

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

**relating to Stanley Road Lowestoft Suffolk**

Dated: 24<sup>th</sup> November 2023

**EAST SUFFOLK COUNCIL (1)**

**AND**

**SUFFOLK COUNTY COUNCIL (2)**

**REF DC/22/3394/RG3**

DATE

24<sup>th</sup> November

2023

## **PARTIES**

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Riduna Park, Station Road Melton Suffolk IP12 1RT (referred to respectively as the context requires as **"the Council"** and until such time as it ceases to have any ownership in the Site, **"the Owner"**)
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP7 2BX (referred to as **"the County Council"**)

## **INTRODUCTION**

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations in this Deed are enforceable.
2. The County Council is a local planning authority and the Highway Authority and the Education Authority for the purposes of the Act and because the Council is also the Owner of the Site is entering into this Deed to act as Enforcing Authority of the obligations contained in this Deed.
3. The Council has applied for Permission under planning reference DC/22/3394/RG3 (**"the Application"**).
4. On 14<sup>th</sup> February 2023 the Council's Planning Committee North resolved to grant the Planning Permission for the Development subject to conditions and subject to the prior completion of this Deed to regulate the Development and to secure the planning obligations contained in this Deed.
5. On the 18<sup>th</sup> October 2016 the Council and the County Council entered into an agreement pursuant to S106 of the Act along with the owner (Craig Atkinson) and the Mortgagee (Eastern Credit Limited) pursuant to section 106 of the Act relating to land at Stanley Road, Lowestoft, Suffolk (**"the Original Agreement"**).
6. On the 7<sup>th</sup> February 2017, the 24<sup>th</sup> October 2017, and the 10<sup>th</sup> April 2019 the Council, the County Council, the owner and the Mortgagee entered in to supplemental agreements to the Original Agreement pursuant to section 106A of the Act relating to land at Stanley Road Lowestoft Suffolk (**the Supplemental Agreements"**).
7. On the 19<sup>th</sup> June 2017 the owner transferred part of the Site to the Council and registered with the Land Registry under title number SK382188.
8. The Council is the freehold owner of the Land free from encumbrances which includes the Site.
9. In the event that the Planning Permission is implemented then clauses 1.2, 3.2 and 3.5 of the Third Schedule of the Supplemental Agreement dated 10<sup>th</sup> April 2019 cannot be complied with and will be discharged.
10. The Site lies within the area to which the Local Plan applies. The Council and the County Council acknowledge that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to section 106 of the Act the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

**OPERATIVE PART**

**1. DEFINITIONS**

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

<b>"Act"</b>	means the Town and Country Planning Act 1990 as amended;
<b>"Application"</b>	means the application for planning permission validated by the Council on 21 <sup>st</sup> September 2022 for the Development and allocated reference number DC/22/3394/RG3;
<b>"Commencement of Development"</b>	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development (or a Phase as the case may be) begins to be carried out on the Site other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, site clearance, erection of any temporary means of enclosure, temporary access for construction works, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;
<b>"Completion of the Development"</b>	means the date that the last Dwelling is first Occupied;
<b>"County Council Monitoring Fee"</b>	means the sum of £476 (Four Hundred and Seventy Six Pounds)
<b>"Consumer Prices Index"</b>	means the consumer prices index published by the Central Government or any subsequent indices replacing the same;
<b>"Development"</b>	means the development of the Site pursuant to the Planning Permission for:- Redevelopment of the site to provide 9no. new residential dwellings;
<b>"Dwelling"</b>	means any dwelling (including a house, bungalow, flat or maisonette) to be constructed pursuant to the Planning Permission;

<b>"Enforcing Authority"</b>	Means the County Council until such time as the Council ceases to have any ownership in the Site after which it means the Council and the County Council;
<b>"Index"</b>	means 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 any subsequent indices of the same;
<b>"Index Linked"</b>	means the increase in any sum referred to in this Deed by an amount equivalent to the increase in the Index to be calculated in accordance with Clause 10 of this Deed;
<b>"Interest"</b>	means interest at four per cent above the base lending rate of the Bank of England from time to time;
<b>"Local Plan"</b>	means the East Suffolk Council – Suffolk Coastal Local Plan adopted 23 September 2020;
<b>"Occupation" and "Occupied"</b>	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
<b>"Original Deed"</b>	The Section 106 Agreement dated 18 <sup>th</sup> October 2016;
<b>"Planning Permission"</b>	The planning permission subject to conditions to be granted by the Council pursuant to the Application substantially as set out in the draft annexed to the Second Schedule;
<b>"Section 73 Consent"</b>	means a planning permission granted pursuant to Section 73 of the Act which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent Section 73 Consent was granted;
<b>"Section 106 Officer"</b>	means the officer so designated by the Council and any notice required to be served on the Section 106 Officer must be sent or delivered to the Council at



the address aforesaid marked for the attention of the Section 106 Officer;

