

DATE 12 May

2023

(1) WEST SUFFOLK COUNCIL

(2) SUFFOLK COUNTY COUNCIL

**(3) T.A.P. INVESTMENTS LIMITED and UNEX (NO.3) LIMITED and
OFTENFACT LIMITED**

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

relating to

Land at Black Bear Lane High Street Newmarket Suffolk

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

DATE

12 May

2023

PARTIES:

- (1) **WEST SUFFOLK COUNCIL** of West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU (hereinafter called the "**Council**")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX (hereinafter called the "**County Council**")
- (3) **T.A.P. INVESTMENTS LIMITED** (company number 2834017) **and UNEX (NO.3) LIMITED** (company number 06877529) **and OFTENFACT LIMITED** (company number 2740915) all of Unex House Church Lane Stetchworth Newmarket Suffolk CB8 9TN (hereinafter called the "**Owners**")

INTRODUCTION

- A The Council is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- B The County Council is the local highway authority (except for trunk roads) the local education authority the local library authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
- C T.A.P. Investments Limited is the freehold owner of part of the Site which is registered at HM Land Registry under title number SK169495 and Unex (No.3) Limited is the freehold owner of part of the Site which is registered at HM Land Registry under title numbers SK304810 and SK129971 and Oftenfact Limited is the freehold owner of part of the Site which is registered at HM Land Registry under title number SK52701
- D The Owners submitted the Application to the Council and the Owners have appealed to the Planning Inspectorate against the Council's non-determination of the Application
- E The Parties agree to enter into this Deed to regulate the Development to secure the necessary planning obligations that they

consider should be required if the Planning Inspectorate decide to allow the Owners Appeal

- F The Council and the County Council consider and the Owners acknowledge that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations necessary to meet policy requirements if the Planning Inspectorate decides to allow the Appeal

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing Contribution"	where the 30% of Dwellings results in a fraction or part of a Dwelling that fraction or part is to be a financial contribution payable to the Council and calculated in accordance with Appendix 2 of the Councils Affordable Housing Supplementary Planning Document 2019 (example: 30% of 123 Dwellings= 36.9 so the 0.9 fraction would be a financial contribution)
"Affordable Housing"	has the same meaning as that term is defined in Annex 2 of the Ministry of Housing Communities & Local Government National Planning Policy Framework document dated July 2021
"Affordable Housing Units"	ten percent (10%) (rounded up) of the Dwellings to be Shared Ownership and thirty per cent (30%) of the Dwellings less the Shared Ownership to be Affordable Housing for Rent
"Affordable Housing For Rent"	the Affordable Housing Units to be provided by a Registered Provider by way of social rent or affordable rent (as defined by the Housing and

	Regeneration Act 2008 Section 69) or with a rent charged at a level up to 80% of the equivalent local market rent (including service charges where applicable) and in all cases also at a level that does not exceed the local housing allowance
"Appeal"	the appeal against non-determination of the Application submitted by the Owners to the Planning Inspectorate with reference number APP/F3545/Y/22/3303353 and reference number APP/F3545/W/22/3303347
"Application"	the application s for planning permission to develop the Site received by the Council on 9 June 2021 bearing the Council's reference number DC/21/1242/OUT
"BCIS Index"	the All In Tender Price Index published by the Building Cost Information Service or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto
"BCIS Indexed"	the increase in any sum referred to in the Second Schedule and the Third Schedule (other than those referred to as RPI Indexed) by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 10 of this Deed
"Chargee"	any mortgagee or chargee of the Registered Provider or the owner of the Affordable Housing Units or any receiver or manager (including administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (however appointed) including a housing administrator
"Commencement of	the date on which any material operation (as defined in Section 56(4) of the Act) forming

