

DATED 26th October

2023

MID SUFFOLK DISTRICT COUNCIL (1)

-and-

SUFFOLK COUNTY COUNCIL (2)

-and-

EAST COUNTY INVESTMENTS LIMITED (3)

SECTION 106 AGREEMENT

relating to land at Violet Hill Road, Stowmarket, Suffolk IP14 1NN

THIS AGREEMENT is made on this 26th day of October 2023

BETWEEN:

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX (**"the District Council"**); and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX (**"the County Council"**); and
- (3) **EAST COUNTY INVESTMENTS LIMITED** (Co. Reg. No. 11346264) of Truck East House, Violet Hill Road, Stowmarket, IP14 1NN (**"the Owner"**); and

BACKGROUND

- (A) For the purposes of the 1990 Act (as defined herein), the District Council and the County Council are the local planning authorities for the area within which the Site (as defined herein) is located and are the authorities entitled to enforce the obligations set out in this Agreement. The County Council is also the local education authority, and the local highway authority (except for trunk roads) in the County of Suffolk.
- (B) The Owner is the freehold owner of the Site and which ownership is registered at HM Land Registry with the Title Number SK370530.
- (C) TruckEast Ltd has submitted the Planning Application (as defined herein) to the District Council and the District Council has resolved to grant the Planning Permission (as defined herein) subject to the Owner first entering into this Agreement.
- (D) The District Council is satisfied that the planning obligations contained in this Agreement meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) in that they: (i) are necessary to make the Development acceptable in planning terms; (ii) are directly related to the Development; and (iii) fairly and reasonable relate in scale and kind to the Development.
- (E) The Parties (as defined herein) have entered into this Agreement with the intention that the obligations contained in this Agreement may be enforced by the District Council and (where appropriate) the County Council against the Owner and their successors in title.

1. **OPERATIVE PROVISIONS**

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

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

"BCIS Index" means the Building Cost Information Service Index published 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;

"BCIS Index Linked " means the increase in any sum referred to in Schedule 1 and Schedule 3 by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 11 of this Agreement;

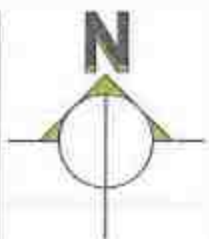
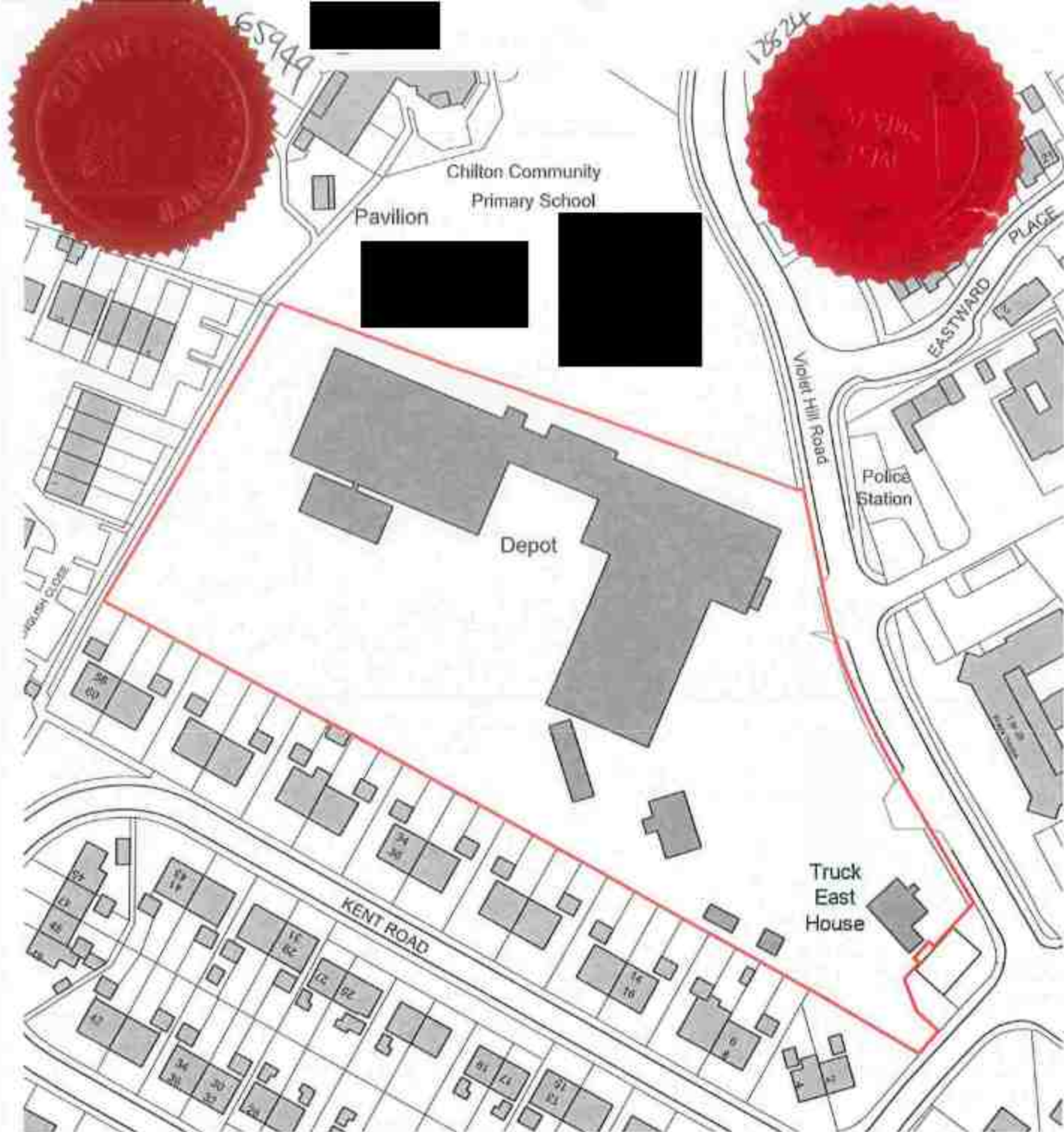
"Commencement Date" means the date that Commencement of Development occurs;

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

"Development" means the development set out in the Planning Application and which development comprises the erection of up to sixty- five (65) dwellings including up to 22 affordable housing units and construction of new vehicular access;