**“Site”**

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

**“Working Days”**

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

**2. CONSTRUCTION OF THIS DEED**

- 2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause or paragraph of or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament or Directive of the European Union shall include any modification, extension or re-enactment of that Act or Directive for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or Directive or deriving validity from it.
- 2.6 Any references to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successors to its respective statutory function.
- 2.7 The headings are for reference only and shall not affect construction.
- 2.8 Any notices required to be given under the terms of this Deed may (in addition to any other valid method of service) be given or served by sending the same by recorded delivery post addressed to the party as set out below:
  - (i) Council: as given in this Deed; and
  - (ii) County Council: as given in this Deed; andor any other address notified by one party to the other parties to this Deed.

**3. LEGAL BASIS**

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

- 3.2 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done.
- 3.3 Insofar as any of the covenants contained in this Deed are not planning obligations within section 106 of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.4 The covenants, restrictions and requirements contained in this Deed shall only be capable of being varied by a supplemental deed between the parties hereto or their respective successors in title or assigns made under section 106A of the Act.
- 3.5 This Deed is governed by and interpreted in accordance with the law of England.

#### **4. CONDITIONALITY**

- 4.1 Subject to clause 4.2, the obligations set out within this Deed are conditional upon:
- (i) the grant of the Planning Permission; and
  - (ii) the Commencement of Development.
- 4.2 The provisions set out in clauses \_\_\_\_\_ of this Deed shall take effect immediately upon completion of this Deed.

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

- 5.1 The Council covenants with the Enforcing Authority so as to bind itself and its successors in title to observe and perform the obligations contained in this Deed.
- 5.2 The Council hereby covenants with the Enforcing Authority as set out in the Third Schedule
- 5.3 The Council hereby covenants with the County Council as set out in the Fourth Schedule so as to bind the Site and each and every part thereof.
- 5.4 The Council hereby covenants with the Enforcing Authority or Owner as set out in the Fifth Schedule
- 5.5 The Council covenants and warrants to the County Council it is the freehold owner of the Site and has the capacity to enter into this Deed.

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

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

#### **7. THE ENFORCING AUTHORITY COVENANTS**

- 7.1 The Enforcing Authority covenants with the Council to comply with its obligations contained in this Deed.

#### **8. MISCELLANEOUS**

- 8.1 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.2 This Deed shall be registrable as a local land charge by the Council.
- 8.3 Where the agreement, approval, consent or expression of satisfaction is required by the Council from 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 County Council by the Executive Director of Growth, Highways and Infrastructure and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

- 8.4 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.5 Insofar as any clause or paragraph of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the legality, validity or enforceability of the remaining provisions of this Deed.
- 8.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.7 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Site or that part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.8 Subject to paragraph 2.6 (subject to paragraph 2.10) in respect of Affordable Dwellings and paragraph 4 to 7 of the Third Schedule in relation to First Homes, this Deed shall not be enforceable against an individual purchaser or owner-occupier or tenant of a Dwelling constructed pursuant to the Planning Permission or any mortgagee or chargee of any individual purchaser, owner-occupier or tenant of a Dwelling or any person deriving title from any such person.
- 8.9 Nothing in this Deed shall be enforceable against any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water sewerage telecommunications or highways in connection with the Development of the Site.
- 8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its function as a local authority.
- 8.12 The Council covenants to pay the County Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed.
- 8.13 The Council covenants to pay the County Council Monitoring Fee on completion of this Deed
- 8.14 Unless otherwise agreed between the Parties if a Section 73 Consent is granted by the Council in relation to the Development, then with effect from the date that each such Section 73 Consent is granted:

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

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

**PROVIDED THAT**

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

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

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

**9. WAIVER**

No waiver (whether expressed or implied) by the Enforcing Authority constitutes a continuing waiver and no such waiver shall prevent the Enforcing Authority from enforcing any of the relevant terms or conditions in this Deed or from acting upon any subsequent breach or default.