"Development"	part of the Development begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of site survey site clearance demolition and strip-out work archaeological investigations investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions diversion and laying or removal of services erection of any temporary means of enclosure or temporary site accommodation the temporary display of site notices or advertisements and "Commenced" and "Commence Development" shall be construed accordingly
"Completion of Development"	the date that the last Dwelling is first Occupied
"Development"	the development of the Site (that may be approved by the Planning Inspectorate pursuant to the Appeal against the refusal of the Application) described as outline planning (means of access to be considered) - a. provision of up to 123 residential dwellings (class C3); b. the part demolition extension and conversion of the former White Lion public house to provide up to 562 sqm of commercial space (classes E(c) (i) e(c)(ii); e(c)(iii)); c. convenience store providing up to 371 sqm of floor space (class E(a)); together with public open space landscaping and land reserved for a dedicated horse walk
"Dwelling"	a dwelling (including a house flat or bungalow and including both Open Market Dwellings and Affordable Housing Units) to be constructed pursuant to the Planning Permission and "Dwelling" and "Dwellings" shall be construed accordingly
"Highways Contribution"	fifteen thousand pounds (£15,000) BCIS Indexed
"Homes England"	the independent regulator for affordable

	housing in England (formerly known as Homes and Communities Agency) or such other organisation or body that replaces it
"Late Payment Interest"	interest at four (4) per cent above the base lending rate of the Bank of England from time to time
"Library Contribution"	twenty-six thousand five hundred and sixty-eight pounds (£26,568) (such figure subject to pro rata reduction in the event that consent is granted for less than 123 Dwellings) BCIS Indexed
"NHS Contribution"	seventy-three thousand eight hundred pounds (£73,800) (such figure subject to pro rata reduction in the event that consent is granted for less than 123 Dwellings) BCIS Indexed
"Occupation"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupied and "Occupy" shall be construed accordingly
"Open Market Dwellings"	those Dwellings that are not Affordable Housing Units
"Planning Permission"	the outline planning permission subject to conditions as may be granted by the Planning Inspectorate pursuant to the Appeal
"Pre School Contribution"	two hundred thousand and fifty-seven pounds (£200,057) (such figure subject to pro rata reduction in the event that consent is granted for less than 123 Dwellings) BCIS Indexed
"Protected Tenant"	any tenant who has: (a) exercised the right to acquire pursuant to the Housing Act 1996 the Housing and Regeneration Act 2008 or any statutory

	<p>provision for the time being in force (or any equivalent contractual right) in respect of an Affordable Housing Unit (as defined in the Second Schedule)</p> <p>(b) exercised any statutory right to buy (including the preserved right to buy) (or any equivalent contractual right) in respect of an Affordable Housing Unit</p> <p>(c) been granted a Shared Ownership lease by a Registered Provider in respect of a particular Affordable Housing Unit and the purchaser has subsequently staircased and purchased from the Registered Provider all the remaining shares so that the purchaser owns the entire Affordable Housing Unit</p>
"Public Open Space Contribution"	<p>a financial contribution as may be required in accordance with the Councils Supplementary Planning Document for Open Space Sport and Recreation Facilities October 2011 SAVE THAT if all required onsite public open space provision is secured at reserved matters (pursuant to the Planning Permission) then no such contribution will be payable by the Owners</p>
"Registered Provider"	<p>a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by the RSH under Chapter 3 of that Act</p>
"RPI Index"	<p>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</p>
"RPI Indexed"	<p>the increase in any sum referred to in the Third Schedule (other than those referred to as BCIS Indexed) by an amount equivalent to the increase in the RPI Index to be calculated in</p>

accordance with Clause 10 of this Deed

"RSH"	Regulator of Social Housing or any statutory successor thereof or other government body with the function of regulating social housing development
"Secondary School Contribution"	three hundred and fifty-three thousand five hundred and forty-two pounds (£353,542) (such figure subject to pro rata reduction in the event that consent is granted for less than 123 Dwellings) BCIS Indexed
"Shared Ownership Unit"	the Affordable Housing Units to be provided by a Registered Provider by way of a Shared Ownership Lease granted to eligible households whose needs are not met by the market and where the purchaser buys an initial share in the property from the Registered Provider who retains the remainder and may charge a rent on the remainder with the purchaser being able to purchase additional shares up to 100% (staircasing)
"Shared Ownership Lease"	a lease to be granted for a term of not less than 125 years which shall substantially accord with the requirements of and be consistent with any model shared ownership lease as approved from time to time by Homes England (or any statutory successor)
"Site"	the land shown edged red on the Site Plan
"Site Plan"	the plan marked "Site Plan" attached to the First Schedule of this Deed
"Sixth Form Contribution"	seventy-five thousand seven hundred and fifty-nine pounds (£75,759) (such figure subject to pro rata reduction in the event that consent is granted for less than 123 Dwellings) BCIS Indexed
"Travel Plan Contribution"	one thousand pounds (£1,000) RPI Indexed