"Dwellings"	means the residential dwellings (within use class C3) constructed as part of the Development (including a house bungalow flat or maisonette) and the use in this Agreement of the term "Dwelling" shall be construed accordingly;
"Market Dwellings"	means all Dwellings to be constructed as part of the Development which are not Affordable Housing Dwellings defined in Schedule 2 hereof;
"NPPF"	means the National Planning Policy Framework first published in March 2012 and last updated in July 2021;
"Notice A"	means a written notice confirming the proposed Commencement Date;
"Notice B"	means a written notice confirming that Commencement of Development has taken place;
"Occupation"	<p>means beneficial occupation for the purposes permitted by the Planning Permission and shall not include:</p> <ul style="list-style-type: none"> (a) any occupation associated with the construction of the Development including daytime occupation by workmen involved in the construction of the Development; and (b) in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices or for show homes or for the storage of plant and materials or in relation to security operations

	and the use in this Agreement of the terms "Occupy" or "Occupied" or "Occupancy" or "Occupiers" shall be construed accordingly;
"Parties"	means together the District Council, the County Council and the Owner;
"Planning Application"	means the planning application (to which application the District Council applied the reference DC/22/06379) seeking outline planning permission for the Development;
"Planning Permission"	means the planning permission granted by the District Council for the Development and which planning permission may be subject to conditions;
"RPI Index"	means the Retail Price Index published from time to time or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Parties;
"RPI Indexed"	means the increase in any sum referred to in Schedule 1 and Schedule 3 by an amount equivalent to the increase in the RPI Index to be calculated in accordance with Clause 11 of this Agreement;
"Site"	means the land at Violet Hill Road, Stowmarket IP14 1NN and which land is identified as being the land shown edged in red on the Site Plan;
"Site Plan"	means the drawing numbered T0103-100 Rev A (dated 12/12/22 and marked 'Location Plan') a copy of which is annexed hereto;



C Squared Architects Ltd			
The Barns Stretton Road Warrington Wiltshire		Telephone 01925 357555 Website csquaredarchitects.co.uk	
Notes:			
On top scale, see figure dimensions only.			
No structure is to be built on the site. It is recommended that any work on the structure of the site should be done in accordance with the planning.			
The drawing is to be used in conjunction with all other relevant drawings and any other relevant information.			
The drawing is copyright © of C Squared Architects Ltd.			
Rev	Description	Date	By
01/12/20	OUTLINE APPLICATION	10	AW
A	01/12/20	01/12/20	AW

Client	
TruckEast	
Project	
Violet Hill Road, Stowmarket	
Drawing title	
Location Plan Existing Site	
Scale	Date
1:1250 @ A1	12/12/22
Drawn by	Checked by
BW	JO
Drawing No	Revision
T0103-100	A
OUTLINE APPLICATION	

"Working Days"

means any day which is not a Saturday, a Sunday, a bank or public holiday in England.

1.2 In this Agreement:

- 1.2.1 the clause or Schedule headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a part or paragraph are to a part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in England as enacted at the date of this Agreement as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the Site include any part of it;
- 1.2.5 references to any party in this Agreement include the successors in title of that party. In addition, references to the District Council and the County Council includes any successor local planning authority exercising planning powers under the 1990 Act or any successor authority exercising statutory powers in respect of matters concerning education and/or highways and/or transportation;
- 1.2.6 "including" means "including, without limitation";
- 1.2.7 any covenant by the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 words importing the singular meaning where the context so admits shall include the plural meaning and vice versa;
- 1.2.9 words of the masculine gender include the feminine and neuter genders and words denoting natural persons include companies corporations and

firms and all such words shall be construed interchangeably in that manner;

1.2.10 words denoting an obligation on a party to do any act matter or thing shall include an obligation to procure that it be done and words placing a party under a restriction shall include an obligation not to cause permit or allow infringement of the restriction;

1.3 The Parties do not intend that any of the terms of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2 EFFECT OF THIS AGREEMENT

2.1 This Agreement is a Deed and is made pursuant to the provisions of Section 106 of the 1990 Act. To the extent that they fall within the terms of Section 106 of the 1990 Act, the covenants contained in the Schedules to this Agreement are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the District Council and (where appropriate) the County Council;

2.2 To the extent that any of the covenants contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers;

2.3 Nothing in this Agreement restricts or is intended to restrict the proper exercise at any time by the District Council and/or the County Council of any of their statutory powers, functions or discretions in relation to the Site or otherwise;

2.4 The covenants in this Agreement will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker;

2.5 The covenants in this Agreement will not be enforceable against individual purchasers or lessees or Occupiers of the Individual Dwellings or their mortgagees or successors in title to either the purchaser or lessee or Occupier or mortgagee, save in respect of the restriction on occupation in paragraph 2.7 of Schedule 2 which shall apply to the Affordable Housing Dwellings;

2.6 The covenants in this Agreement will not be enforceable against any Approved Body or their mortgagee, chargee (including any receivers appointed by a mortgagee who are not in possession) save for the obligations in Schedule 2 which shall remain binding;

2.7 Nothing in this Agreement prohibits or limits the right to develop any part of the Site in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.

3. COMMENCEMENT DATE

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

3.1.1 The grant of the Planning Permission; and

3.1.2 the Commencement of Development

save for the provisions set out at clauses 2.1 to 2.7 (inclusive), 3.1, 3.2, 4.1 to 4.17 (inclusive) 5, 6, 7 and 12 and 13 within this Agreement which shall take effect on the date of this Agreement;

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

3.2.1 archaeological or site investigations or surveys;

3.2.2 site or soil surveys or site decontamination;

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

3.2.4 works connected with groundworks;

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

3.2.6 erection of fencing or boarding;

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

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

3.2.9 construction of temporary access roads.

4. OBLIGATIONS OF THE PARTIES

4.1 The Owner so as to bind the Site hereby covenants with the District Council and the County Council to comply with the obligations set out in the Schedules to this Agreement;

4.2 The Owner hereby covenants with the District Council and the County Council to provide the District Council and the County Council with: (a) a Notice A not less than twenty (20) Working Days before the expected Commencement Date; and (b) a Notice B not more than five (5) Working Days after the Commencement Date;

4.3 The District Council and the County Council hereby covenant with the Owner to comply with their obligations set out in the Schedules to this Agreement;

4.4 The District Council and the County Council hereby covenant with the Owner to act reasonably, properly and diligently in exercising any discretion and in discharging their respective functions under this Agreement. In particular, where any agreement, approval, authorisation, consent or other similar affirmation is required from the District Council or the County Council under the terms of the Agreement, the District Council and the County Council will not unreasonably withhold or delay such agreement, approval, authorisation, consent or other similar affirmation PROVIDED ALWAYS that such agreement, approval, authorisation, consent or other similar affirmation may only be given in writing and only prior to the act or event to which it applies (unless otherwise agreed by the District Council or the County Council as appropriate);

4.5 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation to use reasonable endeavours not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred;

4.6 Any obligation that prohibits the Owner from allowing or limiting Occupation of the Site until certain events occur shall also be an obligation on the Owner to positively carry

out those certain events by no later than the number of Occupations set out therein unless the context otherwise requires;

