, it shall serve a written notice to this effect upon the Owners no later than six weeks from the date of grant of the Planning Permission and such notice shall be accompanied by a written statement advising of the Public Open Space Maintenance Sum payable to the District Council upon transfer of the Public Open Space (including a detailed calculation of such sum).

4. The Owners hereby covenant with the District Council, as follows
 - 4.1 Not to Occupy (or allow, cause or permit the Occupation of) any of the Dwellings unless and until the Relevant Documents have been approved by the District Council in writing or are deemed approved pursuant to paragraph 3.2 above.
 - 4.2 Not to Occupy (or allow, cause or permit the Occupation of) more than fifty percent (50%) of the Dwellings unless and until:
 - 4.2.1 at least fifty percent (50%) of the Public Open Space has been provided in accordance with the approved Public Open Space Plan and the approved Public Open Space Specifications; and
 - 4.2.2 the District Council has issued a Public Open Space Completion Certificate for the Public Open Space provided.
 - 4.3 Not to Occupy (or allow, cause or permit the Occupation of) more than seventy five percent (75%) of the Dwellings unless and until:
 - 4.3.1 one hundred percent (100%) of the Public Open Space (including the LAP) has been provided in accordance with the approved Public Open Space Plan and the approved Public Open Space Specification;

- 4.3.2 and the District Council has issued a Public Open Space Completion Certificate for all of the Public Open Space (including the LAP).
- 4.4 To:
- 4.4.1 maintain the Public Open Space in accordance with the approved Public Open Space Management Plan following the issue of the Public Open Space Completion Certificate and until such time as the transfer described in paragraph 4.7 of this Schedule 4 (below) have been completed; and
- 4.4.2 carry out and complete any remedial works to the Public Open Space as identified by the District Council pursuant to paragraph 4.5 of this Schedule 4 (below).
- 4.5 Upon the expiry of one (1) year from the issue of a Public Open Space Completion Certificate the Owners shall invite the District Council in writing to inspect the Public Open Space and identify any remedial works required to be carried out on the Public Open Space.
- 4.6 Within three (3) months of receipt of any list of remedial works required to be carried out on the Public Open Space (or within the next planting season where this is later and appropriate) the Owners shall complete the said remedial works and invite the District Council in writing to re-inspect the Public Open Space and issue the Public Open Space Final Certificate.
- 4.7 That once the District Council has issued one hundred percent (100%) of the Public Open Space with a Public Open Space Final Certificate the Owners shall transfer the Public Open Space to either the District Council or the Management Company (as the case may be) PROVIDED THAT for the avoidance of any doubt:
- 4.7.1 the proposed transferee shall be in accordance with paragraph 2.3 of this Schedule 4 unless the District Council elects to accept the transfer of the Public Open Space pursuant to paragraph 3.3 of this Schedule 4; and
- 4.7.2 the transfer shall be for the nominal consideration of One Pound (£1.00); and
- 4.7.3 the Public Open Space shall free of encumbrances and with all necessary easements and vacant possession and with the reasonable legal fees for such transfer being the responsibility of the Owners; and

- 4.7.4 in the event that the Public Open Space is transferred to the District Council the Owners shall pay the Public Open Space Maintenance Contribution to the District Council at the same time as the transfer of the Public Open Space has been completed.
- 4.8 To include the following provisions in any transfer of the Public Open Space:
- 4.8.1 covenants to commit the transferee to permit the Public Open Space to be used exclusively by all members of the public for the purposes of recreation without cost, exclusion or hindrance; and
 - 4.8.2 covenants to commit the transferee to maintain the Public Open Space in accordance with the Public Open Space Management Plan; and
 - 4.8.3 covenants that the transferee will not transfer any part of the Public Open Space into the individual ownership of the owners of the Dwellings; and
 - 4.8.4 covenants that the transferee will comply with the provisions of this Agreement; and
 - 4.8.5 obligations that the transferee will (if the District Council so requires) enter into a direct covenant with the District Council to perform the obligations set out in paragraphs 4.8.1, 4.8.2, 4.8.3 and 4.8.4 of this Schedule 4.
- 4.9 To provide a copy of the completed transfer (as referred to in paragraph 4.7 of this Schedule 4) to the District Council in relation to the Public Open Space and to inform the District Council in writing of the contact details of any Management Company.
- 4.10 In the event that the Public Open Space is transferred to a Management Company, to include in each transfer or lease of a Dwelling (including for the avoidance of doubt any Affordable Housing Dwelling) an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Public Open Space.