**10. INDEXATION**

Any contribution referred to in the **Error! Reference source not found.** and the Fourth Schedule (unless the context reads otherwise) shall be increased in accordance with the following formula:

10.1 A is the contribution payable under this Deed;

10.2 B is the original contribution calculated as the contribution payable;

10.3 C is the Index for the month two (2) months before the date on which the contribution is paid or falls due (whichever is the earlier)

10.4 D is the Index for the month two (2) months before the date of this Deed; and

10.5  $C/D$  is greater than one.

**11. INTEREST**

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

**12. VAT**

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



**13. DISPUTE PROVISIONS**

- 13.1 If any dispute is not resolved between the Parties, any of the Parties may refer it for determination, by a single Expert ("the Expert"). The Expert will be appointed by agreement between the Parties or, in default of agreement, by the President for the time being of the Royal Institute of Chartered Surveyors and the Expert's decision shall be final and binding.

**14. DELIVERY**

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

## **FIRST SCHEDULE**

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

The freehold land Stanley Road Lowestoft Suffolk within registered title number SK382188 shown edged red for indicative purposes only on the Plan and known as the Site.

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

Application Number	DC/22/3394/RG3
Application Type	Application submitted by the Council
Date Validated	21 September 2022
Location	Land at Stanley Road Lowestoft Suffolk
Proposal	Full planning permission for Redevelopment of the site to provide 9no. new residential dwellings



## Draft Planning Permission

## Third Schedule

### **PART 1 – AFFORDABLE HOUSING**

#### **1. DEFINITIONS**

1.1 In this Schedule, the following words and expressions below shall mean as follows:

**“Additional First Homes Contribution”**

means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraph 3, or 5.8 or 5.9 of this Schedule, the lower of the following two amounts:

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

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

**“Affordable Dwellings”**

means 6 of the Dwellings be made available as Affordable Housing comprising of:

- i) 3 Affordable Dwellings for Rent;
- and
- ii) 1 Shared Ownership Dwelling; and
- iii) 2 First Homes

as set out in the Affordable Housing Table with the exact number, location, tenure and mix of Affordable Dwellings for a Phase to be set out

in the Affordable Housing Scheme for that Phase and which are to be transferred to the Registered Provider for housing persons in whose needs are not met by the market in accordance with the provisions of this Schedule;

**“Affordable Dwellings for Rent”**

Affordable Housing let by a Registered Provider to Eligible Persons where the rent level is capped at 80% of the local market rent (including any service charges, where applicable) and within local housing allowance rates, or as otherwise agreed with the Council in writing; at such other rent as may be agreed in writing by the Council with rent increases during the term of any individual tenancy being limited to increases in the Consumer Prices Index from the date of this Deed plus 1% or any subsequent limit placed upon Registered Providers by Homes England or Central Government;

**“Affordable Housing”**

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

**“Affordable Housing Table”**

Means the table at paragraph 2.6 indicating the tenure types of the Affordable Housing and shown on the Affordable Mix Plan unless otherwise agreed in writing with the Council;

**“Affordable Mix Plan”**

means the plan attached to this Deed;

**“Allocation Policy”**

means the policy and procedure adopted by the Council to determine the eligibility and priority for allocation of the Affordable Dwellings;

**“Armed Services Member”**

means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force



or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service;

**"Chargee"**

means any mortgagee or chargee of the Registered Provider of the Affordable Dwellings (or any number of them) and any receiver (including an administrative receiver) and manager 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;

**"Compliance Certificate"**

means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 5.2 applies the Eligibility Criteria (Local);

**"Discount Market Price"**

means a sum which is the Market Value discounted by at least 30%;

**"Disposal"**

means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest in an First Home other than:

- (a) a letting or sub-letting in accordance with paragraph 5 of this Third Schedule
- (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner; or
- (c) an Exempt Disposal;

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

**"Eligibility Criteria (Local)"**

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

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

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

**“Eligibility Criteria (National)”**

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

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

**“Eligible Person”**

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

**“Exempt Disposal”**

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

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) a Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order,

divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order

(d) a Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 9 shall apply to such sale)

Provided that in each case other than (d) the person to whom the disposal is made complies with the terms of paragraphs 5 and 6;