- 4.7 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with their interest in the Site or the part of the Site in respect of which such breach occurs except to the extent that they have caused or contributed to that breach, but they will remain liable for any breaches of this Agreement occurring before that date. Neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause 4.7 nor shall the granting of any legal easements constitute an interest for the purposes of this Clause 4.7;
- 4.8 No compensation shall be payable by the District Council or the County Council to any party to this Agreement or their successors in title and assigns arising from the terms of this Agreement and unless specified otherwise in this Agreement all works and activities to be executed hereunder (including such as are of a preparatory ancillary or maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the District Council or the County Council;
- 4.9 Representatives of the District Council and/or the County Council may enter upon the Site at any reasonable time upon reasonable written notice (and immediately in the event of an emergency) to ascertain whether the terms of this Agreement and of the Planning Permission are or have been complied with subject to complying with all health and safety and security requirements required by the Owner Provided That this right shall cease and determine in relation to any Dwelling on first Occupation of that Dwelling;
- 4.10 Any agreement, covenant or obligation contained herein by any of the Parties which comprise more than one person or entity shall be joint and several and where any agreement, covenant or obligation is made with or undertaken towards more than one person it shall be construed as having been made with or undertaken towards each such person separately;
- 4.11 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the Parties shall amend that provision in such reasonable manner as achieves the intention of this Agreement without illegality provided that any party may seek the consent of the other

or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the foregoing provisions would be to defeat the original intention of this Agreement;

- 4.12 No variation to this Agreement shall be effective unless made by deed and for the avoidance of doubt the consent seal signature execution or approval of the owner, lessee or occupier of any Dwelling or their mortgagee or chargee or any person deriving title from them shall not be required to vary any part of this Agreement;
- 4.13 The failure by any party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement;
- 4.14 If at any time Value Added Tax ("VAT") is or becomes chargeable in respect of any supply made in accordance with the provisions of this Agreement and such VAT is irrecoverable then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly;
- 4.15 This Agreement shall be enforceable as a local land charge and shall be registered immediately by the District Council as such and the District Council covenants with the Owner that it will note on the local land charges register when compliance with all of the said obligations has occurred;
- 4.16 That in the event that the Owner fails to serve any of the notices that they are required by the provisions of this Agreement to serve then the District Council and/or the County Council (as appropriate) shall be entitled to payment of the various financial contributions contained in this Agreement at any time following them becoming aware that an event or a level of Occupancy of Dwellings has occurred that would trigger the payment of a financial contribution and the time period for the return of any unspent financial contribution shall be extended accordingly;
- 4.17 Any of the financial contributions payable by the Owner in accordance with this Agreement that are paid late will attract a daily interest rate of four percent (4%) above the Bank of England base rate on the amount due from the day that it is due until the day that it is paid.

5. TERMINATION OF THIS AGREEMENT

- 5.1 This Agreement will come to an end if:

5.1.2 the Planning Permission is quashed, revoked or otherwise withdrawn or otherwise modified without the consent of the Owner before the Commencement Date so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

5.1.3 the Planning Permission expires;

5.2 Where the Agreement comes to an end under Clause 5.1 above the District Council shall, on the written request of the Owner vacate or cancel the entry made in the local land charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site.

6. NOTICES

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

6.1.1 for the Owner as set out above;

6.1.2 for the District Council as set out above and all notices shall: (a) be marked to the attention of the Chief Planning Officer; and (b) quote the planning application reference **DC/22/06379**;

6.1.3 for the County Council as set out above and all notices shall: (a) be marked for the attention of the Executive Director of Growth, Highways and Infrastructure; and (b) quote the planning application reference **DC/22/06379**;

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

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

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

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

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

6.4 Otherwise than in relation to individual purchasers of Dwellings the Owner shall give to the District Council and the County Council within one month of the Owner disposing of any part of the Site written notice of the name and address of the person or persons to whom the Site or part thereof has been transferred.

7. COSTS OF THIS AGREEMENT

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

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

7.3 Upon completion of this Agreement the Owner covenants to pay to the County Council a contribution of £1,428 (One Thousand Four Hundred and Twenty Eight Pounds) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms of this Agreement.

8. DETERMINATION OF DISPUTES

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

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

8.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either party to the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional

institute with expertise in the relevant discipline as agreed between the parties in dispute) who will have the power, with the right to take such further advice as he may require, to determine the appropriate type of Specialist and to arrange his nomination under clause 8.4;

8.4 Any dispute over the identity of the Specialist is to be referred at the request of either party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President for the time being of the Chartered Institute of Arbitrators (or other appropriate President of a professional institute with expertise in the relevant discipline as agreed between the parties in dispute);

8.5 The Specialist is to act as an independent expert and:

8.5.1 each party may make written representations within ten (10) Working Days of his appointment and will copy the written representations to the other party;

8.5.2 each party is to have a further ten (10) Working Days to make written comments on the other's representations and will copy the written comments to the other party;

8.5.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;

8.5.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other;

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

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

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

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

9. **JURISDICTION**

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

10. **SECTION 73**

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

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

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

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

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

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

11. **INDEXATION**

- 11.1 Save for the Public Open Space Maintenance Contribution which is referred to in Schedule 3 of this Agreement which will be index linked from the date that such contribution sum has been agreed by the Owner and the District Council any sum referred to in Schedules 1 and 3 of this Agreement (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index or the 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:

- 11.1.1 A is the sum payable under this Agreement;
- 11.1.2 B is the original sum calculated as the sum payable;
- 11.1.3 C is the BCIS Index or RPI Index as appropriate for the month 2 months before the date on which the sum is payable;
- 11.1.4 D is the BCIS Index or RPI Index as appropriate for the month 2 months before the date of this Deed; and
- 11.1.5 C/D is greater than 1.

12. **COUNTERPARTS**

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

13. **EXECUTION**

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

SCHEDULE 1

COUNTY COUNCIL CONTRIBUTIONS

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

"Early Years & Childcare Contribution"	means the sum of One Hundred and Thirty Thousand Six Hundred and Forty- Four Pounds (£130,644) BCIS Index Linked to be applied by the County Council solely towards the Early Years & Childcare Purposes;
"Early Years & Childcare Purposes"	means the use of the Early Years & Childcare Contribution towards provision at Grace Cook Nursery or alternative provision serving the Development for the education of children up to age 5 including those with special educational needs and including the reimbursement of capital funding made by the District Council or the County Council in anticipation of payment of the Early Years & Childcare Contribution;
"Education Contribution"	means together the Early Years & Childcare Contribution and the Primary School Contribution;
"Primary School Contribution"	means the sum of Three Hundred and Seventy Thousand One Hundred and Fifty Eight Pounds (£370,158) BCIS Index Linked to be applied by the County Council solely towards the Primary School Purposes;
"Primary School Purposes"	means the use of the Primary School Contribution for the provision of primary school places at Grace Cook Primary School or alternative provision serving the

Development (whether previously forward funded or not)

"Traffic Regulation Order Contribution"

means the sum of Eleven Thousand Five Hundred Pounds (£11,500) RPI Indexed to be applied by the County Council solely towards the Traffic Regulation Order Purposes;

"Traffic Regulation Order Purposes"

means the use of the Traffic Regulation Order Contribution towards a legal order for a parking restriction amendment to enable the proposed access and off-site highway improvement works to be completed.