SCHEDULE 5

HIGHWAYS

1. In this Schedule 5 the following words and expressions shall have the following meanings:

- "Ashes Farm Development"** means the development of land at Ashes Farm, Newton Road, Stowmarket pursuant to the planning permission DC/20/01036 or any subsequent planning permission granted for that land pursuant to an application made under Section 73 of the 1990 Act or otherwise;
- "Bus Service Contribution"** means the sum of Two Hundred and Thirty One Thousand One Hundred and Eighty Two Pounds and Eighty Pence (£231,182.80), and which sum shall be RPI Index Linked;
- "Bus Service Contribution Purposes"** means the use of the Bus Service Contribution towards the provision of bus services to serve this Development and the Ashes Farm Development which may be new services or extensions to existing services;
- "Connectivity"** means the cycling, pedestrian and vehicular connections between the Site and the neighbouring Ashes Farm Development, and which connections are shown on the Connectivity Plan;
- "Connectivity Plan"** means the drawing titled 'Connectivity Plan' Revision E and dated 25 August 2022, a copy of which drawing is attached hereto as Appendix 2;
- "Footpath Contribution"** means the sum of Ten Thousand Pounds (£10,000), and which sum shall be RPI Index Linked;

"Footpath Purposes"	Contribution	means the use of the Footpath Contribution towards the legal and administrative costs together with ancillary officer time incurred by the County Council for putting in place any statutory order(s) or agreements for any proposed alterations to the legal status of Stowmarket Public Footpath 8 (which may also include Stowmarket Public Footpath 6);
"Footpath Works"		means works identified in the SCC letter dated 6 June 2022, to: (a) enhance Stowmarket Public Footpath 8 to a 3m wide path and a sealed surface, and (b) provide safe crossings of roads by Stowmarket Public Footpath 8 to include such raised platforms and signage to ensure users of Stowmarket Public Footpath 8 have priority as are deemed necessary by the County Council before consenting to delivery of the works;
"Highway Works Agreement"		means an agreement entered into: <ul style="list-style-type: none"> a) for the construction and completion of the Improvement Scheme; and b) by the County Council and one or more of the parties who signed the Memorandum of Understanding; and c) pursuant to the provisions of Sections 38 and 278 of the Highways Act 1980;
"Improvement Scheme"		means the Stowupland Road B1115/A1120 Improvement Scheme that is necessary to mitigate the impact of the Development and other nearby developments and which improvement scheme is shown indicatively in the Improvement Scheme Plan;
"Improvement Scheme Plan"		means the drawing numbered Z301-PL-SK-007 (a copy of which is annexed hereto at Appendix 3) which identifies the location and extent of the Improvement Scheme;

"LA078 Development"	means the development of the land identified in the District Council's Local Plan as site LA078 (being land to the south of Stowmarket Road, Stowupland) pursuant to a planning permission granted by the District Council or by the Secretary of State (for Levelling Up, Housing and Communities) on appeal;
"Memorandum of Understanding"	means the memorandum of understanding annexed hereto at Appendix 4 and which memorandum of understanding: <ul style="list-style-type: none"> a) relates to Improvement Scheme; and b) has been signed on behalf of the Developer and dated by them on 25 May 2022; and c) has been signed on behalf of St Philips and dated by them on 25 May 2022; and d) has been signed on behalf of Taylor Wimpey UK Limited and dated by them on 24 May 2022; and e) commits the Developer, St Philips and Taylor Wimpey UK Limited to cooperating to ensure timely delivery of the Improvement Scheme;
"Spine Road"	means the main distributor road that runs through the Site from Stowupland Road (at the point marked with a blue triangle on the Connectivity Plan) up to the boundary of the neighbouring Ashes Farm Development (at the point marked with a grey triangle on the Connectivity Plan);
"Travel Plan Monitoring Fee"	means the sum of One Thousand Pounds (£1,000.00) RPI Index Linked per annum for at least 5 years to be applied by the County Council solely towards the Travel Plan Monitoring Fee Purposes;
"Travel Plan Monitoring Fee Purposes"	means the use of the Travel Plan Monitoring Fee towards the monitoring of the Travel Plan submitted as part of the Planning Application and approved by the County Council.