**"First Home"**

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

**"First Homes Owner"**

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

- (a) the Owner; or
- (b) another developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (c) a tenant or sub-tenant of a permitted letting under paragraph 5

**"First Time Buyer"**

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

**"Habitat Mitigation Contribution"**

means a contribution of £2890.98 (two thousand eight hundred and ninety pounds and 98 pence) Index Linked payable to the Council towards the costs of mitigating the impact of additional visitors upon European Protected Sites as a result of the Development pursuant to the Councils Local Plan Policy and the Appropriate Assessments of the Local Plans and the Recreational Disturbance



**"Homes England"**

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

**"Initial Sale"**

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

**"Local Connections Cascade"**

means the local connections criteria to be applied to each and every let or sale of an Affordable Dwelling as set out in paragraph 4 of this Third Schedule;

**"Market Dwelling"**

means any Dwelling which is general market housing for sale on the open market and which is not an Affordable Dwelling

**"Market Value"**

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

**"Mortgagee"**

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

**"Playing Fields Contribution"**

means a contribution calculated at the rate of one hundred and ninety three pounds (£193) per Dwelling RPI Index Linked;

**"Practical Completion"**

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

**"Price Cap"**

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

**"Protected Person"**

means any person who:

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

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

c) a 100% Staircaser;

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

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

**"SDLT"**

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

**"Secretary of State"**

means the Secretary of State for Levelling Up, Housing and Communities from time to time

appointed and includes any successor in function;

**"Shared Ownership Dwellings"**

means those Dwellings purchased on a Shared Ownership Lease;

**"Shared Ownership Lease"**

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

- not more than 75% and not less than 10% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Registered Provider;
- power to the purchaser to increase their ownership up to 100%; and
- an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Consumer Prices Index (CPI) published by the Office for National Statistics (or if such index ceases to be published such other index the Council shall reasonably determine) plus 1% or such other rent as complies with the requirements from time to time of Homes England;

**"Valuer"**

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

**"100% Staircaser"**

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

**2. AFFORDABLE HOUSING**

- 2.1 The Owner covenants that no more than two of the Market Dwellings shall be Occupied until all of the Affordable Dwellings have reached Practical Completion and advertised for rent or sale as appropriate.



- 2.2 The Owner will notify the Section 106 Officer within 28 days of the occupation of any Affordable Dwellings of the plot number, street address, house type, size and tenure of each dwelling and date of transfer.
- 2.3 The Owner covenants that from the date of Practical Completion of an Affordable Dwelling, that Affordable Dwelling shall not be used other than for the purposes of Affordable Dwellings for Eligible Persons or First Time Buyers otherwise agreed in writing with the Council.
- 2.4 If after three calendar months of advertising the Affordable Dwellings there remains any such Affordable Dwellings not leased or sold and there are no prospective occupants the Owner shall be free to seek written agreement to convert those Affordable Dwellings to an alternative form of affordable housing defined within Annex 2 to the National Planning Policy Framework (February 2021) (or any amended or subsequent national planning policy that may be published by the Government from time to time).
- 2.5 Nothing in this Part 1 of the Third Schedule shall be binding on a Protected Person or any Mortgagee or Chargee of a Protected Person or any receiver appointed by such Mortgagee or Chargee or any person deriving title from any such person.

#### **Affordable Housing Table**

- 2.6 The Affordable Housing shall be provided in accordance with the following table:

Tenure	Number of Dwellings	Plot numbers
Affordable Dwellings for Rent	3	5, 6, 7
Shared Ownership Dwellings	1	3
First Homes	2	8, 9

#### **Affordable Dwellings for Rent and Shared Ownership Dwellings**

- 2.7 On the first and any subsequent letting of an Affordable Dwelling for Rent the Council will (unless otherwise agreed in writing) nominate eligible applicants in accordance with the Allocation Policy (priority will go to applicants who have a Local Connection as defined in and in accordance with the Local Connections Cascade at paragraph 4 of this Third Schedule).
- 2.8 In the event that 100% of a Shared Ownership Dwelling is purchased:
- 2.8.1 the net proceeds from the final sale of the Shared Ownership Dwelling are to be ringfenced for 5 years for the provision of Affordable Housing within the East Suffolk District, and should the owner of the Shared Ownership Dwelling wish to sell it he must notify the Council and allow the Council to purchase the Shared Ownership Dwelling back in the first instance at Market Value;