2. The Owner hereby covenants with the County Council as follows:
 - 2.1 Not to Commence Development before the Traffic Regulation Order Contribution has been paid to the County Council;
 - 2.2 To pay the Traffic Regulation Order Contribution before Commencement of Development;
 - 2.3 Not to Occupy (or allow cause or permit the Occupation of) more than 25% of the Dwellings unless or until at least fifty percent (50%) of the Education Contribution has been paid to the County Council;
 - 2.4 To pay at least fifty percent (50%) of the Education Contribution to the County Council before the Occupation of more than 25% of the Dwellings;
 - 2.5 Not to Occupy (or allow, cause or permit the Occupation of) more than 75% of the Dwellings unless and until the remaining 50% of the Education Contribution has been paid in full; and
 - 2.6 To pay the remaining 50% of the Education Contribution to the County Council before the Occupation of more than 75% of the Dwellings.
3. The County Council hereby covenants with the Owner, as follows:
 - 3.1 To provide a written form of receipt for payment of each tranche of the Education Contribution;

- 3.2 To place each tranche of the Education Contribution when received into an interest-bearing account with a clearing bank and to ensure that the Education Contribution is applied exclusively towards the Early Years & Childcare Purposes and the Primary School Purposes, as appropriate;
- 3.3 To provide a written form of receipt for payment of the Traffic Regulation Order Contribution;
- 3.4 To place the Traffic Regulation Order Contribution when received into an interest-bearing account with a clearing bank and to ensure that the Traffic Regulation Order Contribution is applied exclusively towards the Traffic Regulation Purposes;
- 3.5 To pay any part of the Education Contribution remaining unspent or uncommitted after ten years from the date the last Dwelling was first Occupied (including interest applied at the Bank of England base rate minus two basis points compounding annually at financial year end) to the party who paid such contribution within 28 Working Days of receipt of a written request made;
- 3.6 To pay any part of the Traffic Regulation Order Contribution remaining unspent or uncommitted after five years from the date of payment (including interest applied at the Bank of England base rate minus two basis points compounding annually at financial year end) to the party who paid such contribution within 28 Working Days of receipt of a written request made.

SCHEDULE 2

AFFORDABLE HOUSING

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

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

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

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

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

"Affordable Housing Scheme " means a scheme which sets out the precise location of the Affordable Housing Dwellings, the type of the Affordable Housing Dwellings

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

"Approved Body"

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

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

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

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

"Building Regulations"

means the Building Regulations 2010, as amended;

"Chargee"

means any mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a Housing Administrator (each "a Receiver") of the whole or any part of the Affordable Housing Dwellings;

"Choice Based Lettings Scheme"	means an integrated electronic and manual information system which enable members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme relates to apply for a selection of suitable property or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party;
"CPI"	means the Consumer Price Index;
"Homes England"	means the public body set up to fund and regulate the provision of Affordable Housing (as described in Annex 2 (Glossary) of the NPPE) in England and any successor body;
"Housing Administrator"	has the meaning ascribed to it in Section 101 of the Housing and Planning Act 2016;
"Nominations Agreement"	<p>means an agreement (or agreements) entered into by the District Council and the Approved Body to:</p> <p>(i) regulate the initial letting and subsequent letting of the Affordable Rented Dwellings and for the avoidance of any doubt the Nominations Agreement must provide that: (a) the District Council is to have 100% nomination rights for all initial lets; and (b) all subsequent lets are via the Choice Based Letting Scheme; and (c) all initial and subsequent lets shall be subject to a local connection criteria;</p> <p>(ii) regulate the initial purchases and subsequent purchases of the Shared Ownership Dwellings.</p>

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

And for the further avoidance of any doubt, the Nominations Agreement for the Affordable Rented Dwellings and/or the Shared Ownership Dwellings shall be in accordance with the District Council's standard template included hereto at Appendix 2 unless: (a) the District Council notifies the Owner or the Approved Body that the standard template has been updated; or (b) the District Council agrees in writing to amendments to the standard template;

"Persons in Housing Need"

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

"Protected Person"

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

(c) exercised a contractual right to acquire a one hundred percent (100%) interest in the lease of a Shared Ownership Dwelling
and for the avoidance of any doubt the term **"Protected Persons"** shall include successors in title to the tenant referred to above;

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

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

"Shared Ownership Dwellings" means those Dwellings to be used exclusively for the purposes of Shared Ownership Housing, subject to the terms of this Schedule 2, and the use in this Schedule 2 of the term **"Shared Ownership Dwelling"** shall be construed accordingly;

"Shared Ownership Housing" means: housing let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time being in force in accordance with terms in the Regulator of Social Housing capital funding guide;

"Shared Ownership Lease"

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

- (a) an initial purchase shall range from 10% to 70% of the equity dependent on the ability of the lessee to obtain finance;
- (b) there is the ability for the lessee to acquire increased levels of equity (up to 100%) in the Shared Ownership Dwelling at some time in the future;
- (c) the initial rent charged by the Approved Body shall not exceed 2.75% of the value of the equity retained by the Approved Body subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the District Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England;
- (d) capital receipts received from increased equity acquisitions (referred to in '(b)' above) is to be retained by the Approved Body and the Approved Body shall use reasonable endeavours to re-invest such capital receipts in Affordable Housing (as defined in the NPPF) within the administrative district of the District Council subject to any contrary

requirements within the Regulator of
Social Housing capital funding guide.

Part One

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

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

title through such Chargee PROVIDED THAT the Chargee has first provided the District Council with notice in writing that they intend to dispose of the Affordable Housing Dwelling (or Affordable Housing Dwellings) and shall have used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Housing Dwellings to another Approved Body or to the District Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses AND if such disposal has not completed within the three (3) month period the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the obligations in Schedule 2 in this Agreement which provisions shall determine absolutely;

Part Two

- A. The transfer of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession.
- B. The transfer deed shall contain:
 - 1. a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;
 - 2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and
 - 3. such other covenants and reservations as the Owner (as appropriate) may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

SCHEDULE 3

PUBLIC OPEN SPACE

1. In this Schedule 3 the following words and expressions shall have the following meanings:

"Chartered Landscape Architect"	means a chartered member of the Landscape Institute appointed by the Owner;
"Landscape Institute"	means the Landscape Institute (charity registered in England and Wales with the number 1073396) of 85 Tottenham Court Road, London W1T 4TQ;
"Management Company"	means: <ul style="list-style-type: none">(i) a private limited company established or appointed for inter alia the purpose of managing and maintaining the Public Open Space; and/or(ii) any statutory undertakers which are to take on the management of any areas of the Public Open Space in accordance with their statutory functions; and/or(iii) any Approved Body (as defined in Schedule 2) in relation to any areas of Public Open Space to be provided in areas marked for affordable housing in the Affordable Housing Scheme (as defined in Schedule 2);
"Public Open Space "	means the areas of land within the Site comprising the public open space which shall be laid out in accordance with the approved Public Open Space Specification to enable the Public Open Space to be used by all members of the public for informal and casual recreational use PROVIDED THAT for the avoidance of any doubt the Public Open Space does not include: (a) the Dwellings and parking areas and garden space associated with those Dwellings; (b) the estate roads; and (c) any land to be used for highway purposes including highway verges;