2. The Owners hereby covenant with the County Council, as follows:
- 2.1 Not to Commence the Development unless and until the Footpath Contribution has been paid to the County Council.
 - 2.2 To pay the Footpath Contribution to the County Council before Commencement of Development.
 - 2.3 Not to Occupy (or allow, cause or permit the Occupation of) the fiftieth (50th) Dwelling unless and until One Thousand Pounds (£1000) RPI Index Linked of the Travel Plan Monitoring Fee has been paid to the County Council.
 - 2.4 To pay One Thousand Pounds (£1000) of the Travel Plan Monitoring Fee to the County Council before first Occupation of the fiftieth (50th) Dwelling and thereafter to pay a further One Thousand Pounds (£1000) of the Travel Plan Monitoring Fee to the County Council no later than each subsequent anniversary thereafter for a minimum period of five years or until the first Occupation of the final Dwelling whichever is the longer.
 - 2.5 Not to Occupy (or allow, cause or permit the Occupation of) more than forty (40) Dwellings unless and until the Bus Service Contribution has been paid to the County Council
 - 2.6 To pay the Bus Service Contribution to the County Council prior to the Occupation of more than forty (40) Dwellings.
 - 2.7 Not to Occupy (or allow, cause or permit the Occupation of) more than fifty (50) of the Dwellings unless and until the Footpath Works on the Site have been completed to the reasonable satisfaction of the County Council.
 - 2.8 To complete the Footpath Works on the Site to the reasonable satisfaction of the County Council before more than fifty (50) of the Dwellings are Occupied.
 - 2.9 Not to Occupy (or allow, cause or permit the Occupation of) any more than seventy-five (75) of the Dwellings unless and until the Highways Works Agreement has been entered into and the Improvement Scheme has been completed PROVIDED THAT for the purposes of this paragraph 2.9 of this Schedule 5 only the term "Dwellings" includes any residential dwellings

located within the Site, the Ashes Farm Development and the LA078 Development.

2.10 Not to Occupy (or allow, cause or permit the Occupation of) any more than one hundred and twenty five (125) the Dwellings unless and until the Spine Road has been completed to a standard such that it is capable of being adopted by the County Council as highway maintainable at public expense PROVIDED THAT for the avoidance of any doubt the Spine Road has not been completed unless it has been constructed up to the point where it abuts the neighbouring Ashes Farm Development PROVIDED FURTHER THAT for the avoidance of any doubt the Owners are not required to carry out any works within the Ashes Farm Development.

2.11.1 To allow all cycleways, footpaths and vehicular roads from the neighbouring Ashes Farm Development to connect to the Site (which connections are shown indicatively on the Connectivity Plan) such that all cyclists, pedestrians and road users may cycle, walk or drive from and to the neighbouring Ashes Farm Development without any impediment.

2.11.2 Not to prevent by means of any physical barrier or otherwise (including any financial ransom) full Connectivity between the Site and the neighbouring Ashes Farm Development.

A s h e s Farm Development.

2.12 To cooperate with the County Council so far as is reasonably practical and is within the Owners' legal ability or powers as owner of the Site to do so to facilitate any change in legal status of Stowmarket Public Footpath 8 to either a bridleway or cycle track and to widen it as necessary to provide a minimum width of 3 metres such cooperation to include:

2.12.1 not unreasonably objecting to or seeking compensation in respect of any order that seeks to upgrade (amongst other effects) the status of the Stowmarket Public Footpath 8 to a bridleway or cycle track and to widen such;

2.12.2 if requested by the County Council to do so to enter into an agreement pursuant to the Highways Act 1980 or the Cycle Tracks Act 1984 (as the case may be) to upgrade the status of the Stowmarket Public Footpath 8 to a bridleway or cycle track and to widen such as set out above and without

request for compensation and for the avoidance of doubt each party shall bear its own legal costs in respect of entering into such an agreement; and

2.12.3 subject to the County Council providing all necessary and relevant information to the Owners beforehand not unreasonably withholding or delaying any response to a request from the County Council in respect of the above change in status and not unreasonably withholding or delaying any agreement that may be required pursuant to para 2.12.2 of this Schedule 5.

3. The County Council hereby covenants with the Owners, as follows:

- 3.1 To provide a written form of receipt for payment of Footpath Contribution, the Bus Service Contribution and the Travel Plan Monitoring Fee.
- 3.2 To place the Footpath Contribution when received into an interest-bearing account with a clearing bank and to ensure that Footpath Contribution is applied exclusively towards the Footpath Contribution Purposes.
- 3.3 To place the Bus Service Contribution when received into an interest-bearing account with a clearing bank and to ensure that Bus Service Contribution is applied exclusively towards the Bus Service Contribution Purposes.
- 3.4 To place the Travel Plan Monitoring Fee when received into an interest-bearing account with a clearing bank and to ensure that Travel Plan Monitoring Fee is applied exclusively towards the Travel Plan Monitoring Fee Purposes.
- 3.5 To pay any part of the Bus Service Contribution, Footpath Contribution remaining unspent or uncommitted after ten years from the date of first Occupation of the final Dwelling (including interest applied at the Bank of England base rate minus two basis points compounding annually at financial year end) to the party who paid such contribution within 28 Working Days of receipt of a written request made within one year of the tenth anniversary of the date of first Occupation of the final Dwelling for the repayment of any such unspent monies.