- 2.8.2 in the event the Council purchases the Shared Ownership Dwelling in accordance with this paragraph at 2.8.1, the Shared Ownership Dwelling will be marketed as such subject to the terms of this Deed; and
- 2.8.3 in the event the Council declines to purchase the Shared Ownership Dwelling or fails to notify the owner of the Shared Ownership Dwelling of its intention to make an offer to purchase the dwelling within twenty-eight days of the notification as specified in this paragraph 2.18.1, then the owner of the Shared Ownership Dwelling may sell it on the open market free from the terms of this Deed.

### **3. MORTGAGEE IN POSSESSION**

- 3.1 The Affordable Housing obligations in this Part 1 and Part 2 of the Third Schedule shall not apply to any Mortgagee or Chargee (or any receiver or any receiver (including an administrative receiver appointed by such Chargee) or any other person appointed under any security documentation to enable such Mortgagee or Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Dwellings or any persons or bodies deriving title through such Chargee, Mortgagee or Receiver PROVIDED THAT:

- 3.1.1 such Chargee or Receiver of an Affordable Dwelling for Rent or Shared Ownership Dwelling shall first give written notice to the Council and the County Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 3.1.2 if such disposal of the Affordable Dwelling for Rent or Shared Ownership Dwellings has not completed within the three month period, the Chargee or Receiver shall be entitled to dispose of the Affordable Dwellings for Rent or Shared Ownership Dwellings free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely
- 3.1.3 Such Mortgagee or Receiver of a First Home shall first given written notice to the Council and the County Council of its intention to Dispose of the relevant Dwelling; and
- 3.1.4 Once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Council the Mortgagee or Receiver shall be free to sell that First subject only to paragraph 3.1.5 at its full Market Value
- 3.1.5 Following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Council the Additional First Homes Contribution
- 3.1.6 Following receipt of notification of the Disposal of the relevant First Home the Council shall:

- (a) Forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in Part 2 Third Schedule Paragraph 5.5
- (b) Apply all such monies received towards the provision of Affordable Housing in East Suffolk

#### **4. LOCAL CONNECTIONS CASCADE**

##### **4.1 Affordable Dwellings for Rent**

- 4.1.1 The Affordable Dwellings for Rent are to be allocated to a person nominated by the Council in line with its Allocation Policy who is considered by them or it to be in need of such accommodation and unable to compete in the normal open market for property. Before nominating an applicant the Council will be satisfied that the applicant
  - (a) Has continuously lived in the postcode areas NR32 or NR33 for the preceding 5 years, OR
  - (b) Has continuously had a principal place of work in the postcode areas NR32 or NR33 for the preceding 5 years OR
  - (c) Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived in the postcode areas NR32 or NR33 for the preceding 5 years, OR
  - (d) Due to a lack of suitable accommodation was forced within the preceding 5 years to move away from the postcode areas NR32 or NR33
- 4.1.2 If there are no persons who qualify under paragraph 4.1.1 above the Affordable Dwelling shall be allocated to person nominated by the Council who
  - (a) Has continuously lived within 10 miles of the Site for the preceding 5 years, OR
  - (b) Has continuously had a place of work within 10 miles of the Site for the preceding 5 years OR
  - (c) Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within 10 miles of the Site for the preceding 5 years, OR
  - (d) Due to a lack of suitable accommodation was forced within the preceding 5 years to move away from within 10 miles of the Site
- 4.1.3 If there are no persons who qualify under paragraph 4.1.1 and 4.1.2 above the Affordable Dwelling shall be re-advertised to the district of East Suffolk and where after re-advertising there are no persons who qualify under the paragraphs above the Affordable Dwelling shall be allocated to a person nominated by the Council who is considered by it to be in need of such accommodation and who is unable to compete in the normal open market for property in East Suffolk
- 4.1.4 Where there is a mutual exchange the Registered Provider may let the Affordable Dwelling to any incoming tenant who satisfies the local connection criteria at paragraph 4.1.1 or 4.1.2 or 4.1.3 above