"Working Days"

Monday to Friday (inclusive) except Good Friday Christmas Day and public or bank holidays from time to time in England

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause sub-clause schedule paragraph sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause sub-clause schedule paragraph sub-paragraph or recital in this Deed
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies corporations and firms and all such words shall be construed as interchangeable in that manner
- 2.4 Wherever more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise
- 2.5 Any reference to an Act of Parliament shall include any modification extension or re-enactment of that Act for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given under that Act or deriving validity from it
- 2.6 References to any party to this Deed shall include the successors in title to that party the personal representatives of that party and any party deriving title through or under that party and in the case of the Council and or the County Council the successors to their respective statutory functions
- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the Council or the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document
- 2.8 References to a "Site Plan" in this Deed shall be references to the plan attached to the First Schedule of this Deed bearing the relevant

plan number or any amended plans as shall be agreed between the Owners and the Council and the County Council

2.9 The Affordable Housing obligations within the Second Schedule shall not be binding on:

2.9.1 a Protected Tenant

2.9.2 any successor in title or mortgagee of a Protected Tenant

2.9.3 a mortgagee of a Shared Ownership Lease or shared equity lease lawfully exercising the mortgage protection provision within that lease;

2.9.4 a Chargee of the whole or any part of the Affordable Housing Units or any persons deriving title through such Chargee PROVIDED THAT:

2.9.4.1 such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies interest and costs and expenses and

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

2.9.5 any person or body deriving title through any of the parties referred to in clauses 2.9.1 to 2.9.4 above

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

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

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and section 278 of the Highways Act 1980 and all other enabling powers
- 3.2 The covenants restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as local planning authorities against the Owners and their successors in title
- 3.3 This Deed shall only be capable of being varied by a supplemental deed between the Parties hereto or their respective successors in title or assigns made under section 106A of the Act

4. CONDITIONALITY

- 4.1 This Deed is conditional upon:

- 4.1.1 the grant of the Planning Permission and

- 4.1.2 the Commencement of Development

SAVE FOR the provisions of this clause and clauses 7.3 7.4 7.5 7.6 7.10 9 12 13 14 18 and 19 (related to legal and monitoring costs change in ownership right of entry dispute resolution jurisdiction and delivery) and any other relevant provisions which shall come into effect immediately upon completion of this Deed

- 4.2 For the avoidance of doubt none of the planning obligations in this Deed (with the exception of clause 6.2 in respect of payment of the Council's and the County Council's costs in respect of the preparation of this Deed) will be binding if the Planning Inspector dismisses the Appeal such that the Planning Permission is not granted

- 4.3 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

- 4.3.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owners shall not undertake any further works to implement the Planning Permission following the issue of such proceedings until such proceedings or challenge has concluded and the Planning Permission remains valid and fully enforceable

- 4.3.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed this Deed will cease to have any further effect and
- 4.3.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full
- 4.4 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used) the following provisions will apply:
 - 4.4.1 proceedings by way of judicial review are concluded:
 - 4.4.1.1 when permission to apply for judicial review has been refused and no further application can be made
 - 4.4.1.2 when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused or
 - 4.4.1.3 when any appeal(s) is or are finally determined
 - 4.4.2 proceedings under Section 288 of the Act are concluded:
 - 4.4.2.1 when the court has given judgement in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused or
 - 4.4.2.2 when any appeal(s) is or are finally determined