"Public Open Space Completion Certificate"	means written confirmation issued by the District Council that confirms that the Public Open Space has been laid out in accordance with the approved Public Open Space Specification;
"Public Open Space Final Certificate"	means written confirmation issued by the District Council that confirms that the Public Open Space has been maintained and remedial works completed to the reasonable satisfaction of the District Council;
"Public Open Space Plan"	means a HM Land Registry compliant plan that precisely identifies the areas of Public Open Space within the Site;
"Public Open Space Management Plan"	means a management plan prepared by the Owner to be approved in writing by the District Council for the ongoing management and maintenance of the Public Open Space including for the avoidance of doubt provisions for the rectification of any defects in any area of the Public Open Space until the completion of the relevant transfer of the Public Open Space to either the District Council or the Management Company in accordance with this Agreement;
"Public Open Space Maintenance Contribution"	means the sum to be calculated in accordance with the approved plans and the unit prices appended as Appendix 1 to this Agreement and which shall be BCIS Index Linked from the date that such contribution is agreed between the District Council and the Owner;
"Public Open Space Specification"	means a specification (to be approved by the District Council in writing) prepared by or in association with a Chartered Landscape Architect for the provision of the Public Open Space to include the clearing, decontamination (if necessary), fencing (if necessary), levelling/profiling (as appropriate), laying out, planting and seeding of the Public Open Space to enable the Public Open Space to be used by all members of the public for recreational activities at all times without cost, exclusion or hindrance;

"Relevant Documents" means the Public Open Space Plan, the Public Open Space Specification and the Public Open Space Management Plan;

2. The Owner hereby covenants with the District Council:

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

3. The District Council hereby covenants with the Owner that the District Council will:

- 3.1 use reasonable endeavours to provide approval in writing of the Relevant Documents within 40 Working Days of receipt; and
- 3.2 in the event that the District Council has not provided its approval of the Relevant Documents within 40 Working Days of receipt then the Relevant Documents are deemed to have been approved by the District Council;
- 3.3 in the event that the District Council elects to accept the transfer of the Public Open Space, it shall serve a written notice to this effect upon the Owner no later than six weeks from the date of grant of the Planning Permission and such notice shall be accompanied by a written statement advising of the Public Open Space Maintenance Sum payable to the District Council upon transfer of the Public Open Space (including a detailed calculation of such sum).

4. The Owner hereby covenants with the District Council as follows

- 4.1 Not to Occupy (or allow, cause or permit the Occupation of) any of the Dwellings unless and until the Relevant Documents have been approved by the District Council in writing or are deemed approved pursuant to paragraph 3.2 above;
- 4.2 Not to Occupy (or allow, cause or permit the Occupation of) more than fifty percent (50%) of the Dwellings unless and until:
- 4.2.1 at least fifty percent (50%) of the Public Open Space has been provided in accordance with the approved Public Open Space Plan and the approved Public Open Space Specification; and
- 4.2.2 the District Council has issued a Public Open Space Completion Certificate for the Public Open Space provided;
- 4.3 Not to Occupy (or allow, cause or permit the Occupation of) more than seventy- five percent (75%) of the Dwellings unless and until:
- 4.3.1 one hundred percent (100%) of the Public Open Space has been provided in accordance with the approved Public Open Space Plan and the approved Public Open Space Specification;
- 4.3.2 and the District Council has issued a Public Open Space Completion Certificate for all of the Public Open Space;
- 4.4 To:
- 4.4.1 maintain the Public Open Space in accordance with the approved Public Open Space Management Plan following the issue of the Public Open Space Completion Certificate and until such time as the transfer described in paragraph 4.7 of this Schedule 3 (below) have been completed; and
- 4.4.2 carry out and complete any remedial works to the Public Open Space as identified by the District Council pursuant to paragraph 4.5 of this Schedule 3 (below);
- 4.5 Upon the expiry of one (1) year from the issue of a Public Open Space Completion Certificate the Owner shall invite the District Council in writing to inspect the Public Open Space and identify any remedial works required to be carried out on the Public Open Space;

- 4.6 Within three (3) months of receipt of any list of remedial works required to be carried out on the Public Open Space (or within the next planting season where this is later and appropriate) the Owner shall complete the said remedial works and invite the District Council in writing to re-inspect the Public Open Space and issue the Public Open Space Final Certificate;
- 4.7 Once the District Council has issued one hundred percent (100%) of the Public Open Space with a Public Open Space Final Certificate the Owner shall transfer the Public Open Space to either the District Council or the Management Company (as the case may be) PROVIDED THAT for the avoidance of any doubt:
- 4.7.1 the proposed transferee shall be in accordance with paragraph 2.3 of this Schedule 3 unless the District Council elects to accept the transfer of the Public Open Space pursuant to paragraph 3.3 of this Schedule 3; and
 - 4.7.2 the transfer shall be for the nominal consideration of One Pound (£1.00); and
 - 4.7.3 the Public Open Space shall free of encumbrances and with all necessary easements and vacant possession and with the reasonable legal fees for such transfer being the responsibility of the Owner; and
 - 4.7.4 in the event that the Public Open Space is transferred to the District Council the Owner shall pay the Public Open Space Maintenance Contribution to the District Council at the same time as the transfer of the Public Open Space has been completed;
- 4.8 To include the following provisions in any transfer of the Public Open Space:
- 4.8.1 covenants to commit the transferee to permit the Public Open Space to be used exclusively by all members of the public for the purposes of recreation without cost, exclusion or hindrance; and
 - 4.8.2 covenants to commit the transferee to maintain the Public Open Space in accordance with the Public Open Space Management Plan; and
 - 4.8.3 covenants that the transferee will not transfer any part of the Public Open Space into the individual ownership of the owners of the Dwellings; and
 - 4.8.4 covenants that the transferee will comply with the provisions of this Agreement; and

4.8.5 obligations that the transferee will (if the District Council so requires) enter into a direct covenant with the District Council to perform the obligations set out in paragraphs 4.8.1, 4.8.2, 4.8.3 and 4.8.4 of this Schedule 3;

4.9 To provide a copy of the completed transfer (as referred to in paragraph 4.7 of this Schedule 3) to the District Council in relation to the Public Open Space and to inform the District Council in writing of the contact details of any Management Company;

4.10 In the event that the Public Open Space is transferred to a Management Company, to include in each transfer or lease of a Dwelling (including for the avoidance of doubt any Affordable Housing Dwelling) an obligation to contribute an annual amount to the Management Company which together with fair contributions from other purchasers or lessees of the Dwellings shall be sufficient to enable the Management Company to discharge its obligations under this Agreement in relation to the Public Open Space.