## 4.2 Affordable Dwellings for sale

- 4.2.1 On advertising the first Disposal of a Shared Ownership Dwelling or First Home the Dwelling shall be marketed for sale for the first 3 months to persons who:
- (a) Have continuously lived within the postcode areas NR32 or NR33 for the preceding 5 years, OR
  - (b) Have continuously had a principal place of work within the postcode areas NR32 or NR33 the preceding 5 years OR
  - (c) Have parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within the postcode areas NR32 or NR33 the preceding 5 years, OR
  - (d) Due to a lack of suitable accommodation were forced within the preceding 5 years to move away from the postcode areas NR32 or NR33
- 4.2.2 On subsequent Disposals of a Shared Ownership Dwelling or First Home, it shall be marketed for sale for the first 3 months to persons who:
- (a) Have continuously lived within the District of East Suffolk for the preceding 5 years, OR
  - (b) Have continuously had a principal place of work within the District of East Suffolk for the preceding 5 years OR
  - (c) Have parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within the District of East Suffolk for the preceding 5 years, OR
  - (d) Due to a lack of suitable accommodation were forced within the preceding 5 years to move away from the District of East Suffolk.
- 4.2.3 If there are no purchasers who qualify under paragraph 4.2.1 or 4.2.2 above within 3 months of marketing the Affordable Dwelling it may be sold free of Local Connections restrictions.

## **PART 2—FIRST HOMES**

### **S. FIRST HOMES**

- 5.1 The First Homes shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:
- 5.1.1 the Eligibility Criteria (National); and
  - 5.1.2 the Eligibility Criteria (Local).
- 5.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 5.1.2 shall cease to apply.
- 5.3 Subject to paragraphs 5.6 to 5.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee.



5.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until the Council has been provided with evidence that:

5.4.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 5.2 applies meets the Eligibility Criteria (Local);

5.4.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price; and

5.4.3 the transfer of the First Home includes:

(i) a definition of the "Council" which shall be East Suffolk Council;

(ii) a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in clause[s] [ ] of the S106 Agreement a copy of which is attached hereto as the Annexure."

(iii) A definition of " S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [ ] made between (1) the Council [and] (2) [and (3) ]

(iv) a provision that the Property is sold subject to and with the benefit of the First Homes Provisions and the Transferee acknowledges that it may not transfer or otherwise Dispose of the First Home or any part of it other than in accordance with the First Homes Provisions

(v) a copy of the First Homes Provisions in an Annexure

5.4.2 The Council has issued the Compliance Certificate and the Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 5.3 and 5.4.1(a) have been met.

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

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

5.6 The owner of a First Home may apply to the Council to Dispose of it other than as a First Home on the grounds that either:

5.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with paragraph 5.1 and 5.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the

Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 5.3 and 5.4.1(a); or

5.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 5.6.1 before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship.

5.7 Upon receipt of an application served in accordance with paragraph 5.6 the Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price.

5.8 If the Council is satisfied that either of the grounds in paragraph 5.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.6 that the relevant Dwelling may be Disposed of:

5.8.1 to the Council at the Discount Market Price; or

5.8.2 (if the Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 5.10 which shall cease to apply on receipt of payment by the Council where the relevant Dwelling is disposed of other than as a First Home.

5.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 5.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 5.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Council in accordance with paragraph 5.6 following which the Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home.

5.10 Where a Dwelling is Disposed of other than as a First Home or to the Council at the Discount Market Price in accordance with paragraphs 5.8 or 5.9 above the Owner of the First Home shall pay to the Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution.

5.11 Upon receipt of the Additional First Homes Contribution the Council shall:

5.11.1 within twenty eight (28) days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 5.5 where such restriction has previously been registered against the relevant title; and

5.11.2 apply all monies received towards the provision of Affordable Housing.

5.12 Any person who purchases a First Home free of the restrictions in the Third Schedule of this Deed pursuant to the provisions in paragraphs 5.8 and 5.9 shall not be liable to pay the Additional First Homes Contribution to the Council.

5.13 Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed

PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 5.14 – 5.17 below.

- 5.14 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.
- 5.15 In addition to paragraph 5.14, a First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Council and the Council consents in writing to the proposed letting or sub-letting. The Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) –(f) below:
- a. the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
  - b. the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
  - c. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
  - d. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
  - e. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
  - f. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.
- 5.16 A letting or sub-letting permitted pursuant to paragraph 8.14 or 8.15 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.
- 5.17 Nothing in this Part 2 of the Third Schedule paragraph 8 prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation (except where other local policy restrictions apply) provided that the First Home remains at all times the First Home Owner's main residence.