5. THE OWNERS COVENANTS

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

6. THE COUNCILS AND THE COUNTY COUNCILS COVENANTS

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

7. MISCELLANEOUS

- 7.1 The Owners shall act in good faith and shall co-operate both with the Council and the County Council to facilitate the discharge and performance of all obligations contained herein and the Owners shall comply with any reasonable requests either of the Council and or the County Council and their duly authorised officers or agents to have access to any part or all of the Site or any requests to provide documentation within the Owners possession (at the Owners expense) for the purposes of monitoring compliance with the obligations contained herein
- 7.2 The Owners agree declare and covenant both with the Council and the County Council that they shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this agreement and further shall indemnify the Council and the County Council for any expenses or liability arising to the Council and the County Council in respect of breach by the Owners of any obligation contained herein save to the extent that any act or omission of the Council or the County Council its employees or agents has caused or contributed to such expenses or liability
- 7.3 The Owners have paid to the Council prior to completion of this Deed the proper and reasonable legal costs of the Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.4 The Owners have paid to the County Council prior to completion of this Deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.5 The Owners further covenant to pay within ten (10) days of the date Planning Permission is granted one thousand pounds (£1,000) to the Council and to pay to the County Council three thousand eight hundred and eight pounds (£3,808) towards the costs of reporting and monitoring the obligations contained in this Deed
- 7.6 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.7 This Deed shall be registered as a local land charge by the Council
- 7.8 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owners from either the Council or County Council under the terms of this Deed such approval or consent or expression of satisfaction shall not be unreasonably

withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the Council by the Assistant Director of Growth or officer acting under his/her hand and on behalf of the County Council by the Executive Director of Growth Highways and Infrastructure or duly appointed successor or officer acting under his/her hand

- 7.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 7.10 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 7.11 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission is not granted or the Planning Permission is quashed revoked or otherwise withdrawn or expires by effluxion of time for the Commencement of the Development or is modified (without the consent of the Owners) and the Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed
- 7.12 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants restrictions or reservations in respect of it
- 7.13 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 7.14 The Owners agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived
- 7.15 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise)

to be at the sole expense of the Owners and at no cost to either the Council or the County Council

- 7.16 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions functions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority
- 7.17 The Owners covenant and warrant to the Council and the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein
- 7.18 The Parties agree that the amount of each contribution calculated by reference to the number of Dwellings consented and stated as being payable by the Owners under this Deed has been calculated and expressed as a total figure contribution in each case in expectation of the grant of an outline planning permission consenting to 123 Dwellings on the Site. The parties agree (in order to avoid overpayments) that in the event that the number of Dwellings for which consent is granted is less than 123 Dwellings then a pro rata adjustment shall be made to each of the contributions payable under this Deed in order to reduce the amount payable by the Owners in respect of each contribution calculated by reference to the number of Dwellings consented (limited to the Library Contribution, NHS Contribution, Pre-School Contribution, Secondary School Contribution and Sixth Form Contribution) so that each contribution payable accords proportionately with the number of Dwellings consented by the Planning Permission

8. WAIVER

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

9. CHANGE IN OWNERSHIP

The Owners agree with the Council and the County Council to give each of them independently written notice of any transfer in ownership of any of any freehold interests in the Site occurring before all the positive obligations under this Deed have been

discharged such notice to be served within twenty one (21) days of such transfer and to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like

10. INDEXATION

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

10.1 A is the sum payable under this Deed

10.2 B is the original sum calculated as the sum payable

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

10.4 D is the BCIS Index or RPI Index (as the context dictates) (most recently published) for the month two (2) months before the date of this Deed and

10.5 C/D is greater than 1

11. INTEREST

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

12. VAT

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

13. NOTICES

13.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the

notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 13.2

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

The Council	The Assistant Director of Growth West Suffolk House Western Way Bury St. Edmunds Suffolk IP33 3YU
The County Council	The Executive Director of Growth Highways and Infrastructure (or a duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX
The Owners	Unex House Church Lane Stetchworth Newmarket Suffolk CB8 9TN