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



Authorised Signatory

The COMMON SEAL of
SUFFOLK COUNTY COUNCIL
was affixed in the presence of;

)
)
)



Authorised Signatory

EXECUTED as a DEED by
EAST COUNTY INVESTMENTS LIMITED
In the presence of;

)
)

JOHN BIGGIN

Director



Director/ Company Secretary



ALEX VICKERY

Appendix 1

Unit Prices for Calculating Public Open Space Contribution

Annual rates for maintenance – these would need adjusting to allow for requirements of individual

Specification	Revised price per unit for ONE YEAR maintenance (price of gas inflation to be added for variations for future years)	unit of pricing	additional notes
Grading Surface	£	107.00	100m ² (average 5.10m width)
Grading Trees and Fencing – Woodland Grading and Tree Growth	£	15.0	if applicable would need calculating following site visit
Grading Hedgehog	£	11.0	if applicable would need calculating following site visit
New Hedge	£	0.90	per meter including 1.5m width
New Fence	£	25.00	per meter Based on average maintenance expenses over five year intervals such as fence lifting structural joining remove hydraulic growth and so on
Grounds	£	0.40	per 100m ² per cut monthly by lawnmower (average grass)
	£	12.00	per 100m ² per cut monthly by lawnmower (average grass)
	£	11.00	per 100m ² per cut monthly by lawnmower (average grass)
Surface Foot Path	£	20.00	per 100m ² including 1.5m width
	£	0.25	per meter width where appropriate multiply by two (both sides of path)

Grass Treatment	A	05.00	per hour	cutting and general tidying
	B	06.00	per 50m	maintain flower borders and borders
	C	120.00	per 50m	emptying waste
	D	05.00	per 50m	maintain grass borders and borders
	E	022.00	per 50m	emptying waste
Maintain paths and public areas of site	B	0100	per 100m ² per set (multiply by no. of standard assembly grass regions)	emptying paths 2m wide
Topsoil (per 100m ² per)		10.0		If applicable waste cost (including haul in equipment) type quantity and in m
Grass seeds	B	0.05	per 2m ²	

Appendix 2
Standard Template for the Nominations Agreement

DRAFT DEED OF NOMINATION RIGHTS

is made [enter date at completion]

BETWEEN

(1) [ENTER NAME OF RP]

and

(2) BABERGH DISTRICT COUNCIL/MID SUFFOLK DISTRICT COUNCIL (delete as appropriate)

Relating to

[Enter name and address as set out in Section 106. If new or different address, enter "and also known as"]

[Enter Planning Application reference]

[Enter Date of S106 Agreement:]

Shared Legal Services

Babergh District Council/Mid Suffolk District Council (delete as appropriate)

Council Offices

Endeavour House

8 Russell Road

Ipswich IP1 2BX

Part I

Provisions relating to Affordable Rent Units – Pages 3 to 11

Part II

Provisions relating to Shared Ownership Units – Pages 11 to 19

(Delete this page if only one part is used)

DRAFT

THIS DEED OF NOMINATION RIGHTS

is made [enter date at completion]

BETWEEN:

(1) [Enter name of RP] whose registered address is [enter RP'S address]

(the RP) and

(2) **BABERGH DISTRICT COUNCIL/MID SUFFOLK DISTRICT COUNCIL** (delete as appropriate) of Endeavour House, 8 Russell Road Ipswich Suffolk IP1 2BX

(the Council)

the Parties

Part I - Provisions relating to Affordable Rent Units

1. Definitions

1.1. 'Affordable Housing' has the meaning given to it in Annex 2 of the National Planning Policy Framework published in July 2021 (as may be amended from time to time or such other national policy that may from time to time replace or update this framework) or any successor policy thereto issued by HM Government.

1.2. 'Affordable Housing Location Plan' means a document consistent with the provision of Affordable Housing Units pursuant to the Planning Permission detailing the following:

- i) the Affordable Housing Units and their location;

- ii) the number of bedrooms per Dwelling;
- iii) street name and postal address; and
- iv) tenure.

1.3. 'Affordable Housing Unit' means {enter number} Dwellings ({enter percentage number} % of the Dwellings) which shall be Affordable Rent Units (unless otherwise agreed by the Council) and 'Affordable Housing Units' shall be construed accordingly.

1.4. 'Affordable Rent' means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable. Rents will be set, and may be adjusted over time, in accordance with the Government's policy for Affordable Rents as set out in the Rent Standard of April 2023 and any subsequent update or such Government policy which may succeed it.

1.5. 'Affordable Rent Unit' means an Affordable Housing Unit made available by a RP as low cost rental accommodation (as defined in Section 89 of the Housing and Regeneration Act 2008).

1.6. 'Allocations Policy' means the policy adopted by the Council which governs households that are eligible to Occupy Affordable Housing, in line with its statutory duties.

1.7. 'Chargee' means any mortgagee or chargee of the RP or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator.

1.8. 'Choice Based Lettings Scheme' means the allocation process that the Council has adopted for allocating social housing or any allocation process which may succeed it.

1.9. 'Dwelling' means a dwelling (including a house, flat, maisonette or bungalow and including both market housing units and Affordable Housing Units) to be constructed pursuant the Planning Permission and 'Dwellings' shall be construed accordingly.

1.10. 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings Scheme (or any replacement or similar system in place at the time).

1.11. 'Homes England' means the non-departmental public body known as Homes England or any successor organisation who is charged with the function of investing in the provision of Affordable Housing.

1.12. 'Initial Let' means the first tenancy of a newly constructed and previously unoccupied Affordable Rent Unit.

1.13. 'Local Connection' means a connection to the District of [enter name] and as defined in the Allocations Policy.

1.14. 'Local Connection Criteria' means the requirements that need to be met for a Local Connection as set out in the Allocations Policy.

1.15. 'Market Rent' means, in relation to accommodation, an estimate of its market rent inclusive of all service charges at the time the tenancy is granted that is based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.

1.16. 'Notice of Practical Completion' means a written notice (in a form to be agreed between the RP and the Council) to be given to the Council within two (2) weeks from the issue date of the certificate of Practical Completion. The function of such notice being the notification to the Council by the RP of the expected date on which the construction and fitting out of the Affordable Rented Units will be complete and ready to let.

1.17. 'Occupation' means the action of living in or using an Affordable Housing Unit as an only and principal home, for the purposes permitted by the Planning Permission, not including occupation by personnel engaged in construction, fitting out, decoration, marketing or display; or occupation in relation to security operations and 'Occupy' and 'Occupied' shall be construed accordingly.

1.18. 'Plan' means the location plan bearing drawing number [insert number] annexed to this deed.

1.19. 'Planning Permission' means the planning permission which may be granted pursuant to the planning application reference number [insert number] subject to conditions, and also to obligations in the section 106 (Town and Country Planning Act 1990) agreement dated [insert date].

