

DATED

17th August

2023

BABERGH DISTRICT COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

**GEOFFREY MAYHEW FARMS LIMITED
and PJM FARMS LIMITED (3)**

BARCLAYS SECURITY TRUSTEE LIMITED (4)

**PLANNING OBLIGATION BY DEED PURSUANT TO SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

Relating to land on five sites and associated land for the provision of cycleways in the
parishes of Woolverstone and Freston Suffolk

Shared Legal Service
West Suffolk House
Western Way
Bury St Edmunds
Suffolk
IP33 3YE
BM31.462 DC/20/03247

THIS DEED IS MADE THE

17th

DAY OF

August

2023

BETWEEN

- (1) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("The District Council")
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("The County Council")
- (3) **GEOFFREY MAYHEW FARMS LIMITED** (Co. Regn. No. 07466543) of Pond House Farm Warren House Erwarton Ipswich Suffolk IP9 1LH and **P J M FARMS LIMITED** (Co. Regn. No. 07466549) of Home Farm, Woolverstone, Ipswich, Suffolk IP9 1AJ (together called "The Owner")
- (4) **BARCLAYS SECURITY TRUSTEE LIMITED** (Co. Regn No 10825314) of P.O. Box 16276 One Snowhill Queensway Birmingham B2 2XE ("The Mortgagee")

Together "the Parties"

WHEREAS

- (1) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and by whom the obligations in this Deed are enforceable.
- (2) The County Council is the local highway authority (except for trunk roads) the local education authority and is also a local planning authority for the purposes of the Act for the area in which the land is situated and by whom the obligations contained in this deed are enforceable.
- (3) The Owner is the freehold owner of the Land and details of ownership and other interests in the Land are provided in the First Schedule.

- (4) The Mortgagee holds a registered charge over part of the Land as described in the First Schedule to this Deed.
- (5) The District Council and the County Council enter into this Deed so that the requirements of their respective policies are met and that any objections by the District Council to the grant of planning permission on the basis of those policies are overcome and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (6) The District Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests in Regulation 122 of the Community Infrastructure Regulations 2020 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS

1. Definitions

1.1 In this Deed the following expressions shall have the following meanings:

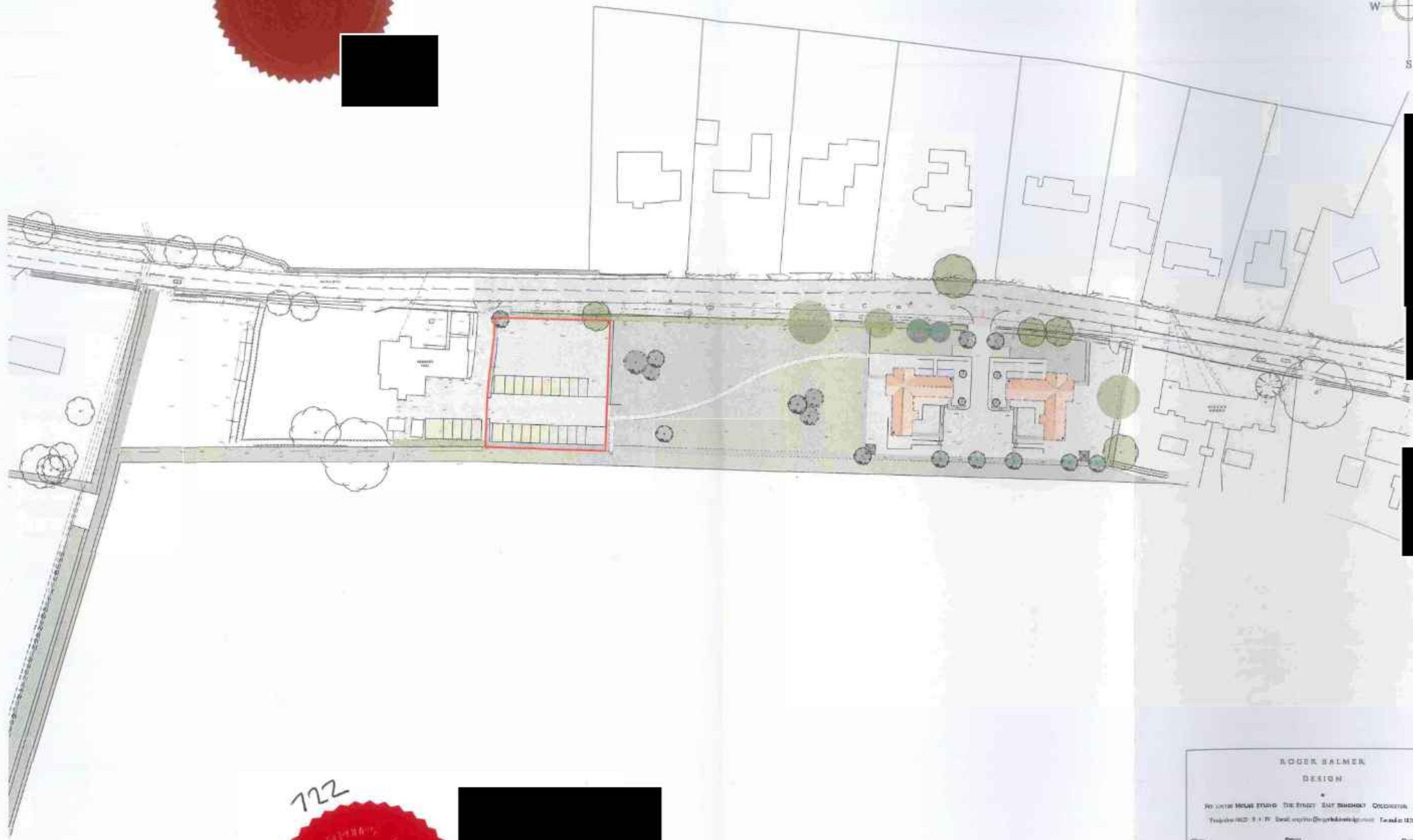
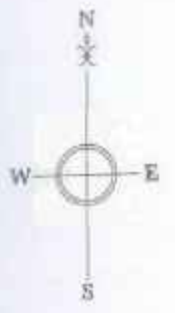
"Act"	the Town and Country Planning Act 1990.
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to buy or rent housing generally available on the open market in accordance with Annexe 2 of the National Planning Policy Framework 2021, as amended.
"Affordable Housing Commuted Sum"	the sum calculated in accordance with the District Council's affordable housing policies in place at the time to be paid by the Owner to the District Council to spend on Affordable Housing within the administrative district of the Council in the event the Owner is unable to dispose of the Affordable Housing in accordance with Schedule Two.
"Affordable Housing Contribution"	a sum not exceeding one hundred and fifty-one thousand, eight-hundred and seventy-two pounds (£151,872.00) BCIS Indexed payable under Schedule Two if the District Council has agreed to accept such a sum to pay for the provision of Affordable Housing in the district of

	the District Council in place of onsite provision of the Affordable Housing Units.
"Affordable Housing Nomination Agreement"	an agreement substantially in the form set out in Schedule 6 subject to such as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and "Nomination Agreement" shall have the same meaning.
"Affordable Housing Unit"	the two (2) Dwellings identified in Part 1 of Schedule 2 to this Deed both of which shall be provided on the Land and one of which shall be a Rental Dwelling and the other a Shared Ownership Dwelling pursuant to the Planning Permission to be occupied as Affordable Housing in accordance with the details in Schedule 2 and "Affordable Housing Units" shall be construed accordingly.
"Affordable Rent"	housing made available by a Registered Provider as low-cost rental accommodation (as defined by Section 69 of the Housing and Regeneration Act 2008) with a rent charged at a level up to 80% of the equivalent market rent including any service charges applicable or the local housing rate allowance.
"Application"	the application for full planning permission to develop the Land in accordance with the application plans and other materials deposited with the District Council validated on 6 August 2020 and bearing the District Council's reference number DC/20/03247.
"BCIS Index"	the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation, or, if that index shall cease to be published or is otherwise unavailable, such alternative basis of indexation as may be agreed between the Parties hereto.
"BCIS Indexed"	the increase in a sum described as BCIS Indexed by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 9 of this Deed.

"Car Park Land"	land edged red on the plan appended to this agreement with reference number 1418 - 41 as land to provide additional car parking at Berners Hall.
"Chargee"	any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or charge or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925 or housing administrator appointed pursuant to the relevant provisions of the Housing and Planning Act 2016.
"Chargee's Duty"	the tasks and duties set out in Schedule 2, Part 4, Paragraph.
"Choice Based Lettings Scheme"	an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme (or such other scheme as may be agreed) 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.
"Commencement Date"	the date on which Commencement of Development occurs.
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Completion of Development"	the date that the last dwelling to be Occupied is first Occupied.
"Development"	the development on the Land to be permitted by the Planning Permission including the phased construction of twenty-two (22) dwellings the provision of cycle tracks to



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Bardays Security Trustee Lim
Business Lending Services, PO Box 10270, One Snowhill,
Snowhill Queensway Birmingham, B2 2XE

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ROGER SALMER
DESIGN

PO BOX 10270 SNOW HILL QUEENSWAY BIRMINGHAM B2 2XE
Telephone 0121 353 3111 Email: r.salmer@bardsays.com Website: www.bardsays.com

Client	Bardsays	Planning	Planning
Designing Party	Development Director	Site Plan	Site Plan
Date	10/10/10	Scale	1:100
Drawn by	R.S.	Checked by	R.S.

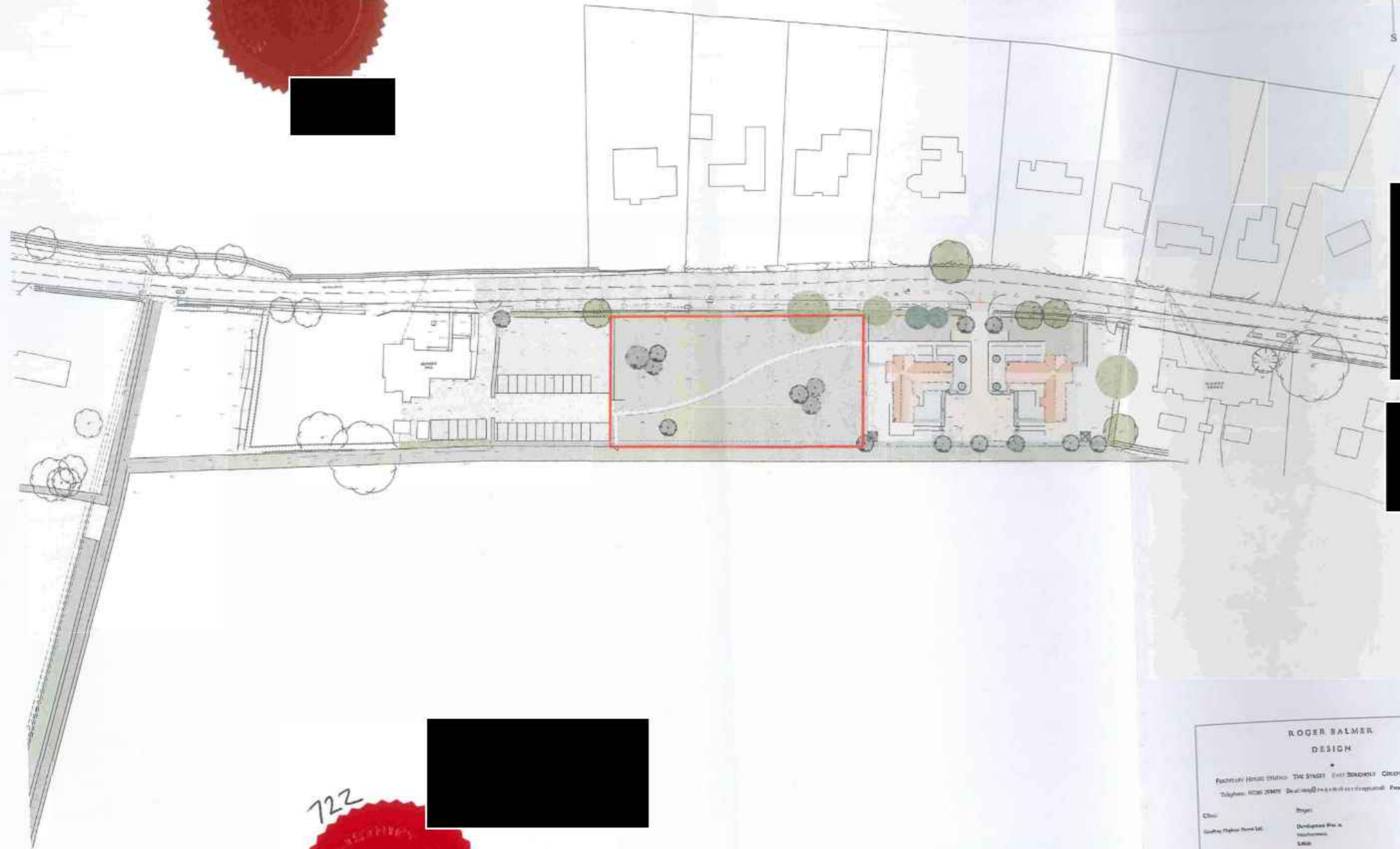
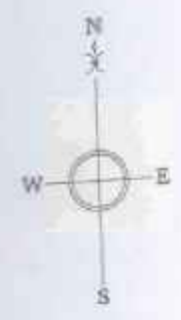
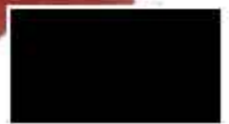
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	Holbrook and Chelmondiston and associated development.
"Dwelling"	any dwelling to be permitted by the Planning Permission and built on the Land as part of the development including a house fiat maisonette or bungalow and including Affordable Housing Units as well as Market Housing Units and "Dwellings" shall be construed accordingly.
"Habitats Sites"	those sites on the Suffolk Coast which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations.
"Habitats Sites Mitigation Contribution"	the sum of Two thousand six hundred and eighty-one pounds and fifty eight pence (£2,681.58) (BCIS Indexed) calculated using the Habitat Sites Mitigation Contribution Calculation to be paid by the Owner to the District Council as a contribution towards the impact of development on the Habitats Sites.
"Habitats Sites Mitigation Contribution Calculation"	the sum of £121.89 (one hundred and twenty-one pounds and eighty nine pence) multiplied by the total number of new Dwellings proposed pursuant to the Planning Permission to calculate the Habitats Sites Mitigation Contribution.
"Homes England"	the organisation as may from time to time be the Regulator of Social Housing or such other body with statutory force charged with regulating Registered Providers.
"Intended Cycle Paths"	collectively the Intended Cycle Path Part 1, the Intended Cycle Path Part 2 and the Intended Cycle Path Part 3.
"Intended Cycle Path Part 1"	the route to be created and dedicated by the Owner as bridleway to be adopted by the County Council in accordance with the PROW Agreement(s) which is identified on the PROW Plan as a-d.
"Intended Cycle Path Part 2"	the route to be created and dedicated by the Owner as bridleway to be adopted by the County Council in accordance with the PROW Agreement(s) which is identified on the PROW Plan as j-f-e and f-g and k-l-m-n.
"Intended Cycle Path Part 3"	the route to be created and dedicated by the Owner as bridleway to be adopted by the County Council in accordance with the PROW

	Agreement(s) which is identified on the PROW Plan as h-i.
"Interest"	interest at four per cent (4%) above the base lending rate of the Bank of England from time to time.
"Land"	the land described in the First Schedule and shown edged red for identification purposes only on the Plan against which this Deed may be enforced.
"Market Housing Unit"	any Dwelling which is for general market housing for sale or rent on the open market and which is not an Affordable Housing Unit and "Market Housing Units" shall be construed accordingly.
"Notice of Actual Commencement"	notice in writing to advise of the actual date of Commencement.
"Notice of Expected Commencement"	notice in writing to advise of the expected date of Commencement.
"Occupation"	Occupation of any Dwelling on the Land for the purposes permitted by the Planning Permission and Occupation would be deemed to have taken place when the District Council have evidence of the Occupation of any Dwelling on the Land but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be construed accordingly.
"Open Space Land"	land identified on the plan appended to this agreement bearing reference number 1418 - 42 for the provisions of play space, wildlife meadow and recreation space.
"Open Space Scheme"	a written scheme setting how the Open Space Land and the facilities to be provided on it are to be provided and maintained.
"Phase 1"	the 6 (six) Dwellings which form Site 1 as shown on the PROW Plan attached to this Deed.
"Phase 3"	the 4 (four) Dwellings which form Site 3 as shown marked on the PROW Plan attached to this Deed.
"Phase 5"	the 4 (four) Dwellings which form Site 5 as shown marked on the PROW Plan attached to this Deed.

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Business Lending Services, PO Box
Snowhill Queensway Birmingham, B2 2XE

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**ROGER BALMER
DESIGN**

Architectural Practice: THE STUDIO, 1111 BUCKFIELD, COLCHESTER, COE ST2
Telephone: 0206 294711 Fax: 0206 294712 Email: rbalmer@rogerbalmerdesign.co.uk Website: www.rogerbalmerdesign.co.uk

Client:	Stages:	Designing
Southey Property Fund Ltd.	Developed Phase II Infrastructure Litham	2015 Open Space
Scale:	Date:	Drawn by:
1:200 A1	July 2015	AB
		Checked by:
		RB

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"Plan"	the plan attached as Annex A ⁸⁴ numbered 1418 – 40A.
"Planning Permission"	the full planning permission subject to conditions which may be granted by the District Council or by the Planning Inspectorate upon appeal in respect of the Application and which for the avoidance of doubt encompasses any modification to a planning permission which is permitted upon the grant of an application for a Non-Material Amendment pursuant to Section 96A of the Act.
"Protected Person"	<p>any person who:</p> <ul style="list-style-type: none"> a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; c) any person who has staircased the equity in their Shared Ownership Dwelling to 100%; d) any successor in title to paragraph a-c above.
"PROW Agreement"	an agreement or agreements made under Section 25 of the Highways Act 1980 or any other appropriate power under which the Owner will provide the Intended Cycle Paths by the dedication of bridleways and under which upon certification by the County Council that the works as contained in Condition 15 of the Planning Permission are satisfactorily completed the bridleways become highways maintainable at the public expense.
"PROW Plan"	the attached plan numbered 1418 – 140(B) attached to this Deed showing the Intended Cycle Paths.
"Registered Provider" or "RP"	an organisation which is 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 Homes England pursuant to Chapter 3 of that Act and approved in writing by the District Council in accordance with Schedule 2 of this Deed. If another body

	is permitted to provide Affordable Housing by paragraph 2 of Schedule 3 then all references herein to a Registered Provider shall be to that body and which shall for the avoidance of doubt include the District Council itself.
"Rental Dwelling"	the Affordable Housing Unit which is to be let at an Affordable Rent or social rent and is let on the Registered Provider's standard form of letting in accordance with the terms of this Deed by a Registered Provider and "Rental Dwellings" shall be construed accordingly.
"Shared Ownership Dwelling"	the Dwelling to be let on a Shared Ownership Lease to a household for which the household income does not exceed Eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with the terms as set out in Home England's capital funding guide and "Shared Ownerships Dwellings" shall be construed accordingly.
"Shared Ownership Lease"	a long lease (over 99 years) of a dwelling granted at a premium whereby no less than twenty-five percent (25%) and no more than up to seventy percent (70%) on first purchase of the equitable interest in the Shared Ownership dwelling is paid by a lessee upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to acquire up to one hundred percent (100%) of the legal and equitable interest in the Shared Ownership dwelling at some future date or dates. Any capital receipt received from staircasing between 80% and 100% to be retained by the Registered Provider and re-invested in affordable housing within the administrative district of the District Council subject to any contrary requirements within the HE's Capital Funding Guide.
"Working Days"	any day which is not a Saturday, a Sunday, a bank or public holiday in England.

2. Interpretation

- 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



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 Business Lending Services, PO Box 16276,
 Snowhill Queensway Birmingham, B2 2XE

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**ROGER BALMER
 DESIGN**

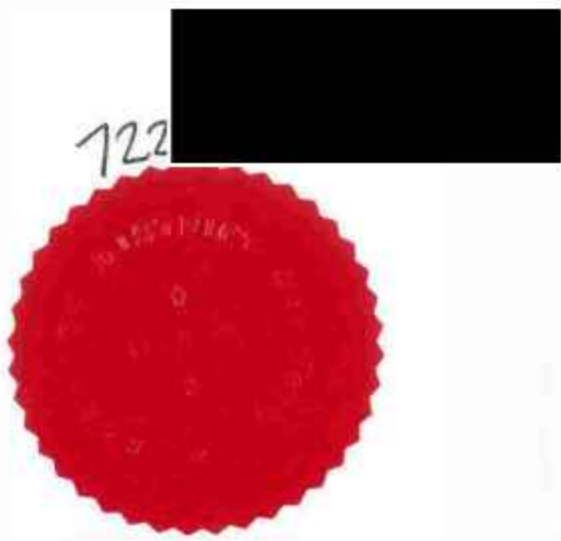
*
 SYLVAN HOUSE STUDIO THE STRAIT EAST BRIDGEWAY GROUNDWATER CITY 0118
 Telephone 0121 20011 Email robert@rogerbalmer.co.uk Fax 0121 20011

Client	Project	Drawing
Orkney Nelson Crane Ltd.	Project Siteded Design Warehouse 10/04	Volume 08 Rev
Date	Scale	Drawing No. Rev.
10/04 1:1	Jan 2011 A3	1018-1001

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Bardlays Security Trustee Limit
 Business Lending Services, PO
 Snowhill Queensway Birmingham, B2 2XE



- KEY**
- Outline of marked segments of existing Public Rights of Way
 - Proposed layout of existing footways to indicate the position of new footways

Proposed position of Public Rights of Way indicated for the new footways

Provision of new Public Footways to provide access to both houses and public cycle to be effected by an agreement made under (25) of the Highways Act 1980 which shall provide for phased construction and dedication of the new public rights of way as follows:

Chronological phasing of Site	Footways to be dedicated prior to occupation of first dwelling on Site
1 Site 1	nil
2 Site 2	-
3 Site 3	1/2 A & G & H
4 Site 4	-
5 Site 5	nil

Where works to construct the new footways shall require public rights of way Temporary Traffic Regulation Orders will be required.

Provision of new Footways
 Where new Footways are to be provided they will be constructed in separate sections prior to the occupation of each Site

The plan was prepared using data provided with GIS data obtained from Joby, County Council, District of War and Street Lines. The red dashed line indicates the extent of the reserved highways as provided by SCC. The full extent of the public footways by the owner of the land as shown on the plan by brown lines is a subject to confirmation of the precise alignment of the footways as a result of consultation of the land holder on the impact of Dedication, the and footways plan and other requirements, such as utility and facilities and other land interests

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PROFESSIONAL HOUSE VISITOR THE STREET BERT BENDERSY CROOKHURST COE LTD
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Client	Project	Drawing
Quaker Village Farm Ltd	Trapped National Development, Truckham, Suffolk	Plot 10/10/10
Date	Drawn by	Checked by
11/02/2011	RB	AD
11/02/2011	RB	AD

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reference to a clause, sub clause, schedule, paragraph, sub paragraph or recital in this Deed.

- 2.2. Headings are for reference only and shall not affect the interpretation of this Deed.
- 2.3. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4. Words of the masculine gender include the feminine and neuter genders.
- 2.5. Words denoting actual persons include companies, corporations and firms and all such words shall be constructed as interchangeable in that manner. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.6. References to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the District Council and the County Council the successors to their respective statutory functions.
- 2.7. A reference to "writing" or "written" excludes fax and email.
- 2.8. Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 2.9. An obligation on a party not to do something includes an obligation not to allow that thing to be done by another person.
- 2.10. Any reference to an Act of Parliament or Statutory Instrument shall include any modification, extension or re-enactment of that Act or Instrument 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 Instrument or deriving validity from it.
- 2.11. References to a "Plan" or "Drawing" in this Deed shall be reference to the plans attached to this Deed bearing the relevant plan number of any amended plans as shall be agreed in writing between the Owner the District Council and the County Council.

- 2.12. Where this Deed requires a plan, scheme, strategy or other document to be submitted to the District Council or the County Council for approval or agreement then upon written approval being given by the District Council or the County Council (as appropriate) 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, scheme, strategy or other document.
- 2.13. None of the covenants contained in this Deed on the part of the Owner shall be enforceable against any statutory undertaker who acquires any part of the Land or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.

3. Legal Basis

- 3.1 This agreement is a Deed and is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council as local planning authorities against the Owner and the Owner's successors in title.

4. Consent to Enter Deed

- 4.1 The Owner covenants and warrants to the District Council and the County Council that they have full power to enter into this Deed and there is no other person other than the Mortgagee having a charge over or any other interest in the Land whose consent is necessary to make this Deed binding on the Land and all estates and interests therein.
- 4.2 The Mortgagee hereby consents to the completion of this Deed and declares that from the date of this Deed its interest in the Land shall be bound by the terms of this Deed. The Mortgagee shall not be personally liable for any breach of the obligations in this Deed unless committed or continuing at a time when the Mortgagee is in possession of all or any part of the Land in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

5. Third Parties

- 5.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 and any such rights that arise pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

6. Conditionality

- 6.1 This Deed shall take effect on the date that it is completed but performance of the planning obligations contained in this Deed at Clause 7 and the Schedules apart from the obligations to give notice prior to the Commencement of Development are conditional upon the grant of the Planning Permission and the Commencement of Development.

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

6.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings;

6.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed this Deed will cease to have any further effect; and

6.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full.

- 6.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used), the following provisions will apply:

6.3.1 proceedings by way of judicial review are concluded:

- (a) when permission to apply for judicial review has been refused and no further application can be made;

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

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

6.3.2 proceedings under Section 288 of the Act are concluded:

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

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

7. The Owner's Covenants

7.1. The Owner hereby covenants with the District Council as set out in the Schedule 2 and with the County Council as set out in Schedule 3 so as to bind the Land and each and every part thereof.

8. Local Land Charge

8.1. This Deed is a local land charge and upon completion shall be registered by the District Council as such.

8.2. The District Council shall effect the cancellation of all entries made in the register of local land charges in respect of this Deed upon the written request of the Owner (a) following the performance and satisfaction of all the obligations contained in this Deed or (b) on the determination of this Deed in accordance with clause 6.

9. Indexation

9.1 Any sum referred to in Schedule 3 or Schedule 4 (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

9.1.1 A is the sum payable under this Deed;

9.1.2 B is the original sum calculated as the sum payable;

9.1.3 C is the BCIS Index for the month 2 months before the date on which the sum is payable;

9.1.4 D is the BCIS Index for the month 2 months before the date of this Deed; and

9.1.5 C/D is greater than 1.

10. Interest

If any payment due from the Owner under this Deed is paid late, Interest will be payable on the sum due and shall accrue on a daily basis from the date the sum is due to the date of payment.

11. VAT

Each amount stated to be payable by any party to this Deed to another party to this Deed pursuant to this Deed is exclusive of any VAT properly payable.

12. Changes of Ownership

The Owner agrees with the District Council and the County Council to give written notice of any transfer in ownership of its freehold interest in the Land occurring before all the obligations under this Deed have been discharged such notice to be served within twenty (20) Working Days' of such transfer quoting the District Council's reference DC/20/003247 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 Land purchased by reference to a plan and a copy of the registered title and plan thereto.

13. Approvals

Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council by the Chief Planning Officer or officer acting under his hand or officer acting under his hand and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

14. Right of Entry

14.1. At all times on not less than twenty-four (24) hours' written notice (except in case of emergency) the Owner shall allow any employee or agent of the District Council entry

to the Land for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

14.1.1. such employee or agent on arrival at the Land shall if requested by any person present who appears to be the Owner or manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Land);

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

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

14.1.4. such employee or agent may take photographs, measurements and levels;

14.1.5. such employee or agent may not remain on the Land for longer than is reasonably necessary for carrying out a proper inspection;

14.1.6. such employee or agent and any accompanying persons shall comply with the Owner's or the Owner's representative's reasonable directions and precautions in the interests of health and safety.

14.2. For the avoidance of doubt the provisions of this Clause 14 shall be in addition to and does not prejudice the powers conferred on the District Council by Sections 196A, 196B and 196C of the Act.

15. No Waiver

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

16. Confirmation of Discharge

Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the District Council or the County Council for a certificate to that effect and upon the District Council or the County Council (acting reasonably) being satisfied that the relevant agreement obligation and

covenant as the case may be has been satisfied the District Council or the County Council shall forthwith issue a certificate to such effect.

17. Release

No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed occurring after it has parted with its entire interest in the Land or part of the Land to which the breach relates save for an interest arising only from the grant or reservation of an easement or similar right or the benefit of any restrictive covenant in the Land notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it.

18. Determination

The obligations in this Deed except for Clause 24 shall cease to have effect insofar as it has not already been complied with if the Planning Permission:

- (a) expires;
- (b) is modified or revoked; or
- (c) is quashed following a successful legal challenge.

19. Severance

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.

20. Future Permissions

20.1. Subject to the remainder of this Clause 20 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

20.2. In the event that any new planning applications are made in respect of the Development pursuant to Section 73 of the Act then with effect from the date that the new planning permission is granted pursuant to Section 73 of the Act:

20.2.1. the planning obligations in this Deed shall in addition to binding the Land in respect of the Planning Permission shall also bind the Land in respect of any planning permission granted pursuant to Section 73 of the Act; and

20.2.2. the definitions of "Application", "Development" and "Planning Permission" shall be assumed to include references to any applications under Section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this Clause 20 shall fetter the discretion of the District Council in determining any applications under Section 73 of the Act and the appropriate nature and/or quantum of planning obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the Act (whether by way of a new Deed or supplemental Deed pursuant to Section 106 of the Act or a modification pursuant to Section 106A of the Act).

21. Miscellaneous

21.1. Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes, by-laws, statutory instruments, orders or regulations in the exercise of their function as local authorities.

22. Dispute Resolution Provisions

22.1. Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) shall be referred to an independent single Expert ("the Expert")

22.2. The Expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant to clause 22.1.

22.3. The Parties to the dispute shall jointly appoint the Expert not later than twenty (20) Working Days' after service of a request in writing by any Party to the dispute to do so

22.4. If the Parties to the dispute are unable to agree within twenty (20) Working Days' as to the appointment of such Expert then the Expert shall be appointed on the application of either of the Parties to the dispute as follows:

- 22.4.1. difference or question relates to the rights and liabilities of either Party to the dispute or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society; or
- 22.4.2. difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or
- 22.4.3. difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Parties but in default of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
- 22.4.4. if such difference of question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.
- 22.5. In the event of a reference to an Expert the Parties to the dispute agree to:
- 22.5.1. prosecute any such reference expeditiously; and
- 22.5.2. do all things or take all steps reasonably necessary in order to enable the Expert to make a final determination as soon as reasonably practicable and in any event within one (1) month of his appointment Provided That if the Expert fails to do so either Party to the dispute may apply to the President for the time being of the Institution of Law Society, Civil Engineers, Royal Institute of Chartered Surveyors or Royal Town Planning Institute (as appropriate) for a substitute to be appointed in which case the same procedure shall be repeated.
- 22.6. The Expert shall invite written representations from each of the Parties.
- 22.6.1 The Expert will have the power to consolidate proceedings or hold concurrent proceedings.
- 22.7. The findings of the Expert shall be in writing signed by the Expert.
- 22.8. The findings of the Expert shall be final and binding both on the Parties to the dispute except in the case of manifest, material error.
- 22.9. The Expert shall act as an expert and not as an arbitrator.

- 22.10. The costs of the Expert shall be payable by the Parties in such proportion as may be determined by the Expert and failing such determination to be borne in equal shares by the Parties.
- 22.11. Unless this Deed has already been terminated each of the Parties to the dispute shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this clause 22 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed.
- 22.12. Nothing in the provisions of this clause 22 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

23. Notices

- 23.1. 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 23.2
- 23.2. The address for any notice or other written communication in the case of each party to this Deed shall be as follows:

The District Council	The Chief Planning Officer, Babergh District Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX.
The County Council	The Executive Director for Growth Highways and Infrastructure Suffolk County Council Constantine House, 5 Constantine Road, Ipswich, IP1 2DH.
The Owner	As detailed on the first page of this Deed.
The Mortgagee	As detailed on the first page of this Deed.

- 23.3. The Owner covenants to inform the District Council and the County Council by way of written notice within seven (7) days following:

23.3.1. Commencement of Development

23.3.2. 1st Occupation of Phase 1 of the Development

23.3.3. 1st Occupation of Phase 3 of the Development

23.3.4. 1st Occupation of Phase 5 of the Development

23.3.5. The submission of an application for a PROW Agreement

23.3.6. Completion of Development

24. Legal and Monitoring Fees

- 24.1. The Owner shall on completion of this Deed pay to the District Council their reasonable legal costs together with any disbursements incurred in the negotiation, preparation, execution and completion of this Deed.
- 24.2. The Owner shall on completion of this Deed pay to the County Council their reasonable legal costs together with any disbursements incurred in the negotiation, preparation, execution and completion of this Deed.
- 24.3. The Owner shall on completion of this Deed pay to the County Council £1,428 towards the costs of monitoring the obligations contained in this Deed.

25. Governing Law

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

26. Delivery

The provisions of this Deed (other than this clause which shall have 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)
Babergh District Council)
was hereunto affixed)
in the presence of)



.....
Authorised Officer

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




.....
Authorised Officer

Executed as a Deed by)
GEOFFREY MAYHEW FARMS)
LIMITED)
in the presence of)



Director: 

Director/Company Secretary: 

Executed as a Deed by)
PJM FARMS
LIMITED)
in the presence of)

Director: [Redacted]

Director/Company Secretary: [Redacted]

Executed as a Deed by)
BARCLAYS SECURITY
TRUSTEE LIMITED)
Acting by)

Director:

Director/Company Secretary:

[Redacted]

Barclays Security Trustee Limited

[Redacted]

OCC	
TO	Initials
2.6. 23	Date

SCHEDULE 1
LAND AND OWNERSHIP

1. Description of the Land

- 1.1. All that freehold land registered at HM Land Registry under Title Numbers SK 111175, SK394006, SK166119, SK127140 located in the parishes of Freston and Woolverstone in Suffolk and shown edged in red on the Plan.

2. Interests

- 2.1. The first named owner Geoffrey Mayhew Farms Limited is the freehold owner of the land which is registered under Title Numbers SK394006 SK166119 and SK127140.
- 2.2. The other named owner PJM Farms Limited is the freehold owner of the land which is registered under Title Number SK111175.
- 2.3. The freehold land which is registered under Title Number SK127140 is subject to a registered charge in favour of the Mortgagee

SCHEDULE 2
THE OWNER'S COVENANTS WITH THE DISTRICT COUNCIL

The Owner for themselves and their successors in title to the Land covenant as follows

Part 1
Affordable Housing

1. Notices

- 1.1 The Owner shall in addition to complying with the notice requirements as set out in clause 23 of this Deed give the District Council Notice of Expected Commencement not less than seven (7) days before the date that the Owners expect Commencement of the Development to occur.
- 1.2 The Owner shall give the District Council not less than two (2) months' written notice of the anticipated date for the first Occupation of the first Dwelling to be Occupied.
- 1.3 The Owner shall give to the District Council not less than seven (7) Days' written notice following
- 1.3.1 the date of Occupation of the first Dwelling; and
- 1.3.2. the date of occupation of the tenth Market Dwelling

2. Owners obligation to construct Affordable Housing Units

- 2.1 Having given notice under paragraph 1 of Part 1 of this Schedule 2 above unless the District Council is the Registered Provider the Owner shall nominate a Registered Provider. The Owner may Commence Development while this process is ongoing.
- 2.2 Unless the District Council is the Registered Provider or otherwise agreed in writing the Owner shall endeavour to agree with the Council on the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred prior to Commencement of Development.
- 2.3 The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission.
- 2.4 The Owner shall not Occupy or permit Occupation of more than ten (10) Market Housing Units unless and until both of the Affordable Housing Units have been made ready for residential Occupation and have been transferred to the approved Registered Provider and written notification of such has been received by the District Council.

- 2.5 The Owner covenants that unless otherwise agreed in writing by the District Council as part of the Affordable Housing Scheme the mix and tenure of the Affordable Housing Units shall be one Rental Dwelling and one Shared Ownership Dwelling
- 2.6. The Owner covenants that unless the District Council is the Registered Provider to procure a covenant in the transfer(s) of the Affordable Housing Units that the Registered Provider(s) will enter into the Affordable Housing Nomination Agreement within one (1) month of the date of the transfer(s) to it of the Affordable Housing Units (or such other time period as is otherwise agreed in writing with the Council).
- 2.7. The Owner covenants that the Shared Ownership Dwelling shall only be Occupied by persons allocated in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and the Rental Dwelling shall only be Occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or chosen pursuant to the Affordable Housing Nomination Agreement which confers nomination rights on the Council unless otherwise agreed by the District Council in writing or in accordance with the Government's Help to Buy Agency requirements.
- 2.8. From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing as set out herein save that this obligation shall not be binding on:
- a) any Protected Person or any mortgagee or chargee of the Protected Person exercising the mortgagee protection provision within the Shared Ownership Lease or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargees; or
 - b) any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or
 - c) any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor; or
 - d) any mortgagee of the Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions in the Shared Ownership Lease or any person or body deriving title from any such person; or
 - e) any successor in title of a) - d) above.
- 2.9. Unless the District Council is the Registered Provider, any capital receipt received from a lessee purchasing further shares in the Shared Ownership Dwelling between 81% and 100% is to be retained by the Registered Provider and re-invested in affordable housing within the administrative district of the Council subject to any contrary requirements within the Homes England Capital Funding Guide. If after a period of five (5) years it has not been possible to spend the recycled funds within

the administrative district of the District Council the funds may be spent elsewhere for the provision of affordable housing.

2.10. The Owner shall not Occupy or permit Occupation of any of the Affordable Housing Units for any purpose other than as Affordable Housing.

2.11. PROVIDED ALWAYS that the District Council may in its absolute discretion agree to accept an Affordable Housing Contribution if it is not possible to find a Registered Provider for the Affordable Housing Units.

3. Future use of Affordable Housing Units

3.1. The Owner covenants that any transfer of land on which any of the Affordable Housing Units has been constructed to a Registered Provider shall be:

3.1.1 with vacant possession;

3.1.2 free from any encumbrance other than existing at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker);

3.1.3 Subject to a grant by the Owners to the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units;

3.1.4 subject to a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the construction, operation use, maintenance and management of the Development;

3.1.5 subject to a covenant to enter into an Affordable Housing Nomination Agreement substantially in the form of the agreement contained in Schedule 6 with the District Council within three (3) months of the date the Site is transferred from the Owner to the Registered Provider;

3.1.6 subject to a covenant that the Registered Provider shall include a pre-emption provision in its own favour in any transfer of an Affordable Housing Unit from the said Registered Provider to the owner or tenant of an Affordable Housing Unit; and

3.1.7 subject to a covenant that the Registered Provider shall use all capital receipts from the sale of Affordable Housing Units only for the purpose of providing Affordable Housing.

3.2. The obligations and restrictions contained in paragraph 3 of this Schedule 3 shall not be binding on:

- 3.2.1 a Chargee who has complied with the provisions of paragraph 4 of this Schedule 3;
- 3.2.2 Any Affordable Housing Unit purchased by a tenant through Social Homebuy funded pursuant to Section 19(3) Housing and Regeneration Act 2008 or a voluntary grant scheme pursuant to Section 21 Housing Act 1996 or any replacement of said schemes; or
- 3.2.3 any person or body deriving title through or from any other parties mentioned in this paragraph 3.

4 Chargee's Duty in relation to Affordable Housing Units

- 4.1 Any Chargee of a Registered Provider shall prior to seeking to dispose of any Affordable Housing Unit pursuant to any default under the terms of its mortgage or charge shall first give written notice to the District Council of its intention to dispose.
- 4.2 If notice is given pursuant to paragraph 4.1 of this Schedule the following provisions shall apply:
 - 4.2.1 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 (3) months from the date of the written notice to complete a disposal of the Affordable Housing Units to another Registered Provider or to the 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
 - 4.2.2 if such disposal has not completed within the three month period referred to in clause 4.2.1 above, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the restrictions set out in this deed regarding the provision of Affordable Housing on the Site restrictions in this Deed which provisions shall determine absolutely.

PROVIDED that at all times the rights and obligations in this paragraph 4 shall not require the Chargee to act contrary to its duties under its mortgage or charge and the District Council must give consideration to protecting the interests of the Chargee of a Registered Provider in respect of monies, interest and costs outstanding under its mortgage or charge.

Part 2

Open Space

- 1.1 To submit the Open Space Scheme to the District Council.
- 1.2 Not to Commence Development until the Open Space Scheme has been approved in writing by the District Council.
- 1.3 To prepare and lay out the Open Space Land in accordance with the Planning Permission and the Open Space Scheme. Following the provision of the Open Space Land the Owner shall invite the District Council to inspect the Open Space Land and provided that the Open Space Land has been delivered in accordance with the Open Space Scheme to the reasonable satisfaction of the District Council the District Council shall confirm in writing that it is satisfied that the Open Space Land has been provided in accordance with the Open Space Scheme within 20 Working days of such inspection.
- 1.4 Not to occupy or permit Occupation of any Dwelling within Phase 3 of the Development before the District Council has confirmed in writing that it is satisfied that the Open Space Land has been provided in accordance with the Open Space Scheme.
- 1.5 To keep the Open Space Land open to the public at all times.
- 1.6 At their own cost to maintain the Open Space Land strictly in accordance with the Open Space Scheme and the Planning Permission.
- 1.7 It is acknowledged and agreed by the Owner and the District Council that where the District Council has failed to inspect the Open Space Land within 20 Working Days of the invitation or provide a written response to the Owner within 20 Working Day the restriction at Paragraph 1.5 of this Part 2 will cease to have effect.

Part 3

Habitats Sites Mitigation Contribution

- 1 To pay the Habitats Sites Mitigation Contribution to the District Council within twenty eight (28) days of Commencement of Development.
- 2 Not to cause or permit Occupation of any part of the Development until the Habitats Sites Mitigation Contribution has first been paid to the District Council.
- 3 In the event that the Habitats Sites Mitigation Contribution remains unpaid after twenty eight (28) days of Commencement of Development, Interest will be payable from the date that the sum fell due until the date of actual payment.

Part 4

Berners Hall Car Park Extension

1. The Owner covenants not to permit Commencement of the Development until a specification for the provision of the Car Park Land to provide additional car parking at Berners Hall has been agreed and approved in writing by the District Council.
2. The Owner covenants not to permit Occupation of Phase 3 of the Development until the Car Park Land has been provided to the satisfaction of the District Council
3. Unless otherwise agreed in writing with the Local Planning Authority the Owner shall transfer the freehold of the Car Park Land to Woolverstone Parish Council on a date no later than twelve months after the Commencement of Phase 3 of the Development or six months after the completion of the Development whichever is the earlier by means of a deed of conveyance which shall contain the following provisions:
 - (a) all easements and rights necessary in relation to access for the benefit of the Car Park.
 - (b) any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development.
 - (c) the following restrictive covenants to be included in the Car Park Transfer:
 - (i) not to use or permit the Car Park Land to be used other than as additional car parking for the Berners Hall;
 - (ii) not to use or permit the Car Park to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development.

SCHEDULE 3

THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL AND DISTRICT COUNCIL

The Owner covenants as follows:

1. To fully construct the Intended Cycle Path Part 1 in accordance with condition 15 of the Planning Permission and the relevant PROW Agreement (where such an agreement has been entered into) prior to Occupation of any Dwelling within Phase 1.
2. Not to Occupy any Dwelling within Phase 1 before the Intended Cycle Path Part 1 has been fully constructed in accordance with condition 15 of the Planning Permission and the relevant PROW Agreement (where such an agreement has been entered into).
3. To fully construct the Intended Cycle Path Part 2 in accordance with condition 15 of the Planning Permission and the relevant PROW Agreement (where such an agreement has been entered into) prior to Occupation of any Dwelling within Phase 3.
4. Not to Occupy any Dwelling within Phase 3 before the Intended Cycle Path Part 2 has been fully constructed in accordance with condition 15 of the Planning Permission and the relevant PROW Agreement (where such an agreement has been entered into).
5. To fully construct the Intended Cycle Path Part 3 in accordance with condition 15 of the Planning Permission and the relevant PROW Agreement (where such an agreement has been entered into) prior to Occupation of any Dwelling within Phase 5.
6. Not to Occupy any Dwelling within Phase 5 before the Intended Cycle Paths have all been fully constructed in accordance with condition 15 of the Planning Permission and the PROW Agreements and dedicated as highway maintainable at the public expense pursuant to the PROW Agreements.
7. To use reasonable endeavours to enter into the PROW Agreement (which may be concluded as one agreement or multiple agreements) with the District Council or County Council (as the case may be) without unreasonable delay.
8. In the event that any PROW Agreement relating to the Intended Cycle Paths has not completed prior to the relevant triggers in paragraphs 1 – 5 of this Schedule the restriction on Occupation of Dwellings in paragraphs 1 – 5 shall not be enforceable by the District Council and County Council provided that the Owner has provided the relevant Intended

Cycle Path at the Owner's expense to the standard approved by condition 15 of the Planning Permission on a permissive basis until such time as the PROW Agreement has completed and the relevant Intended Cycle Path has become a highway maintainable at the public expense PROVIDED THAT the Owner shall be entitled prior to dedication of any part of the Intended Cycle Paths as highway to close that part of the Intended Cycle Paths on the grounds of safety, repair and maintenance where reasonably required.

9. To not seek any compensation of costs for agreeing any PROW Agreement.
10. To pay the District Council's or County Council's (as the case may be) (but not both) reasonable legal and professional costs in relation to the drafting, negotiation and completion of the PROW Agreement(s) up to a combined total of £5,000 (no VAT) within 28 working days of receipt of invoice from the District Council or County Council (as the case may be).
11. To cooperate with the County Council so far as is reasonably necessary to facilitate any modification to the Definitive Map and Statement that may be reasonably required to record Woolverstone Restricted Byway 20 running along and within the whole width of Berners Lane as it exists at the date of this Agreement and not to object to any such Definitive Map Modification Order.

SCHEDULE 4

THE DISTRICT COUNCIL'S COVENANTS WITH THE OWNER

1. The District Council covenants to use the Affordable Housing Commuted Sum towards the purpose for which it is intended as set out in this agreement and to repay any unspent portion of the same with interest ten (10) years after receiving it from the Owner.
2. In the event that the PROW Agreement(s) is between the District Council and the Owner the District Council covenants to act promptly and not to unreasonably withhold any consent, certification or approval required in connection with PROW Agreement(s).
3. The District Council covenants to undertake an inspection of the Open Space Land within 20 Working Days of the Owner's invitation detailed at paragraph 1.4 of Part 4 of Schedule 2.

SCHEDULE 5

THE COUNTY COUNCIL'S COVENANTS WITH THE OWNER

1. Subject to paragraph 2 of this Schedule the County Council covenants to provide the Owner with a draft certificate of works within two (2) months of receipt by the County Council of an application for the PROW Agreement(s).
2. Where the Owner makes an application for the PROW Agreement(s) to the District Council instead of the County Council paragraph 1 of this Schedule shall be read as if the two (2) month period runs from receipt by the County Council of a notice in writing from the Owner that an application for a PROW Agreement has been submitted to the District Council.
3. In the event that the PROW Agreement(s) is entered into between the County Council and the Owner or where PROW Agreement(s) entered into with the District Council or entered into with the County Council and the District Council require action by the County Council the County Council covenants to act promptly and not to unreasonably withhold any certificate of works, consent, certification or approval required in connection with the PROW Agreement(s).

SCHEDULE 6

NOMINATIONS AGREEMENT

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

BETWEEN:

- (1) [_____] whose registered address is at [_____] ('the Registered Provider') and
- (2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ('the District Council')

1. Definitions

In this Deed:

- 1.1 **'Affordable Housing'** means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market.
- 1.2 **'Affordable Housing Units'** means the two [2] Dwellings all of which shall be Affordable Housing to be provided on the Property of which one (1) Dwellings shall be Shared Ownership and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and one (1) Dwellings shall be Rental Dwellings to be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to this deed of nomination rights as varied from time to time and Affordable Housing Units shall be construed accordingly.
- 1.3 **'Affordable Rent'** means housing 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 service charges applicable or the local housing allowance rate.
- 1.4 **'Chargee'** for the purposes of this Nominations Agreement means any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed

pursuant to the Law of Property Act 1925 or housing administrator pursuant to section 101 of the Housing and Planning Act 2016.

- 1.5 **'Chargee's Duties'** means the tasks and duties set out in Clause 10.4 of this Deed.
- 1.6 **'Gateway to Homechoice'** means the Greater Haven Gateway sub-regional Choice Based Lettings system (or any replacement or similar system in place at the time).
- 1.7 **'Initial Let'** means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit.
- 1.8 **'Local Connection Criteria'** means an individual who immediately before taking up occupation of an Affordable Housing Unit:
- 1.8.1 had his only or principal home in the district of Babergh for a continuous period of not less than 2 years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.8.2 to 1.8.4 inclusive;
- 1.8.2 has or a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than 2 years in the district of Babergh and wishes to be near that relative or;
- 1.8.3 is employed in the district of Babergh on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for 2 years;
- 1.8.4 who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called the "Availability Date") can provide satisfactory written evidence to the District Council of his or her former residency in the district of Babergh for either (i) six months out of the preceding twelve months or (ii) three years out of the preceding five years and in either case such period of former residency shall end with the Availability Date.
- 1.9 **'Nomination List'** means the Gateway to Homechoice Short List produced in accordance with the Service Level Agreement.

- 1.10 **'Nominee'** means a person named on the Nomination List who satisfies the Local Connection Criteria and is verified by the District Council as best meeting the criteria for the category of Affordable Housing Unit in respect of which the Registered Provider is to select a person from the Nomination List and offer a Tenancy Agreement.
- 1.11 **'Practical Completion'** means issue of a certificate of practical completion by the Registered Provider's surveyor or in the event that the Affordable Housing Units are constructed by a party other than the Registered Provider the issue of a certificate of practical completion by that other party's surveyor.
- 1.12 **'Property'** means the land and dwellings on five sites in Woolverstone and Freston Suffolk shown edged red on the plan annexed.
- 1.13 **'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.
- 1.14 **'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 Chapter III of that Act.
- 1.15 **"the Service Level Agreement"** means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the Registered Provider and Others (1) and the District Council and Others.
- 1.16 **'Shared Ownership Dwelling'** means an Affordable Dwelling to be let on a Shared Ownership Lease in accordance with the terms as set out in Homes England's capital funding guide or any other such guidance as shall replace it.
- 1.17 **'Shared Ownership Lease'** means a lease or sub-lease of an Affordable Dwelling granted at a premium whereby up to 70% of the Open Market Value on first purchase of the legal and equitable interest in the Affordable Dwelling is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% of the legal and equitable interest in the Affordable Dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider

at the date of the grant of the Shared Ownership Lease or such other figure permitted by Homes England from time to time. Any capital receipt received by the Registered Provider in excess of eighty per cent (80%) as a result of the tenant exercising their right to staircase out to one hundred per cent (100%) shall be retained by the Registered Provider for re-investment in Affordable Housing within the district of Babergh for a period of five (5) years from the date of receipt and if not spent within 5 years the Registered Provider will be able to expend such sums for Affordable Housing elsewhere.

- 1.18 **'Tenancy Agreement'** means an assured tenancy agreement in a form prepared by the Registered Provider and containing terms which accord with the form of tenancy agreement being used by the Registered Provider from time to time for its general lettings.
- 1.19 **'Vacancy Notice'** means a written notice (in a form to be agreed between the Registered Provider and given by the Registered Provider to the District Council within one month from the date of this Deed) the function of such notice being the notification to the District Council by the Registered Provider of the expected date on which the construction and fitting out of the Affordable Housing Units will be complete.
- 1.20 **'Void'** means an Affordable Housing Unit which is vacant otherwise than as a result of the tenant having:
- 1.20.1 moved to other accommodation either by transfer or decant provided by the Registered Provider;
 - 1.20.2 moved to other accommodation under a reciprocal arrangement provided by another Registered Provider;
 - 1.20.3 vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere.
- 1.21 **'Void Notice'** means a written notice given by the Registered Provider to the District Council (in a form to be agreed between the Registered Provider and the District Council within one month from the date of this Deed) the function of such a notice being the notification to the District Council of a Void.
- 1.22 **'Working Day'** means Monday to Friday (inclusive) except Good Friday, Christmas Day and any public or bank holidays from time to time in England.

2 Enabling Provisions

This Deed is made pursuant to the Local Government Act 1972 Section 111 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.

3.1 Initial lets

The Registered Provider hereby grants the District Council Nomination rights for 100% of the Initial lets and thereafter 75% for voids in relation to the Affordable Rented Dwellings. In relation to the Initial Let of the Affordable Housing Unit the following provisions shall apply;

3.1.1 The Registered Provider shall give the District Council not less than three (3) months' written notice of the date when the Affordable Housing Unit will be ready for occupation.

3.1.2 The Registered Provider shall serve a Vacancy Notice upon the District Council in respect of the Affordable Housing Unit not earlier than two (2) months prior to the Affordable Housing Unit becoming available for occupation.

3.2 Voids

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

4 Supplemental provisions relating to allocating Initial Lets and Voids

4.1 Where there are two or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.8.1 to 1.8.5 of this Schedule and subject to clause 4.2 of this Schedule preference must be given to the applicant/s who have the highest housing need according to the District Council's current allocations policy.

- 4.2 If any of the Affordable Housing Units are designed or adapted for people with disabilities then any such Dwelling may be first offered to a person or persons with disabilities who require such accommodation even where such person(s) have a lesser Local Connection under clauses 1.8.1 to 1.8.5 of this Schedule than someone who does not have disabilities.

5. Registered Provider covenants

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

- 5.1 To ensure the Affordable Housing Units comprised within the Property are used as Affordable Housing Units.
- 5.2 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.
- 5.3 the Affordable Housing Units are constructed in accordance with current Homes England Housing Standards Technical requirements 2015 Level 1 requirements (unless otherwise agreed in writing with the District Council through reserved matters or otherwise).

6. Alteration of lists

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

7. 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.

8 Transfer to other Registered Provider

The Registered Provider 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 District Council and Gateway to Homechoice simultaneously on completing the transfer of the Property.

9 Disputes

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

10 Agreements and declarations

The parties agree:

- 10.1 Nothing in this Deed fetters or restricts the exercise by the District Council of any of its powers.
- 10.2 The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33.
- 10.3 From the date of Practical Completion the Affordable Housing Units shall be let in accordance with the terms of this deed save that the obligations and restrictions contained in this deed shall not be binding on:
 - 10.3.1 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
 - 10.3.2 any Chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or
 - 10.3.3 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.

- 10.4 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 District Council of its intention to dispose and:
- 10.4.1 in the event that the District Council responds within one 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.
- 10.4.2 if the District Council does not serve its response to the notice within the said period of one month contained in clause 10.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this deed.
- 10.4.3 if the District Council or any other person cannot within two (2) months' of the date of service of its response under clause 10.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 10.4 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 District Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

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

THE COMMON SEAL OF)

BABERGH DISTRICT COUNCIL)

was affixed in the presence of:)

Authorised Officer

Executed as a deed by **BARCLAYS**)

SECURITY TRUSTEE LIMITED)

acting by a director in the presence of:)