- 13.3 Any notice or other written communication to be given by either the Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or the County Council by a duly authorised officer of the Council or the County Council as appropriate

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

13.4.1 Commencement of Development

13.4.2 Occupation of the first (1st) Dwelling

13.4.3 Occupation of 30% of the Dwellings(rounded down to a whole dwelling if the calculation produces a decimal point)

13.4.4 Occupation of 70% of the Dwellings(rounded down to a whole dwelling if the calculation produces a decimal point)

13.4.5 Completion of Development

14. DISPUTE RESOLUTION

- 14.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence

validity or termination) which cannot be resolved by prior agreement between the parties to the dispute ("the Dispute Parties") shall be referred to arbitration before a single Expert (the "Expert")

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

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

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

14.3.2 if the difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers

14.3.3 if the difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Dispute Parties but in default of agreement appointed at the request of any Dispute Party by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors or

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

14.4 In the event of a reference to arbitration the Dispute Parties agree to:

14.4.1 prosecute any such reference expeditiously and

14.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable

- 14.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 14.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing
- 14.7 The award shall be final and binding both on the Dispute Parties and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be
- 14.8 Unless this Deed has already been terminated the Parties shall in every case continue to comply with their obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause but without prejudice to the rights and obligations of the Parties in relation to the termination of the Deed
- 14.9 The provisions of this clause shall not affect the ability of the Council or County Council to apply for and be granted any of the following: declaratory relief injunction specific performance payment of any sum damages and any other means of enforcing this Deed and consequential and interim orders and relief

15. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

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

16. APPROVALS

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

17. COMMUNITY INFRASTRUCTURE LEVY

Subject to matters referred to in Recital F the Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 the obligations imposed in this Deed are (a) necessary to make the Development permitted pursuant to the

Application acceptable in planning terms (b) directly relate to the Development permitted pursuant to the Application and (c) fairly and reasonably relate in scale and kind to the Development permitted pursuant to the Application

18. JURISDICTION

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

19. DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated

In witness whereof the Parties hereto have executed this deed on the day and year first before written

**THE COMMON SEAL OF
WEST SUFFOLK COUNCIL**

was affixed in the presence of:

CHRISTINE LITTON A [REDACTED] fficer



**THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL**

was affixed in the presence of:

EMILY SPRINGTON A [REDACTED] fficer



Signed as a deed by

T.A.P. INVESTMENTS LIMITED

acting by:



Direct



Director/Secretary

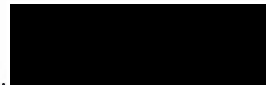
Signed as a deed by

UNEX (NO.3) LIMITED

acting by:



Director

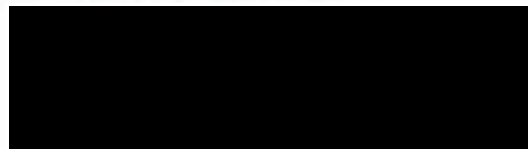


Director/Secretary

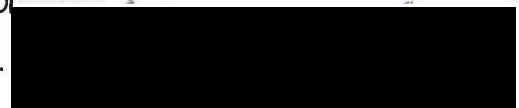
Signed as a deed by

OFTENFACT LIMITED

acting by:



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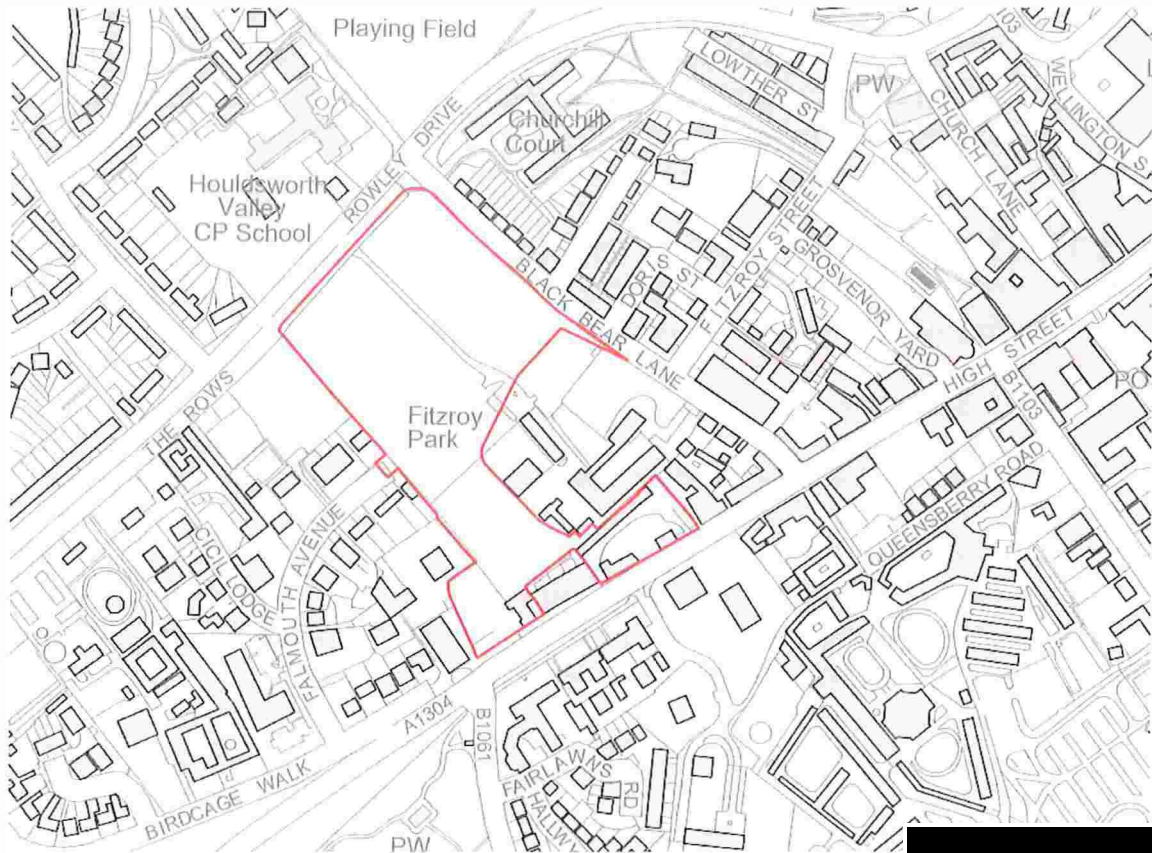


Director/Secretary

FIRST SCHEDULE

The Land shown for identification purposes edged red in the Site Plan comprising of the Owners land forming part of land registered with the Land Registry under title numbers SK169495 and SK304810 and SK129971 and SK52701

SITE PLAN



SECOND SCHEDULE

THE OWNERS COVENANT WITH THE COUNCIL:

1. AFFORDABLE HOUSING UNITS

- 1.1 Not to Occupy or permit Occupation of more than seventy percent (70%) of the Open Market Dwellings unless and until the Affordable Housing Units have been constructed and the Owners have transferred a freehold or leasehold interest in those Affordable Housing Units to a Registered Provider and any Affordable Housing Contribution has been paid to the Council
- 1.2 To ensure the transfer referred to in Paragraph 1.1 of this Second Schedule to the Registered Provider and their successors in title will contain a covenant to enter into a nomination agreement with the Council for those Affordable Housing Units prior to Occupation of those Affordable Housing Units
- 1.3 To ensure the conditions on which the Affordable Housing Units to be transferred to a Registered Provider shall be transferred shall include but not be limited to the following:
 - 1.3.1 to have good and marketable freehold title
 - 1.3.2 be remediated so that the land is fit for the proposed use
 - 1.3.3 be on terms that at the date of the transfer the following are (unless otherwise agreed by the Registered Provider) provided up to a point immediately adjacent to the boundary of the Affordable Housing Units:
 - 1.3.3.1 an adoptable road constructed to base course and subject to an agreement under Section 38 of the Highways Act 1980
 - 1.3.3.2 adoptable public sewers and drains subject to an agreement under Section 104 of the Water Industry Act 1991
 - 1.3.3.3 water electricity telecommunications infrastructure with sufficient capacity to serve each Affordable Housing Unit and
 - 1.3.3.4 such necessary rights as the Owners may reasonably require to be reserved
- 1.4 Subject to clause 2.10 to ensure the Affordable Housing Units shall not be used for any purpose other than as Affordable Housing Units

except in those cases where the owner, tenant or lessee has exercise a statutory right to acquire or acquired 100% ownership and is a Protected Tenant in which case those units shall no longer comprise Affordable Housing Units

2. NHS CONTRIBUTION

- 2.1 To pay to the Council the NHS Contribution prior to the first Occupation of fifty percent (50%) of the Dwellings
- 2.2 Not to Occupy or permit Occupation of more than forty-nine percent (49%) of the Dwellings unless and until the NHS Contribution has been paid to the Council

3. PUBLIC OPEN SPACE CONTRIBUTION

- 3.1 To pay to the Council the Public Open Space Contribution (if required) prior to the first Occupation of fifty percent (50%) of the Dwellings
- 3.2 Not to Occupy or permit Occupation of more than forty-nine percent (49%) of the Dwellings unless and until the Public Open Contribution (if required) has been paid to the Council

THIRD SCHEDULE

THE OWNERS COVENANT WITH THE COUNTY COUNCIL:

1. HIGHWAYS CONTRIBUTION

- 1.1 To pay to the County Council the Highways Contribution prior to the first Occupation of the Dwellings unless such payment of the Highways Contribution is deemed by the Planning Inspectorate to be unnecessary in which case no such payment will be required from the Owners
- 1.2 Not to Occupy or permit Occupation of any Dwellings until the Highways Contribution has been paid to the County Council unless such payment of the Highways Contribution is deemed by the Planning Inspectorate to be unnecessary in which case no such payment will be required from the Owners

2. LIBRARY CONTRIBUTION

- 2.1 To pay to the County Council the Library Contribution prior to the first Occupation of thirty percent (30%) (rounded down to a whole dwelling if the calculation produces a decimal point) of the Dwellings
- 2.2 Not to Occupy or permit Occupation of more than twenty-nine percent (29%) (rounded down to a whole dwelling if the calculation produces a decimal point) of the Dwellings until the Library Contribution has been paid to the County Council

3. PRE SCHOOL AND SECONDARY SCHOOL AND SIXTH FORM CONTRIBUTIONS

- 3.1 To pay to the County Council fifty percent (50%) of the Pre School Contribution and the Secondary School Contribution and the Sixth Form Contribution prior to the first Occupation of thirty percent (30%) (rounded down to a whole dwelling if the calculation produces a decimal point) of the Dwellings
- 3.2 Not to Occupy or permit Occupation of more than twenty-nine percent (29%) (rounded down to a whole dwelling if the calculation produces a decimal point) of the Dwellings until fifty percent (50%) of the Pre School Contribution and the Secondary School Contribution and the Sixth Form Contribution have been paid to the County Council
- 3.3 To pay to the County Council a further fifty percent (50%) of the Pre School Contribution and the Secondary School Contribution and the Sixth Form Contribution prior to the first Occupation of seventy

percent (70%) (rounded down to a whole dwelling if the calculation produces a decimal point) of the Dwellings

- 3.4 Not to Occupy or permit Occupation of more than sixty-nine percent (69%) (rounded down to a whole dwelling if the calculation produces a decimal point) of the Dwellings until a further fifty percent (50%) of the Pre School Contribution and the Secondary School Contribution and the Sixth Form Contribution have been paid to the County Council

4. TRAVEL PLAN CONTRIBUTION

- 4.1 To pay to the County Council the first instalment of the Travel Plan Contribution prior to the first Occupation of seventy percent (70%) (rounded down to a whole dwelling if the calculation produces a decimal point)
- 4.2 Not to Occupy or permit Occupation of more than sixty-nine percent (69%) (rounded down to a whole dwelling if the calculation produces a decimal point) Dwellings until the first instalment of the Travel Plan Contribution has been paid to the County Council
- 4.3 To pay further a Travel Plan Contribution annually prior to the anniversary of the date of first Occupation of seventy percent (70%) (rounded down to a whole dwelling if the calculation produces a decimal point) **SAVE THAT** no further instalments of the Travel Plan Contribution shall be payable by the Owners after five such payments have been received by the County Council

FOURTH SCHEDULE

THE COUNCIL COVENANTS TO THE OWNERS:

1. AFFORDABLE HOUSING CONTRIBUTION

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

2. NHS CONTRIBUTION

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

- 2.3 When the NHS Contribution paid to the Council pursuant to this Deed has been spent or committed the Council shall upon written request by the Owners after the expiry of ten (10) years from the date from the Completion of Development within a further period of one (1) year notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

3. PUBLIC OPEN SPACE CONTRIBUTION

- 3.1 To use the Public Open Space Contribution on a project or projects that help address the demand on public open space provision serving the Development
- 3.2 If requested to do so in writing after the expiry of ten (10) years from the date of the Completion of Development within a further period of one (1) year to pay within one month of such request to any person specified in such request such amount of the Public Open Space Contribution paid by that person which has not been committed or expended by the Council in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end PROVIDED THAT if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 3.3 When the Public Open Space Contribution paid to the Council pursuant to this Deed has been spent or committed the Council shall upon written request by the Owners after the expiry of ten (10) years from the date from the Completion of Development within a further period of one (1) year notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

FIFTH SCHEDULE

THE COUNTY COUNCIL COVENANTS WITH THE OWNER:

1. HIGHWAYS CONTRIBUTION

- 1.1 To use the Highways Contribution to pay for officer time and legal and administrative costs and all other ancillary expenses related to the Traffic Regulation Order to prevent motor vehicles at Rowley Drive access
- 1.2 If requested to do so in writing after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year to pay within one month of such request to any person such amount of the Highways Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 1.3 When the Highways Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

2. LIBRARY CONTRIBUTION

- 2.1 To use the Library Contribution for the provision of library lending stock reference audio visual and homework support material and ICT equipment for public use in Newmarket serving the Development and improvements to existing library provision serving the Development
- 2.2 If requested to do so in writing after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year to pay within one month of such request to any person such amount of the Library Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 2.3 When the Library Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten (10)

years from the Completion of Development within a further period of one (1) year notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

3. PRE SCHOOL AND SECONDARY SCHOOL AND SIXTH FORM CONTRIBUTIONS

- 3.1 To use the Pre School Contribution for the improvement and enhancement of pre school provision serving the Development
- 3.2 To use the Secondary School Contribution for the provision of secondary school places serving the proposed development (whether previously forward funded or not by the county council and/or the Department for Education) and, in particular, for provision at Newmarket Academy or Mildenhall College Academy (including reimbursing the Department for such forward funding)
- 3.3 To use the Sixth Form School Contribution for the provision of secondary school (sixth form) places serving the proposed development (whether previously forward funded or not by the county council and/or the Department for Education) and, in particular, for provision at Mildenhall College Academy or Abbeygate (including reimbursing the Department for such forward funding).
- 3.4 If requested to do so in writing after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year to pay within one month of such request to any person such amount of the Pre School Contribution or the Secondary School Contribution or the Sixth Form Contribution paid by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 3.5 When the Pre School Contribution and the Secondary School Contribution and the Sixth Form Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to

4. TRAVEL PLAN CONTRIBUTION

- 4.1 To use the Travel Plan Contribution for evaluation and support of the travel plan for the Development

- 4.2 If requested to do so in writing after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year to pay within one month of such request to any person such amount of the Travel Plan Contribution paid in full by that person which has not been committed or expended by the County Council in accordance with the provisions of this Deed together with any interest accrued. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable
- 4.3 When the Travel Plan Contribution paid to the County Council pursuant to this Deed has been spent or committed the County Council shall upon written request by the Owners after the expiry of ten (10) years from the Completion of Development within a further period of one (1) year notify the Owners that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to