## **6. HABITAT MITIGATION CONTRIBUTION AND PLAYING FIELDS CONTRIBUTION**

- 6.1 The Owner covenants to provide written notification of Commencement of Development to the Section 106 Officer and to the County Council within 10 Working Days.
- 6.2 The Owner covenants to pay the Habitat Mitigation Contribution and the Playing Fields Contribution to the Council prior to Commencement of Development.



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

<b>"Education Contribution (Early Years)"</b>	means a contribution of £30,955.00 (thirty thousand, nine hundred and fifty five pounds) Index Linked payable to the County Council and which is to be used towards the provision of a new pre-new school serving the Development;
<b>"Education Contribution (Primary)"</b>	means a contribution of £92,865.00 (ninety two thousand, eight hundred and sixty five pounds) Index Linked payable to the County Council and which is to be used towards the provision of a new school serving the Development;
<b>"Pedestrian and Cycle Bridge Contribution"</b>	means a contribution of £22,797.00 (twenty two thousand, seven hundred and ninety seven pounds)) Index Linked payable to the County Council and which is to be used towards the provision of a pedestrian and cycle bridge over Lake Lothing or to be used towards sustainable transport projects that help to mitigate the impacts of the Development;

**PART 2**  
**PRIMARY EDUCATION**

**Education Contribution (Early Years)**

- 1.1 The Owner covenants to pay to the County Council the Education Contribution (Early Years) prior to Occupation of the fifth (5<sup>th</sup>) Dwelling.
- 1.2 The Owner hereby covenants not to Occupy the fifth (5<sup>th</sup>) Dwelling until the Education Contribution (Early Years) has been paid to the County Council.

**Education Contribution (Primary)**

- 1.3 The Owner covenants to pay to the County Council the Education Contribution (Primary) prior to Occupation of the fifth (5<sup>th</sup>) Dwelling.
- 1.4 The Owner hereby covenants not to Occupy the fifth (5<sup>th</sup>) Dwelling until the Education Contribution (Primary) has been paid to the County Council.



PART THREE  
HIGHWAYS

**PEDESTRIAN AND CYCLE BRIDGE CONTRIBUTION**

2. The Owner covenants with the County Council as follows:
  - 2.1 To pay the Pedestrian and Cycle Bridge Contribution to the County Council prior to the Occupation of the fifth (5<sup>th</sup>) Dwelling;
  - 2.2 Notto Occupy the fifth(5<sup>th</sup>) Dwelling until the Pedestrian and Cycle Bridge Contribution has been paid to the County Council;

## **FIFTH SCHEDULE**

### **COUNCIL COVENANTS**

1. The Council shall use the Habitat Mitigation Contribution and Playing Fields Contribution for the purposes set out in the Deed within ten (10) years from receipt PROVIDED THAT nothing shall prevent the Council from paying any part of the Habitat Mitigation Contribution to a person, body or company that may be responsible for the carrying out of the work as set out in this Deed.

## SIXTH SCHEDULE

### COUNTY COUNCIL COVENANTS

1. At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. The County Council shall use all sums received under the terms of this Deed for the purposes specified in this Deed.
3. To provide the Owner, at the Owner's written request details of the expenditure of the relevant contributions provided that such request is made within ten years (10) from the date of Completion of the Development.
4. The County Council shall if requested to do so in writing after the expiry of ten (10) years from the date of Completion of the Development either confirm that the relevant contribution or sum was committed or expended by the County Council in accordance with the provisions of this Deed or if it was not committed or expended in that period pay the relevant sum (or any part not committed or expended) together with any interest accrued less any deduction for the County Council's reasonable administrative costs associated with holding administering and refunding any part back to the person who paid it (or its nominee) such payment to be made within twenty eight(28) Working Days' of such request

THE COMMON SEAL of  
EAST SUFFOLK COUNCIL  
was affixed in the presence of:



...Authorised Officer



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



orised Officer





**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 05 January 2023 shows the state of this title plan on 05 January 2023 at 10:28:22. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by the HM Land Registry, Kingston Upon Hull Office.

HM Land Registry  
Official copy of  
title plan

Title number **SK382188**  
Ordnance Survey map reference **TM5292NE**  
Scale **1:1250**  
Administrative area **Suffolk : East Suffolk**



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