1.20. 'Practical Completion' means issue of a certificate of practical completion by the RP's surveyor or, if the Affordable Housing Units are constructed by a party other than the RP, the issue of a certificate of practical completion by that other party's surveyor.

1.21. 'Property' means the land at [enter full address of land] shown edged red on the Plan.

1.22. 'Registered Provider' or 'RP' 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 the Regulator of Social Housing under Chapter III of that Act. For the avoidance of doubt this could also include the Council under the Housing Act 1985.

1.23. 'Rent Standard' means the Government's Policy Statement on rents for social housing updated in April 2023, and any subsequent update or policy which may succeed it.

1.24. 'Service Level Agreement' or 'SLA' means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the RP and the Council.

1.25. 'Tenancy Agreement' means a contract in a form prepared by the RP which sets out the legal terms and conditions of the tenancy, and which conforms with the requirements of the Tenancy Standard.

1.26. 'Tenancy Standard' means the Government's standards in respect of the letting of Affordable Housing published on 1 April 2012, as updated, and any such Government policy which may succeed it.

1.27. 'Void' means an Affordable Rent Unit which is vacant, otherwise than as a result of the tenant having:

- 1) moved to other accommodation due to a temporary decant provided by the RP;
- 2) moved to other accommodation under a reciprocal arrangement between the Council or RP and another Council or RP; or
- 3) moved to other accommodation by way of a mutual exchange.

and any void period shall be measured in calendar days between the date of termination of the previous tenancy, or repossession, and the start date of the new tenancy.

2. Enabling Provisions

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

3. Procedure

The Parties agree that the Service Level Agreement procedure to which they are signatories as part of the Gateway to Homechoice, Choice Based Lettings Scheme (or any such successor) and the Local Connection Criteria therein shall apply to the nomination of persons in respect of the Affordable Rent Units.

4. Initial Let

In relation to the Initial Let of any Affordable Rent Unit, the following provisions will apply:

- 1) the RP shall give the Council not less than twelve (12) weeks' written notice of the date when the Affordable Rent Units will be ready for occupation; and
- 2) the RP shall serve Notice of Practical Completion upon the Council within two (2) weeks of the date of a certificate of Practical Completion being issued; and

- 3) the Initial Let will be let in accordance with the SLA.

5. Voids

Should any Affordable Rent Unit become a Void after the Initial Let, or the RP has reasonable cause to believe it will become a Void, then it will be let in accordance with the SLA.

6. RP covenants

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

- 1) To ensure that each of the Affordable Rent Units that are acquired by the RP are Occupied as Affordable Housing Units.
- 2) To ensure that each of the Affordable Rent Units that are acquired by the RP are let to households with a Local Connection (unless otherwise agreed in writing with the Council and subject to the remaining terms of this deed).
- 3) To ensure that a Tenancy Agreement at an Affordable Rent is retained and managed by the RP.
- 4) To submit an Affordable Housing Location Plan to the Council not less than one (1) month in advance of the date when the first of the Affordable Rent Units will be ready for Occupation.

7. Variation of nomination rights

The Council and the RP agree that the nomination rights contained in this deed may be varied from time to time by agreement in writing by the Parties.

8. Notices

Any notice required to be served hereunder shall be sufficiently served on the Parties at the address indicated below or such other address notified by one party to the other in writing 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 on which such notice was transmitted by the party serving the notice or, if served after 4.30 pm, one (1) working day after electronic mailing.

The Council	Director for Housing, Babergh / Mid-Suffolk District Council, Endeavour House, 8 Russell Road, Ipswich IP1 2BX or by email: [enter email address]
The Registered Provider	As per the address provided at the beginning of this deed or by email: [enter email address]

9. Transfer to other RPs

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

10. 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 or relevant body on the application of either party.

11. Agreements and declarations

The Parties agree:

11.1. Nothing in this deed fetters or restricts the exercise by the Council of any of its powers.

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

11.3. From the issue date of a certificate of Practical Completion of each of the Affordable Rent Units acquired by the RP, the Affordable Rent 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:

11.3.1 any Chargee of the whole or any part of the Affordable Rent Units or any persons or bodies deriving title through such Chargee PROVIDED THAT:

11.3.1.1. Such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall use reasonable endeavours over a period of three (3) months beginning on the date of the written notice to complete a disposal of the Affordable Housing Units to another RP or to the Council for a consideration of not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; and

11.3.1.2. If such disposal has not completed within the three (3) month period and the Chargee has met its obligations in clause 11.3.1.1, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the restrictions in this deed which provisions shall determine absolutely.

11.3.2 Any tenant that:

11.3.2.1 has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or

11.3.2.2 is a successor in title to the above, or any person or body deriving title through or from any of the parties mentioned in this clause 11.3;

(delete execution section below if both Part I and Part II are used)

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

Signatories:

Babergh District Council/ Mid Suffolk District Council (delete as appropriate)

Registered Provider:

Part II – Provisions relating to Shared Ownership Units

1. Definitions

- 1.1 'Affordable Housing' has the meaning given to it in Annex 2 of the National Planning Policy Framework published in July 2021 (as may be amended from time to time or such other national policy that may from time to time replace or update this framework) or any successor policy thereto issued by HM Government.

- 1.2 'Affordable Housing Location Plan' means a document consistent with the provision of Affordable Housing Units pursuant to the Planning Permission detailing the following:
- i) the Affordable Housing Units and their location;
 - ii) the number of bedrooms per Dwelling;
 - iii) street name and postal address; and
 - iv) tenure.
- 1.3 'Affordable Housing Unit' means [enter number] Dwellings ([enter percentage number] % of the Dwellings) which shall be Shared Ownership Units (unless otherwise agreed by the Council) and 'Affordable Housing Units' shall be construed accordingly.
- 1.4 'Capital Funding Guide' means the rules and procedures for all providers delivering Affordable Housing through one of Homes England's 'affordable homes' programmes and any successor guidance fulfilling the same function.
- 1.5 'Chargee' means any mortgagee or chargee of the RP, or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator.
- 1.6 'Dwelling' means a dwelling (including a house, flat, maisonette or bungalow and including both market housing units and Affordable Housing Units) to be constructed pursuant the Planning Permission and 'Dwellings' shall be construed accordingly.
- 1.7 'Homes England' means the non-departmental public body known as Homes England or any successor organisation who is charged with the function of investing in the provision of Affordable Housing.
- 1.8 'Initial Purchase' means the initial equity purchase representing the first sale of the Shared Ownership Unit.

1.9 'Local Connection' means a connection to the District of [enter name] and as defined in the Local Connection Criteria.