The **COMMON SEAL** of)
MID SUFFOLK DISTRICT COUNCIL)
was affixed in the presence of:)

Authorised Signatory

The **COMMON SEAL** of)
SUFFOLK COUNTY COUNCIL)
was affixed in the presence of:)



Authorised Signatory



EXECUTED as a DEED by)
as attorney for)
CREST NICHOLSON OPERATIONS LIMITED)
In the presence of:

Witness Signature:
Witness Name:
Witness Address:
Witness Occupation:

EXECUTED as a DEED by)
JOHN HENRY DIAPER)
In the presence of:

Witness Signature:
Witness Name:
Witness Address:
Witness Occupation:

EXECUTED as a DEED by)
DAVID JAMES DIAPER)

In the presence of:

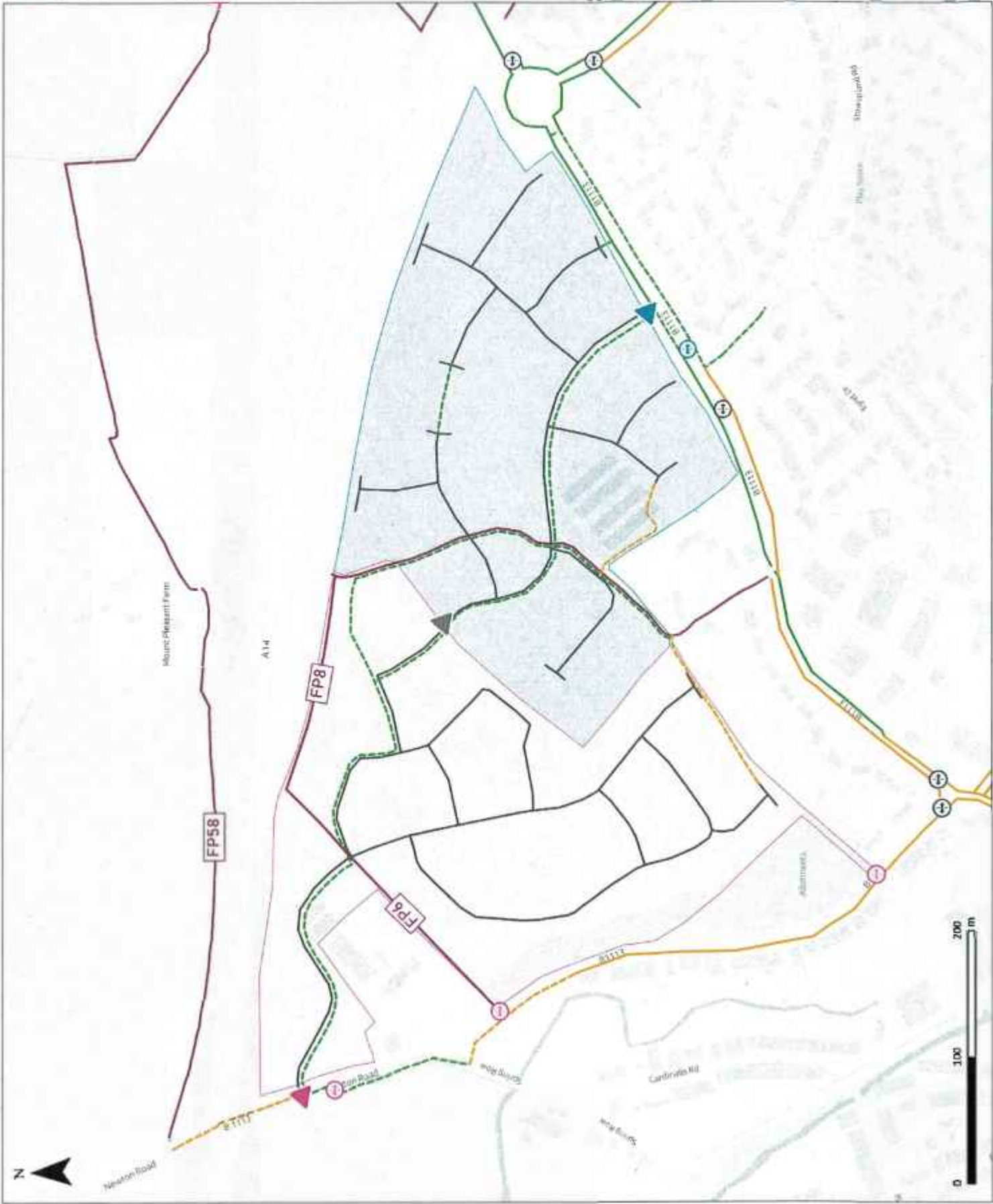
Witness Signature:
Witness Name:
Witness Address:
Witness Occupation:

Appendix 1

Formula for Calculating Public Open Space Contribution

**Appendix 2
Connectivity Plan**

- St Philips Site boundary
- Crest Nicholson Site boundary
- Internal Road network
- Pedestrian Crossings
- Existing Pedestrian Crossing
- Proposed Pedestrian Crossing (St Philips)
- Proposed Pedestrian Crossing (Crest Nicholson)
- Vehicular Access Point
- Newton Road
- Connection Between Development Phases
- Stowupland Road
- Pedestrian Connections
- Existing Footway
- Existing Public Right of Way
- Proposed Footway/Footpath Connection
- Pedestrian and Cycle Connections
- Existing Shared Footway/Cycleway
- Proposed Pedestrian and Cycle Connection



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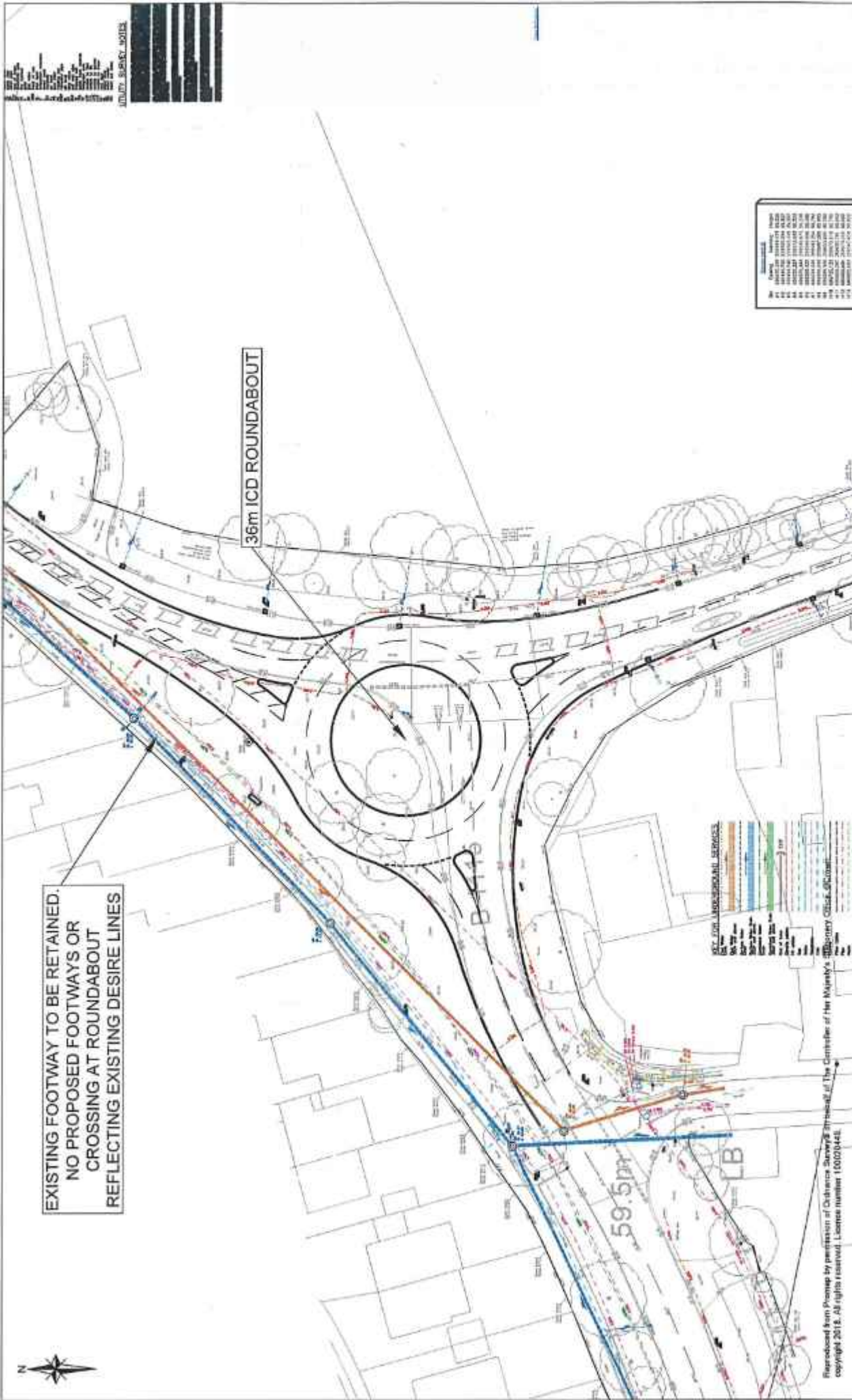
ST PHILIPS LAND LTD
 CREST NICHOLSON

Ashes Farm, Stowmarket

Connectivity Plan

01
 06 38 25/08/2022

**Appendix 3
Improvement Scheme Plan**



EXISTING FOOTWAY TO BE RETAINED.
 NO PROPOSED FOOTWAYS OR
 CROSSING AT ROUNDABOUT
 REFLECTING EXISTING DESIRE LINES

36m ICD ROUNDABOUT

59.5m

SECTION ROUNDABOUT SERVICES

1	Water
2	Gas
3	Electricity
4	Telecommunications
5	Drainage
6	Other

1	Issue
2	Revised
3	Final
4	As Built
5	Final
6	Final
7	Final
8	Final
9	Final
10	Final
11	Final
12	Final
13	Final
14	Final
15	Final
16	Final
17	Final
18	Final
19	Final
20	Final

REV	DESCRIPTION	CH	FN	DATE	PROJECT TITLE	CLIENT	DATE	ISSUE STATUS	DRAWING NUMBER	REV	
					STOWMARKET ROAD STOWUPLAND	TAYLOR WIMPEY	Nov 20				Z301_PL_SK_007
					DRAWING TITLE	DESIGNED (DRAWN)	CHECKED (PASSED)	SCALE (R/F)			
					36m ICD ROUNDABOUT	DS	DS	-	1:500	PRELIMINARY	

CANNON
 CONSULTING ENGINEERS
Highways, Transport & Infrastructure Planning

Cannon Consulting Engineers
 Cambridge House, Kirtford, Newmarket, Cambs, CB8 7PN
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Appendix 4
Memorandum of Understanding

Stowupland Road B1115/A1120 Improvement Scheme
Memorandum of Understanding

May 2022

1 Purpose

This Memorandum of Understanding (MoU) sets out the principles for cooperation between Crest Nicholson Operations Ltd, St Philips and Taylor Wimpey UK Ltd in order to secure the delivery of a junction improvement scheme on the B1115/A1120 junction in Stowupland.

The improvement scheme is required in order to mitigate the impact of the following developments:

- Crest Nicholson Operations Ltd – full planning application for 258 new homes
- St Philips – outline planning application for 300 new homes
- Taylor Wimpey UK Ltd – proposals for approximately 300 new homes

The scheme is required to mitigate the impact of each individual site, so there is a mutual benefit to carrying out these works in partnership.

2 Partnership aims and objectives

The overarching aim of this partnership is to fund the design and construction of a junction improvement scheme on the B1115/A1120 junction in general accordance with drawing Z301-PL-SK-007.

Specific objectives are:

To provide the design of a scheme that mitigates the highways impact of all three sites for the approval of Babergh Mid Suffolk District Council, in consultation with Suffolk Highways, prior to 1st occupation across the three sites

To complete the scheme, as approved by Suffolk Highways (under a S278 Agreement) prior to the 75th occupation across the three sites.

A planning condition will be imposed on each application to ensure enforceability of the design and completion of the junction improvement scheme.

3 Funding Arrangement

The design and construction costs of the scheme will be shared across all three parties fairly and proportionately under a formal legally binding cost share agreement.

Crest Nicholson Operations Ltd will take on the lead role and be responsible for the design and construction of the scheme with a Side Agreement in place to secure funding from the other parties.

St Philips and Taylor Wimpey UK Ltd will have step in rights to deliver the junction improvement scheme in accordance with the timings specified, if required; to safeguard the delivery of the junction improvement scheme.

4 Signatories

Signed on behalf of Crest Nicholson Operations Ltd



ROBERT BIAS, LAND MANAGER Date 25/05/2022
[NAME, POSITION]

Signed on behalf of St Philips

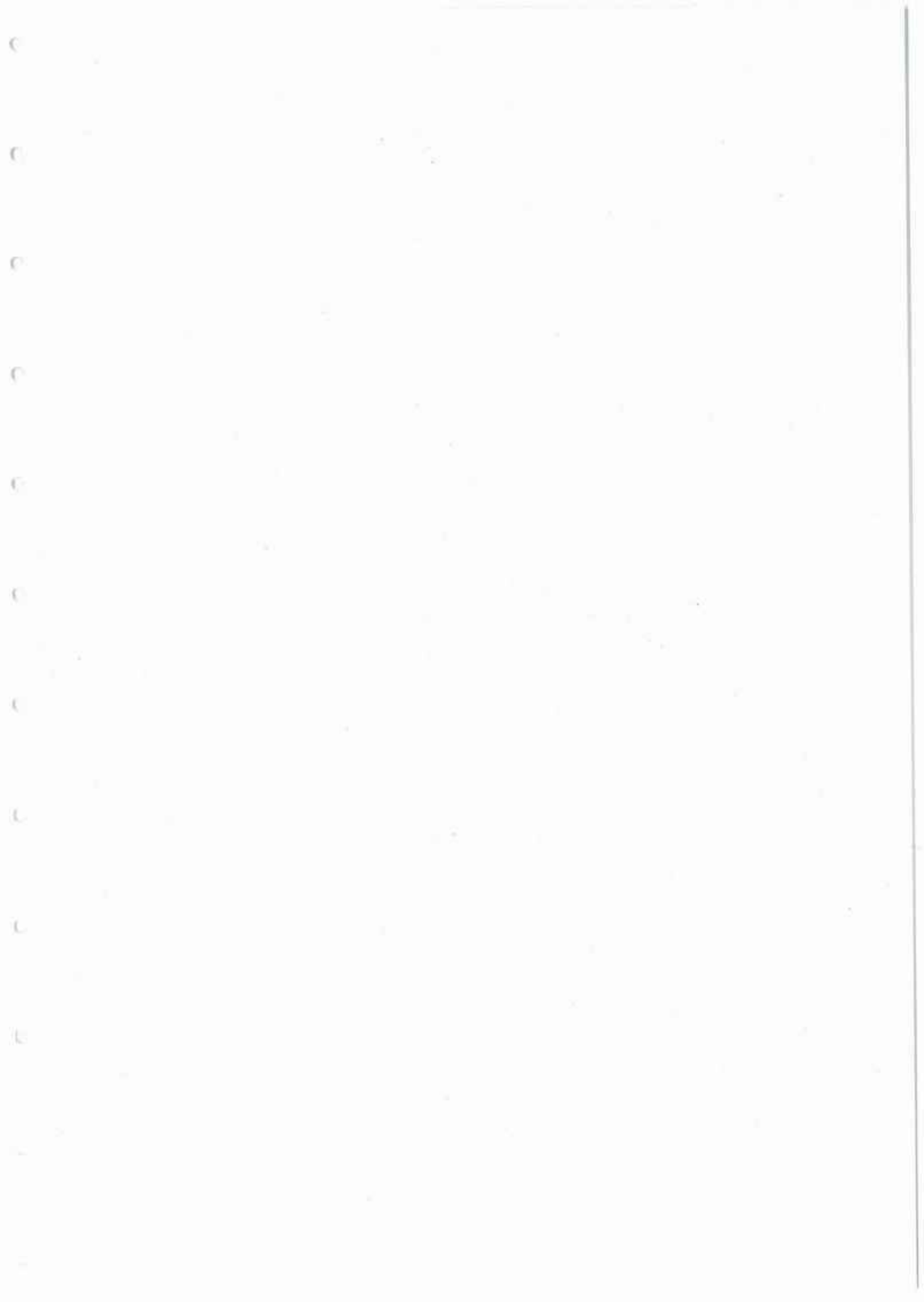


REBECCA BIRCH, DEVELOPMENT MANAGER Date 25 MAY 2022
[NAME, POSITION]

Signed on behalf of Taylor Wimpey UK Ltd



Struan Power, Strategic Projects Director Date 24 May 2022
[NAME, POSITION]



Appendix 5
Standard Template for the Nominations Agreement

otherwise nominated by the Council pursuant to this Deed as varied from time to time and XX Dwellings shall be Shared Ownership Dwellings and shall be occupied by persons who meet the local connection criteria and otherwise in accordance with the Government's Help to Buy Scheme (or other subsequent scheme) and Affordable Housing Units shall be construed accordingly.

- 1.3 'Affordable Housing Scheme' means the affordable housing scheme to be submitted to the District Council for its written approval for the provision of Affordable Housing as part of the Development detailing:
- i) the plots and location;
 - ii) bedroom numbers per Dwelling;
 - iii) Dwelling size; and
 - iv) tenure
- 1.4 'Affordable Rent' means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable
- 1.5 'Affordable Rent Dwelling' means an Affordable Housing Unit made available by a Registered Provider as low-cost rent accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent (inclusive of any service charges applicable) for a dwelling of comparable size in the same location.
- 1.6 'Allocations Policy' means the policy adopted by the Council which governs which households are eligible to occupy Affordable Housing, in line with relevant statutory duties. It also includes the relative priority applicants are awarded to reflect their need for housing under the policy.

- 1.7 'Chargee' means any mortgagee or chargee of the RP who is in possession or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or charge to realise its security or any administrator (howsoever appointed) including a housing administrator.
- 1.8 'Chargee's Duties' means the tasks and duties set out in Clause 12.4 of this deed.
- 1.9 'Choice Based Lettings Scheme' means an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Lettings Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the Council is a party.
- 1.10 'Dwelling' means a dwelling (including a house flat or bungalow and including both Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
- 1.11 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings Scheme (or any replacement or similar s y s t e m in place at the time
- 1.12 'Homes England' means Homes England or such other organisation as may from time to time be the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers

- 1.13 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Rent dwelling
- 1.14 'Initial Purchase' means the first purchase of such newly constructed and previously unoccupied Shared Ownership Dwelling
- 1.15 'Local Connection Criteria' means an individual who immediately before taking up occupation of an Affordable Housing Unit meets the criteria for a local connection to the District of XXXX as defined in the relevant District's Allocations Policy or successor documents.
- 1.16 'Mutual Exchange' means the procedure by which a tenant may exchange their house with another council or housing association tenant
- 1.17 'Nomination List' means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA
- 1.18 'Nominee' means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the RP as best meeting the criteria for the category of Affordable Rent Dwelling in respect of which the RP is to select a person from the Nomination List and offer a Tenancy Agreement
- 1.19 'Practical Completion' means issue of a certificate of practical completion by the RP's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the RP the issue of a certificate of practical completion by that other party's surveyor
- 1.20 'Property' means the land and dwellings at XXXX Suffolk shown edged red on the plan annexed
- 1.21 'Protected Tenant' means any Nominee who has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any

statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit

- 1.22 'Registered Provider' means a registered provider of social housing as defined in section 80(2) of the Housing and Regeneration Act 2008 and listed in the register kept by Homes England under Chapter III of that Act and for the avoidance of doubt this could include the Council.
- 1.23 'Shared Ownership Dwelling' means an Affordable Housing Unit to be advertised via the Help to Buy Agent and let to an individual who meets the Local Connection Criteria and other Homes England eligibility criteria on a Shared Ownership Lease in accordance with the terms as set out in the Capital Funding Guide published by Homes England and any other publication that supercedes it and 'Shared Ownership Dwellings' shall be construed accordingly.
- 1.24 '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:
- (a) not more than 70% 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;
 - (b) power to the purchaser to increase their ownership up to 100% if they so wish;
 - (c) 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 Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England.

- 1.25 '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 (1) and the Council (2)
- 1.26 'Staircasing' means the acquisition after the date of the Initial Purchase of additional tranches of equity in the Shared Ownership Dwelling as set out in the Shared Ownership Lease for that Affordable Housing Unit and as detailed in the Capital Funding Guide published by Homes England and any other publication that supercedes it.
- 1.27 'Tenancy Agreement' means an assured tenancy agreement in a form prepared by the RP and containing terms which accord with the form of tenancy agreement being used by the RP from time to time for its general lettings
- 1.28 'Vacancy Notice' means a written notice (in a form to be agreed between the RP and given by the RP to the Council within five (5) weeks from the date of this Deed) the function of such notice being the notification to the Council by the RP of the expected date on which the construction and fitting out of the Affordable Rented Dwellings will be complete

- 1.29 'Void' means an Affordable Rent Dwelling which is vacant otherwise than as a result of the tenant having:
- 1.29.1 moved to other accommodation either by transfer or decant provided by the RP
 - 1.29.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider
 - 1.29.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere
- 1.30 'Void Notice' means a written notice given by the RP to the Council (in a form to be agreed between the RP and the Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the Council of a void in respect of an Affordable Rent Dwelling

2 Enabling Provisions

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

3 Procedure

The parties agree that the 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

4 Initial Lets/Initial Purchase

In relation to the Initial Lets and Initial Sale of any Affordable Housing Units the following provisions shall apply:

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

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

5. Voids

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

6. Supplemental provisions relating to allocating Initial Lets and Voids

6.1 Where there are two (2) or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.14 of this Deed and thereafter subject to clause 6.2 and 6.3 of this Deed, preference must be given to the applicant/s who have the highest housing need according to the Council's current allocations

p o l i c y

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

7. RP covenants

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

- 7.1 To ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units
- 7.2 To ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or as low-cost home ownership and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider
- 7.3 To construct the Affordable Housing Units in accordance with Homes England requirements and the Affordable Housing Scheme

8. Alteration of lists

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

9. Notices

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

10. Transfer to other Registered Provider

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

11 Disputes

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

12 Agreements and declarations

The parties agree:

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

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

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

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

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

12.3.3 any mortgagee and any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title to either of them.

12.4 The Chargee shall prior to seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge give not less than two (2) months' prior notice to the Council of its intention to dispose and:

12.4.1 in the event that the Council responds within one (1) month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its

reasonable endeavours to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee

12.4.2 if the Council does not serve its response to the notice within the said period of one (1) month contained in clause 12.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this Deed.

12.4.3 if the Council or any other person cannot within two (2) months of the date of service of its response under clause 12.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 12.4 the Chargee shall be entitled to dispose free of the restrictions set out in this deed PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage

13. Mutual Exchanges

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

14. Shared Ownership Dwellings - Capital Receipts from Staircasing

Capital receipts received by the RP for shares sold between 81% and 100% must be recycled and reinvested in new Affordable Housing within the District of Babergh.

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

Signatories:

Babergh/Mid Suffolk District Council

Registered Provider

**Appendix 6
Landscape Plan**