1.10 'Local Connection Criteria' means the requirements that need to be met by an individual for a Local Connection as follows (for the avoidance of doubt, this is not in priority order):

- (i) Their only or principal home is within the administrative boundaries of the District in which the property is located; or
- (ii) They were placed in specialised housing which is not available in the relevant District but had a local connection to the relevant District previously through residence; or
- (iii) They (not a member of their household) are in permanent paid work within the District in which the property is located; or
- (iv) They have a son, daughter, brother, sister, mother or father, who is aged 18 or over and lives in the administrative area of the District and has done so for at least five years; or
- (v) They are a homeless care leaver aged 18 – 20 who have been looked after by Suffolk County Council and were looked after within the District in which the property is located; or
- (vi) They are serving in the regular armed forces of the Crown or who has served in the regular armed forces of the Crown within five years of the date of the purchase of the Shared Ownership Unit; or
- (vii) The main or joint applicant has recently ceased or will cease to be entitled to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner, where the spouse or civil partner has served in the regular forces and their death was attributable (wholly or partly) to that service; or
- (viii) The main or joint applicant is serving or has served in the reserve forces and is suffering from a serious injury, illness or disability which is attributable whether wholly or partly to that service; or

- (ix) Spouses and civil partners who are required to leave accommodation provided by the Ministry of Defence following a breakdown in their relationship with their Service spouse or partner.

- 1.11 'Occupation' means the action of living in or using an Affordable Housing Unit as an only and principal home, for the purposes permitted by the Planning Permission, not including occupation by personnel engaged in construction, fitting out, decoration, marketing or display, or occupation in relation to security operations and 'Occupy' and 'Occupied' shall be construed accordingly.
- 1.12 'Plan' means the location plan bearing drawing number [insert number] annexed to this deed.
- 1.13 'Planning Permission' means the planning permission which may be granted pursuant to the planning application reference number [insert number] subject to conditions, and also to obligations in the section 106 (Town and Country Planning Act 1990) agreement dated [insert date].
- 1.14 'Practical Completion' means issue of a certificate of practical completion by the RP's surveyor or, if the Affordable Housing Units are constructed by a party other than the RP, the issue of a certificate of practical completion by that other party's surveyor.
- 1.15 'Property' means the land at [enter full address of land] shown edged red on the Plan.
- 1.16 'Registered Provider' or 'RP' 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 the Regulator of Social Housing under Chapter III of that Act. For the avoidance of doubt this could also include the Council under the Housing Act 1985.
- 1.17 'Shared Ownership Lease' means a lease in a form approved by Homes England or where there is no such lease in a form approved by the Council to provide

- (a) not more than 75% and not less than 10% of the equity (or such other percentages the Council may agree) shall be sold to the purchaser on an Initial Purchase;
- (b) an option for the purchaser to increase their ownership up to 100% by Staircasing if they so wish;
- (c) an initial rent not exceeding 2.75% of the value of the equity retained by the RP subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England.

1.18. 'Shared Ownership Unit' means an Affordable Housing Unit sold subject to a Shared Ownership Lease and in accordance with the procedure set out in this deed to an individual who meets the Local Connection Criteria, and 'Shared Ownership Units' shall be construed accordingly.

1.9. 'Staircasing' means the acquisition after the date of the Initial Purchase of additional tranches of equity in the Shared Ownership Unit, as set out in the Shared Ownership Lease for that Affordable Housing Unit, and as detailed in the Capital Funding Guide published by Homes England and any other publication that supersedes it.

2. Enabling Provisions

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

3. Procedure

The Parties agree that:

- (i) The Shared Ownership Units shall be sold subject to a Shared Ownership Lease.
- (ii) The RP shall be responsible for assessing potential purchasers.
- (iii) The Shared Ownership Units shall only be sold to applicants with a gross household income of less than £80,000 and otherwise unable to purchase a suitable property for their housing needs on the open market, along with any other eligibility restrictions set out in the Capital Funding Guide (as amended).
- (iv) In respect of the Initial Purchase, each Shared Ownership Unit will, for a period of eight (8) weeks, only be available to purchase by individuals who meet the Local Connection Criteria. If a sale has not been agreed following eight (8) weeks of marketing, the Local Connection Criteria (only) can be waived.
- (v) In respect of future re-sales, each Shared Ownership Unit will, for a period of four (4) weeks, only be available to purchase by individuals who meet the Local Connection Criteria. If a sale has not been agreed following four (4) weeks of marketing, the Local Connection Criteria (only) can be waived.

4. RP covenants

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

- 1) To ensure that each of the Affordable Shared Ownership Units that are acquired by the RP are Occupied as Affordable Housing Units.
- 2) To submit an Affordable Housing Location Plan to the Council not less than one (1) month in advance of the date when the first of the Affordable Shared Ownership Units will be ready for Occupation.

3) To conduct an assessment of potential Shared Ownership purchasers, prior to purchase and in line with the Capital Funding Guide, to ensure that they meet all eligibility criteria, to assess what share they can afford and to ensure that the purchase is affordable and sustainable for the purchaser.

5. Variation of nomination rights

The Council and the RP agree that the nomination rights contained in this deed may be varied from time to time by agreement in writing by the Parties.

6. Notices

Any notice required to be served hereunder shall be sufficiently served on the Parties at the address indicated below or such other address notified by one party to the other in writing, 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 on which such notice was transmitted by the party serving the notice or, if served after 4.30 pm, one (1) working day after electronic mailing.

The Council	Director for Housing, Babergh / Mid Suffolk District Council, Endeavour House, 8 Russell Road, Ipswich IP1 2BX or by email: [enter email address]
The Registered Provider	As per the address provided at the beginning of this deed or by email: [enter email address]

7. Transfer to other RPs

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

8. Disputes

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

9. Agreements and declarations

The Parties agree:

9.1 Nothing in this deed fetters or restricts the exercise by the Council of any of its powers.

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

9.3 From the issue date of a certificate of Practical Completion of each of the Affordable Housing Units acquired by the RP, the Affordable Housing Units shall be purchased in accordance with the terms of this deed, save that the obligations and restrictions contained in this deed shall not be binding on:

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

9.3.1.1 Such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and shall use reasonable endeavours over a period of three (3) months beginning on the date of the written notice to complete a disposal of the Affordable Housing Units to another RP or to the Council for a consideration of not less than the amount due and outstanding

under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; and

9.3.1.2 if such disposal has not completed within the three (3) month period and the Chargee has met its obligations in clause 9.3.1.1, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the restrictions in this deed which provisions shall determine absolutely.

9.3.2 Any tenant that:

9.3.2.1 has been granted a Shared Ownership Lease by a RP (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the RP) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the RP all remaining shares so that the tenant owns the Affordable Housing Unit outright.

9.3.2.2 is a successor in title to the above, or any person or body deriving title through or from any of the parties mentioned in this clause 9.3.

10. Capital Receipts from Staircasing

Subject to Homes England funding requirements, any capital receipts received by the RP for shares sold between 81% and 100% must be reinvested in additional Affordable Housing Units within the District of [enter name] within five (5) years of receipt. Any capital receipts not reinvested within five years may be spent on Affordable Housing outside of the District of [enter name].

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

Signatories:

Bebergh District Council / Mid Suffolk District Council (delete as appropriate)

Registered Provider: