

DATED

24 JUNE

2025

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EAST SUFFOLK COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

P ADAMS & SONS (FARMS) LIMITED and JOHN PAUL ADAMS and RICHARD CHARLES ADAMS (3)

GENERATOR OPTIMA (FERRY ROAD) LTD (4)

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**S106 AGREEMENT**

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Relating to

Land North of Conway Close and Swallow Close Felixstowe Suffolk



[birketts.co.uk](http://birketts.co.uk)

DATE 24 JUNE 2025

## **PARTIES**

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House Station Road Melton Suffolk IP12 1RT ("the Council"); and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council"); and
- (3) **P ADAMS & SONS (FARMS) LIMITED** (Co. Regn. No. 00638625) of Fleet House, Marsh Lane, Felixstowe IP11 9RN and **JOHN PAUL ADAMS** and **RICHARD CHARLES ADAMS** of Fleet House, Marsh Lane, Felixstowe IP11 9RN ("the Owners"); and
- (4) **GENERATOR OPTIMA (FERRY ROAD) LTD** (Co. Regn. No. 10035273) of Townfield House, 27-29 Townfield Street, Chelmsford, Essex, England, CM1 1QL ("the Option Holder");

together "the Parties".

## **INTRODUCTION**

- (A) 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 contained in this Deed are enforceable.
- (B) The County Council is the local highway authority (except for trunk roads), the local education authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
- (C) The Owners are the freehold owners of the Site registered at the Land Registry under title number SK10000.
- (D) The Option Holder is the beneficiary of an option protected by a unilateral notice referred to at entry numbers 1 and 2 of the charges register on title SK10000 in respect of an option to purchase contain in an Agreement dated 7 June 2018 made between (1) David Charles Adams and Alfred Bernard Adams and (2) Generator Optima (Ferry Road) Ltd as varied by the supplemental agreement dated 30 May 2023 and a second variation dated 4 December 2024.
- (E) The Site lies within the area to which the Local Plan applies.

- (F) The Application has been submitted to the Council and the Council's Planning Committee resolved on 24 September 2024 to grant the Planning Permission subject to the prior completion of this Deed
- (G) The Council, the County Council, the Owners, and the Option Holder 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.
- (H) The Council and the County Council are satisfied that the planning obligations sought under the provisions of this Deed meets the test set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**1. DEFINITIONS**

- 1.1 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 Second Schedule:

**"Act"** the Town and Country Planning Act 1990 (as amended);

**"Application"** the application for outline planning permission with some matters reserved for a phased development to create up to 150 new homes, associated infrastructure and open space submitted on 4 June 2021 and with reference number DC/21/2710/OUT;

**"Commencement of Development"** of the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out 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, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" and "Commencement" shall be construed accordingly;

<b>“Completion of Development”</b>	of	the date that the last Dwelling is first Occupied;
<b>“Council Monitoring Fee”</b>		the sum of five-thousand nine-hundred and eighty pounds (£5,980) payable to the Council in respect of its reasonable costs of monitoring performance of the obligations contained in this Deed;
<b>“County Council Monitoring Fee”</b>		the sum of two-thousand five-hundred and ninety pounds (£2,590) payable to the County Council in respect of its reasonable costs of monitoring performance of the obligations contained in this Deed;
<b>“Custom and Self-build Design Code”</b>		<p>a document that provides written and illustrated rules that establish the design parameters of a development and of each Custom and Self-build Plot, and which shall address:</p> <ul style="list-style-type: none"> <li>a) Layout,</li> <li>b) Plot size and shape,</li> <li>c) Developable footprint,</li> <li>d) Building height or number of storeys,</li> <li>e) Orientation,</li> <li>f) Landscaping,</li> <li>g) Boundary treatment,</li> <li>h) Material palette,</li> <li>i) Number and location of car parking and cycle storage spaces, and</li> <li>j) Refuse storage;</li> </ul>
<b>“Custom and Self-build Dwelling”</b>		a Dwelling which meets the definition in section 1 of the Self Build and Custom Housebuilding Act 2015 (as amended);
<b>“Custom and Self-build Plot”</b>		a Fully Serviced plot of land upon which a Custom and Self-build Dwelling is to be constructed;

<b>“Custom and Self- build Register”</b>	the Council’s register of persons seeking to acquire a Custom and Self-Build Plot pursuant to section 1 of the Self-build and Custom Housebuilding Act 2015;
<b>“Custom and Self-build Sale Contract”</b>	a contract or contracts for the sale of a Custom and Self-build Plot which is conditional upon the construction of the Custom and Self-build Dwelling;
<b>“Custom and Self-build Statement”</b>	a statement detailing how the homes to be built on the Custom and Self-build Plots shall meet the definition of a Custom and Self-build Dwelling;
<b>“Development”</b>	the development of the Site pursuant to Application and the reserved matters approval(s) for a phased development to create up to 150 new homes, associated infrastructure and open space at the land north of Conway Close and Swallow Close Felixstowe Suffolk;
<b>“Dwelling”</b>	any dwelling (including a house bungalow flat or maisonette) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly;
<b>“Early Contribution”</b>	<b>Years</b> means a financial contribution calculated by two thousand six hundred and eighty-four pounds and twenty-seven pence (£2,684.27) Index Linked multiplied by the total number of new Dwellings for a Phase proposed pursuant to a Reserved Matters Approval submitted pursuant to the Planning Permission to be paid to the County Council in accordance with the Third Schedule towards the provision enhancement and expansion of Early Years provision serving the Site;
<b>“Fully Serviced”</b>	a Custom and Self-build Plot that has access to a public highway and has connections for electricity, water, waste water and telecommunications;
<b>“Habitats Regulations Mitigation Contribution”</b>	means the sum (Index Linked) calculated using the Habitats Regulations Mitigation Contribution Calculation to be paid by the Owners to the Council towards the cost of mitigating the impact of additional visitors upon European Protected Sites as a result of the Development pursuant to Council’s Local Plan Policies and the Appropriate Assessments of the Local Plans, and the

Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document;

<b>“Habitats Regulations Mitigation Contribution Calculation”</b>	the sum of one hundred and forty five pounds and ninety pence (£145.90) multiplied by the total number of new Dwellings proposed pursuant to a Reserved Matters Approval submitted pursuant to the Planning Permission to calculate the Habitats Regulations Mitigation Contribution;
<b>“Index”</b>	All In Tender Price Index published by the Building Cost Information Service or any successor organisation;
<b>“Index Linked”</b>	the increase in any sum referred to in the Second and Third Schedules by an amount equivalent to the increase in the Index (or the RPI Index where the Third Schedule requires) to be calculated in accordance with Clause 11 of this Deed;
<b>“Interest”</b>	interest at four per cent (4%) above the base lending rate of the Bank of England from time to time;
<b>“Local Plan”</b>	the East Suffolk Council Suffolk Coastal Local Plan adopted in September 2020;
<b>“Management Company”</b>	a company or body who will take over responsibility for the future ownership and maintenance of the Open Space in perpetuity and which definition may include a resident’s association established for this purpose, a private limited company or a community interest company or other organisation primarily for the benefit of the general public in the location of the Site;
<b>“Marketed Appropriately”</b>	marketing the Custom and Self-build Plots in accordance with the agreed Marketing Strategy for a period of not less than 12 months. This will commence when the Marketing Strategy has been agreed between the applicant and the Council, the Custom and Self-build Plots have been Fully Serviced, have defined boundaries, and are available for immediate purchase;

**“Marketing Period”**

a period of not less than 12 months within which the Custom and Self-built Plots shall be Marketed Appropriately;

**“Marketing Strategy”**

a document setting out the marketing arrangements for each Custom and Self-built Plot, which shall include:

a) The period in which the Custom and Self-built Plots will be Marketed Appropriately;

b) The arrangements on which the Custom and Self-Build Plots will be Marketed Appropriately; This should address:

i. Details of marketing materials. Good quality visual information should be made available, such as drone photos/videos, website content, and inspiration brochures to aid marketing;

ii. Details of marketing and promotional methods. This should include social media; website advertising; database marketing; and information packs as a minimum;

iii. On-site signage. As a minimum the Custom and Self-build Plots must be promoted as Custom and Self-build Plots for sale with signage at the site entrance and by the Custom and Self-build Plots themselves. Information must be displayed at each Custom and Self-build Plot which includes as a minimum the Custom and Self-build Plot number and Plot Passport information. QR codes are encouraged to provide quick access to further information. Custom and Self-build Plots must be cleared demarcated and be in a clear and tidy state. The Owners should set out methods to enable potential plot purchasers to gain safe access into the site to view Custom and Self-build Plots.

c) The price that each Custom and Self-build Plot will be advertised for, including valuation methodology, derived from an experienced local RICS registered valuer who should have experience of valuing Custom and Self-build Plots;

- d) The contact details of the marketing agent. The agent should be experienced in selling Custom and Self-build Plots;
- e) Signposting to specialist custom and self-build mortgage brokers;
- f) Information on 'Help to Build' and any similar initiatives to assist custom and self-builders;
- g) The site visit arrangements;
- h) The Plot Passport for each custom and self-build plot;
- i) A commitment that the Owners holds a Record of Sales Enquiries for each Custom and Self-build Plot, which will be provided to the Council upon request;
- j) The arrangements for the delivery of any Custom and Self-build Plots not taken up after the minimum 12 months Marketing Period; and
- k) Any alternative or additional marketing in the event that interest in a Custom and Self-Build Plot is low.

**“Occupation Occupied”**

**and** 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;

**“Open Space”**

the areas of open amenity space and on site playing areas within the Site to be used for recreational use shown indicatively on the Open Space Plan;

**“Open Space Plan”**

a plan to be submitted to the Council for approval indicating the location of the Open Space;

**“Open Space Specification”**

**Space** means a scheme showing:

- (a) the full details of the amount of Open Space
- (b) the extent, location and boundaries of the Open Space

(c) details of the design and layout of the Open Space including all equipment, drainage features, access arrangements, street furniture, fencing and landscaping together with appropriate plans drawings and specifications;

(d) details of the ongoing management and maintenance of the Open Space;

(e) a timetable for the laying out and provision of the Open Space;

to be agreed in writing with the Council in accordance with Paragraph 6 of the Second Schedule and for the avoidance of doubt the Open Space Specification excludes plot landscaping for individual Dwellings

**“Open Space Transfer”**

transfers of the Open Space to be approved in writing by the Council and which inter alia shall contain the following provisions:

(a) the Owners shall transfer the fee simple estate free from encumbrances save those set out in the title;

(b) all easements and rights necessary in relation to access for the benefit of the Open Space;

(c) any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;

(d) restrictive covenants by the Management Company:

(i) not to use or permit the Open Space to be used for any purpose other than for the provision of recreational facilities or amenity land for use by the general public as open space as defined in this Deed and shown on the Open Space Plan;

(ii) not to use or permit the Open Space to be used in a manner which may be or

become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development;

- “Phase”** each phase of construction of the Development (where the Development is to be carried out in phases) identified in a phasing plan approved by the Council and pursuant to the Planning Permission subject to any variations to phasing that may be agreed from time to time between the Owners and the Council;
- “Planning Permission”** the planning permission subject to conditions to be granted by the Council pursuant to the Application;
- “Plot Passport”** a document that provides information for potential plot purchasers regarding the delivery of a Custom and Self-build Dwelling on the Custom and Self-build Plot, and shall include: the plot location, plot size and shape, any design and development parameters established in a Design Code (if relevant), likely ground conditions, location of servicing connection, Community Infrastructure Levy exemption (if relevant), and plot price.
- “Primary School Contribution”** means a financial contribution calculated by seven thousand and ninety-four pounds and thirteen pence (£7,094.13) Index Linked multiplied by the total number of new Dwellings for a Phase proposed pursuant to a Reserved Matters Approval submitted pursuant to the Planning Permission to be paid to the County Council for the provision enhancement and expansion of primary education provision serving the Site;
- “Projected Dwelling Mix”** means the expected and/or actual number of Dwellings which have been built and/or area projected to be built in a Phase pursuant to the Planning Permission and/or Reserved Matters Approvals as notified from time to time by the Owners to the County Council in accordance with Schedule 3;

<b>“Public Right of Way Contribution”</b>	means five thousand pounds (£5,000) RPI Index Linked towards a legal order or agreement to facilitate the legal widening and upgrade in status to a bridleway of the section of Felixstowe Footpath 12 which runs along the southern boundary of the Site as indicatively shown on drawing number. GN003-CPT-01 Revision H. to a 4-metre clearance being 2 metres of surfaced bridleway with 1 metre of cleared ground on either side all forming part of the highway maintainable at public expense and such sum shall include all officer time legal expense and associated ancillary and administrative costs
<b>“Record of Sales Enquiries”</b>	a record of enquiries made by individuals in relation to each plot which shall include: <ul style="list-style-type: none"> <li>a) Date of enquiry;</li> <li>b) Nature of enquiry;</li> <li>c) Whether the enquirer visited the site; and</li> <li>d) Reason/s why the enquirer did not purchase the plot or find it suitable.</li> </ul>
<b>“Reserved Approvals”</b>	<b>Matters</b> all reserved matters approvals that may be issued by the Council in respect of the Development pursuant to the Planning Permission;
<b>“RPI Index”</b>	the “All Items” index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation and <b>“RPI Indexed Linked”</b> shall be construed accordingly;
<b>“Section 73 Consent”</b>	means a planning permission granted pursuant to Section 73 of the TCPA 1990 which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to Section 73 of the TCPA 1990 was granted;
<b>“Section 106 Officer”</b>	the officer so designated by the Council and any notice required to be served on the Council must be sent or delivered to the Council at the address aforesaid marked for the attention of the Section 106 Officer;

<b>“Site”</b>	the land described in the First Schedule against which this Deed may be enforced as shown edged red for identification purposes only on the Site Plan;
<b>“Site Plan”</b>	means the plan attached to this Deed at Appendix C with reference number GN003-PH2-LP-01 Rev. B;
<b>“Travel Plan”</b>	the travel plan submitted and approved in accordance with related condition of the Planning Permission
<b>“Travel Plan Monitoring Contribution”</b>	one thousand two hundred pounds (£1,200.00) RPI Index Linked (per annum) for the purposes of monitoring and evaluating compliance with the Travel Plan
<b>“Working Day”</b>	Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England and <b>“Working Days”</b> shall be construed accordingly.

## 2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph 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 any gender include any other 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 or the County Council the successors to their respective statutory functions

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

2.8 Any covenant by the Owners not to do an act or thing shall be deemed to include an obligation to use all 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

2.9 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 to or upon whom it is to be given or served at the address for that party given in this Deed or such other address in the United Kingdom as that party may by notice to the other parties hereto or their solicitors stipulate as that party's address for service of notice pursuant to this Deed or if not such address is given or stipulated at that party's last known address and any notice so given or served shall be deemed to be received and the date on which it is given or served shall be deemed to be 48 hours after posting and any notice to the County Council shall be addressed to the Executive Director of Growth Highways and Infrastructure

### 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 and all other enabling powers

3.2 The covenants, restrictions and requirements imposed upon the Owners and the Option Holder under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council as appropriate as local planning authorities against the Owners and the Option Holder and their successors in title

### 4. **CONDITIONALITY**

4.1 The obligations set out in the Second and Third Schedules of this Deed are conditional upon the grant of the Planning Permission and Commencement of Development

### 5. **THE OWNERS' AND OPTION HOLDER'S COVENANTS**

5.1 The Owners hereby covenant with the Council as set out in the Second Schedule so as to bind the Site and each and every part thereof

5.2 The Owners hereby covenant with the County Council as set out in the Third Schedule so as to bind the Site and each and every part thereof

- 5.3 The Option Holder hereby covenants with the Council to pay the Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed
- 5.4 The Option Holder hereby covenants with the Council to pay the Council Monitoring Fee within fifteen (15) Working Days following the issue of the Planning Permission
- 5.5 The Option Holder hereby covenants with the County Council to pay the County Council's reasonable legal costs incurred in the preparation and negotiation of this Deed on completion of this Deed
- 5.6 The Option Holder hereby covenants with the County Council to pay the County Council Monitoring Fee within fifteen (15) Working Days following the issue of the Planning Permission
- 5.7 The Owners warrant that they are the freehold owners of the Site and have full power and capacity to enter into this Deed and that no other party other than the Option Holder has any charge over or any interest in the Site which would require them to be a party to this Deed or whose consent is necessary to make this Deed binding on the Site and all estates and interests therein

**6. THE COUNCIL'S COVENANTS**

- 6.1 The Council hereby covenants with the Owners as set out in the Fourth Schedule

**7. THE COUNTY COUNCIL'S COVENANTS**

- 7.1 The County Council hereby covenants with the Owners as set out in the Fifth Schedule

**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
- 8.3 Where the agreement approval, consent or expression of satisfaction is required by the Owners from the Council and/or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning Services (or the officer of the Council fulfilling such functions) 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 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed
- 8.5 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 Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 8.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or part of its interest in the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest
- 8.7 Save for the obligations contained within paragraphs 1, 2 and -3 of the Second Schedule of this Deed which shall continue to be binding and enforceable against individual purchasers, owners, occupiers, lessees or their mortgagees of the Affordable Dwellings subject to the provisions contained therein the covenants, restriction and requirements contained in this Deed shall not be enforceable against:
- 8.7.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Planning Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease; and
- 8.7.2 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 telecommunications or highways in connection with the Development of the Site
- 8.8 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
- 8.9 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the Council and/or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities
- 8.10 The Owners covenant from Commencement of Development to allow the Council and/or the County Council and its duly authorised officers or agents at all reasonable times and on reasonable notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed , subject to complying with all

health and safety and/or security requirements of the Owners or of any developer carrying out the Development

8.11 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act ("Section 73 Consent");

8.11.1 the obligations of this Deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of the Section 73 Consent; and

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

8.11.3 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent

## 9. **WAIVER**

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

## 10. **CHANGE IN OWNERSHIP**

10.1 The Owners agree to give the Council and the County Council written notice within 10 working days of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice quoting the Council's reference DC/21/2710/OUT to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of

the Site or unit of occupation purchased by reference to a plan and the title number or numbers thereof

**11. INDEXATION**

11.1 Any sum referred to in the Second and Third Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index or RPI Index (as the context dictates) 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 Deed;

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

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

11.1.4 D is the Index or RPI Index (as the context dictates) for the month 2 months before the date of this Deed ; and

11.1.5 C/D is greater than 1

**12. INTEREST**

12.1 If any payment due under this Deed is paid late Interest will be payable from the date payment is due until the date of payment

**13. VAT**

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

**14. DISPUTE PROVISIONS**

14.1 In the event of any dispute or difference arising between any of the Parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the Parties in the absence of manifest error and any costs shall be payable by the Parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the Parties in equal shares

- 14.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 14.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all Parties in the absence of manifest error and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties in equal shares
- 14.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received any file or written representation
- 14.4 The expert shall be required to give notice to each of the said Parties requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten (10) Working Days
- 14.5 The provisions of this clause shall not affect the ability of the Council and/ or the County Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief

15. **GOVERNING LAW AND JURISDICTION**

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

16. **DELIVERY**

- 16.1 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

17. **COUNTERPARTS**

- 17.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

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

## SCHEDULE 1

### DETAILS OF OWNER'S TITLE AND DESCRIPTION OF THE SITE

Freehold land at Park Farm, Gulpher Road, Felixstowe IP11 9RH within registered title number SK 10000 shown edged Red for identification only on the Site Plan.

#### **Details of the Option Holder**

Unilateral notice registered on 6 June 2023 against title number SK10000 for the benefit of Generator Optima (Ferry Road) Ltd relating to an option to purchase contained in an Agreement dated 7 June 2018 made between (1) David Charles Adams and Alfred Bernard Adams and (2) Generator Optima (Ferry Road) Ltd as varied by the supplemental agreement dated 30 May 2023.

## SCHEDULE 2

### OWNER'S COVENANTS WITH THE COUNCIL

#### 1. Definitions

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

**“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 paragraphs 1.9, 3.8 or 3.9 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 1 in 3 Dwellings to be made available as Affordable Housing comprising of

- i) 50% Affordable Dwellings for Rent
- ii) 25% Shared Ownership Dwellings
- iii) 25% First Homes

The exact number, location and tenure as set out in the Affordable Housing Table

<b>“Affordable for Rent”</b>	<b>Dwellings</b>	means Affordable Housing let by a Registered Provider to an Eligible Person 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 in writing with the Council;
<b>“Affordable Housing”</b>		housing that will be available to eligible households as and as defined in Annexe 2 of the National Planning Policy Framework (2024) or any amending or subsequent national planning policy that may be published by the Government whose needs are not met by the market and eligibility is determined with regard to local income and local house prices (unless otherwise agreed in writing with the Council);
<b>”Affordable Contribution”</b>	<b>Housing</b>	means a proportionate sum taken from the Affordable Housing Commuted Payment Schedule appended to this Deed at Appendix D Index Linked to be paid as a contribution of a percentage of an Affordable Dwelling in lieu of the full policy requirement for Affordable Housing within a Phase to be used towards the provision of Affordable Housing through the acquisition of land or the construction or development of new properties or the purchase or refurbishment of existing market properties in East Suffolk;
<b>“Affordable Scheme”</b>	<b>Housing</b>	<p>a scheme to be submitted for the provision of the Affordable Dwellings generally in accordance with the Affordable Housing Table unless otherwise agreed with the Council such Affordable Housing Scheme shall include details of;</p> <ul style="list-style-type: none"> <li>- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;</li> <li>- the name and registration number of the Registered Provider, where known;</li> <li>- a plan and schedule indicating the number, location, tenure, plot numbers, type and size (including number</li> </ul>

of occupants each dwelling can house) of Affordable Dwellings allocated to the Affordable Housing Scheme;

- full details of the Affordable Housing mix if differing from that set out in the Affordable Housing Table (such proposal to reflect the Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Council);

- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme;

**“Affordable Housing Table”** means the table at clause 1.10 indicating the house types and tenure types of the Affordable Dwellings unless otherwise agreed in writing with the Council;

**“Allocation Policy”** means the policy and procedure adopted by the Council to determine the eligibility and priority for the allocation of the Affordable Dwellings for Rent;

**“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”** any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;

**“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 3.2 applies the Eligibility Criteria (Local);

**“Discount Market Price”** means a sum which is the Market Value of a First Home 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 other than:

(a) a letting or sub-letting of a First Home in accordance with paragraph 3;

(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;

(c) an Exempt Disposal;

and “Dispose” and “Disposed” and “Disposing” shall be construed accordingly;

**“Eligibility (Local)”**

**Criteria** 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 Local Connections Cascade ); and/or

(b) the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member; and /or

(c) 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 (National)”**

**Criteria** 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 waiting list maintained by the Council or a person or persons 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) 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) Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 1.9 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 paragraph 3

**"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) a 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

(b) the freehold a tenant or sub-tenant of a permitted letting under paragraph 3;

**“First Time Buyer”**

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

**“Homes England”**

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;

**“Local Connection Cascade”**

the local connections criteria to be applied to each and every let or sale of an Affordable Dwelling as set out in Appendix A;

**“Market Dwellings”**

that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;

**“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 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;

**“Nomination Agreement”**

means the agreement to be entered into by the Council and the Registered Provider in respect of rights of the Council to nominate Eligible Persons for the Affordable Dwellings for Rent provided by the Council a draft of which is appended to this Deed at Appendix B;

**“Practical Completion”**

means the stage reached when 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 or
- (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 or
- (c) a 100% Staircaser or
- (d) any successor in title of a chargee or mortgagee of the person named a)–c) above
- (e) any mortgagee of a Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions within that Shared Ownership Lease;

<b>“Qualifying Person”</b>	means a person or persons unable to buy housing generally available on the open market and whose household income is below £80,000 (or such other amount agreed in writing with the Council in accordance with government policy);
<b>“Reasonable Consideration”</b>	offer prices from Registered Providers which give the Owners a reasonable consideration having regard to current market conditions in the Disposal of Affordable Housing of a similar type and location by Registered Providers on a grant free basis via Section 106 Agreements;
<b>“Registered Provider”</b>	means either:- <ul style="list-style-type: none"> <li>(a) a body registered as a social landlord pursuant to the provisions of the Housing Act 1996 or a housing association within the meaning of the Housing Associations Act 1985; or</li> <li>(b) any person or body or entity which is registered as a provider or social housing in accordance with Section 80(2) and Chapter 3 of the Housing and Regeneration Act 2008; or</li> <li>(c) any body, organisation or company which is registered charity with the Charity Commissioners for England and Wales and approved by Homes England or any other body, organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a registered social landlord;</li> </ul> <p style="margin-left: 40px;">to be approved in writing by the Council;</p>
<b>“SDLT”</b>	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect;
<b>“Secretary of State”</b>	means the Secretary of State for Housing, Communities and Local Government from time to time appointed and includes and successor in function;

**"Shared Dwelling"** **Ownership** means those Dwellings purchased on a Shared ownership Lease;

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

- (a) not more than 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;
- (b) power to the purchaser to increase their ownership up to 100%;
- (c) an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider subject to annual increases not exceeding 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 within 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.

## 1. **AFFORDABLE HOUSING**

- 1.1 The Owners covenant to submit with an application for Reserved Matters Approval the Affordable Housing Scheme to be agreed by the Council in writing
- 1.2 The Owners covenant not to Commence Development or the Development of a Phase until the Affordable Housing Scheme has been agreed by the Council in writing
- 1.3 The Owners covenant that no more than 40% of the Market Dwellings in a Phase shall be Occupied until the Affordable Housing Contribution for that Phase has been paid (if applicable)
- 1.4 The Owners covenants that no more than 40% of the Market Dwellings in a Phase shall be Occupied (saved unless otherwise agreed in writing with the Council) until a contract has been entered into with a Registered Provider for transfer of all of the

Affordable Dwellings for that Phase (save for any Affordable Dwellings to be sold directly by the Owner)

- 1.5 The Owners covenant that no more than 60% of the Market Dwellings in each Phase shall be occupied until the Affordable Dwellings for that Phase have been constructed in accordance with the Planning Permission made ready for residential Occupation and transferred to the Registered Provider or marketed for sale to Qualifying Persons or First Time Buyers in accordance with the terms of this Deed
- 1.6 The Owners covenant that from the date of Practical Completion of the Affordable Dwellings they shall not be used other than for the purposes of Affordable Housing for Eligible Persons or Qualifying Persons or First Time Buyers in accordance with the Affordable Housing Scheme and Planning Permission subject however to the provisions herein
- 1.7 In the event that a Registered Provider cannot be found for any of the Affordable Dwellings (save for any First Homes) despite the Owners' reasonable endeavours to do so the Owners will be required to provide notification to the Council's satisfaction that demand from a Registered Provider has not been forthcoming for Reasonable Consideration then:
  - 1.7.1 if the Council is satisfied that demand from Registered Providers has not been forthcoming for Reasonable Consideration the Council will enter into written negotiations with the Owners to seek an agreed way forward that does not disadvantage the Owners or their Development whilst maximising the provision of Affordable Housing;
  - 1.7.2 if after three (3) calendar months of handover of the Affordable Dwellings to the Registered Provider there remains any Affordable Dwellings not leased or sold and the Registered Provider can provide evidence to the Council's satisfaction that there are no prospective occupants the Registered Provider shall be free to seek the written agreement of the Council to convert those Affordable Dwellings to an alternative form of Affordable Housing defined within Annex 2 to the National Planning Policy Framework (2024) (or any amended or subsequent national planning policy that may be published by the Government from time to time)
- 1.8 Nothing in this 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.
- 1.9 The Affordable Housing obligations in this Schedule 2 shall not apply to 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 Dwellings or any persons or bodies deriving title through such Chargee, Mortgagee or Receiver PROVIDED THAT:

- 1.9.1 such Chargee or Receiver of an Affordable Dwelling for Rent or Shared Ownership Dwelling shall first give written notice to the 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 Dwelling[s] 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
- 1.9.2 if such Disposal of the Affordable Dwelling[s] for Rent or Shared Ownership Dwelling[s] has not completed within the three month period, the Mortgagee, Chargee or Receiver shall be entitled to dispose of the Affordable Dwelling[s] for Rent or Shared Ownership Dwelling[s] free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely
- 1.9.3 such Mortgagee or Receiver of a First Home first give written notice to the Council of its intention to Dispose of the relevant Dwelling; and
- 1.9.4 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 Home subject only to paragraph 1.10.5 at its full Market Value
- 1.9.5 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
- 1.9.6 following receipt of notification of the Disposal of the relevant First Home or Discount Market Sale Dwelling the Council shall:
  - I. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 3.5; and

- II. apply all such monies received towards the provision of Affordable Housing in East Suffolk

1.10 Affordable Housing Table

House Type	Tenure	Percentage
1 bed 2 person – 30% 2 bed 4 person - 40% 3 bed 5 person – 25% 4 bed 6 person – 5%	Affordable Dwellings for Rent	50%
1 bed 2 person – 30% 2 bed 4 person - 40% 3 bed 5 person – 25% 4 bed 6 person – 5%	Shared Ownership Dwelling	25%
1 bed 2 person – 30% 2 bed 4 person - 40% 3 bed 5 person – 25% 4 bed 6 person – 5%	First Homes	25%
At least 50% to meet M4(2) wheelchair accessible standards		

**2. AFFORDABLE DWELLINGS FOR RENT AND SHARED OWNERSHIP DWELLINGS**

- 2.1 The Registered Provider shall enter into a Nominations Agreement with the Council and shall not dispose or otherwise permit the Occupation of any of the Affordable Dwellings for Rent until such Nomination Agreement has been entered into
- 2.2 On the first and any subsequent letting of an Affordable Dwelling for Rent the Council will (unless otherwise agreed in writing) nominate Eligible Persons in accordance with the Allocation Policy and Nomination Agreement and FOR THE AVOIDANCE OF DOUBT priority will be given to the applicant who has a Local Connection in accordance with the Local Connections cascade provided at Appendix A
- 2.3 The Registered Provider shall not dispose of any interest in any of the Affordable Dwellings for Rent other than by way of an assured tenancy or an assured shorthold tenancy under the Housing Act 1988 (or any form of residential tenancy prescribed by statute in substitution for or in addition to those) PROVIDED THAT nothing in this paragraph shall be deemed to prohibit the sale of the Affordable Dwellings individually or together (in any numerical combination) as one transaction (whether or not subject to any tenancy) to a Registered Provider nor prevent any Registered Provider from charging the Affordable Dwellings in whole or part.

- 2.4 The Owners will notify the Council within twenty-eight (28) days of transfer of any Affordable Dwellings to a Registered Provider of the plot number street address house type size and tenure of each Dwelling and date of transfer.
- 2.5 The Shared Ownership Dwellings shall only be disposed of (which term shall include a freehold sale of a registerable title) to a Qualifying Person in accordance with the Local Connections Cascade.
- 2.6 In the event 100% of a Shared Ownership Dwelling is purchased:
- 2.6.1 the net proceeds from the final sale of the Shared Ownership Dwelling are to be ringfenced by the Registered Provider for 5 years for the provision of Affordable Housing within the East Suffolk District, and should the owner of the former Shared Ownership Dwelling wish to sell it he must notify the Registered Provider and allow the Registered Provider to purchase the former Shared Ownership Dwelling back in the first instance at Market Value;
- 2.6.2 in the event the Registered Provider purchases the Shared Ownership Dwelling in accordance with this paragraph at 2.6.1, the Shared Ownership Dwelling will be marketed as a Shared Ownership Dwelling subject to the terms of this Deed; and
- 2.6.3 in the event the Registered Provider 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 (28) days of the notification as specified in this clause 2.6.1, then the owner of the Shared Ownership Dwelling may sell it on the open market free from the terms of this Deed.

### 3. **FIRST HOMES**

- 3.1 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:
- 3.1.1 the Eligibility Criteria (National); and
- 3.1.2 the Eligibility Criteria (Local).
- 3.2 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 3.1.2 shall cease to apply.

3.3 Subject to paragraphs 3.6 to 3.10, 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.

3.4 No First Home shall be Disposed of (whether on a first or any subsequent sale) unless and until:

3.4.1 the Council has been provided with evidence that:

3.4.1.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph 3.2 applies meets the Eligibility Criteria (Local) (if any)

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

3.4.1.3 the transfer of the First Home includes:

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

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

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

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

d) a provision that the First Home 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

e) a copy of the First Homes Provisions in an Annexure.

3.4.2 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 3.3 and 3.4.1.1 have been met.

3.5 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 xxx (the First

Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition”

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

3.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 3.1 and 3.2 (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 3.3 and 3.4.1.1; or

3.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 3.6.1 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.

3.7 Upon receipt of an application served in accordance with paragraph 3.6 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.

3.8 If the Council is satisfied that either of the grounds in paragraph 3.6 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 3.6 that the relevant Dwelling may be Disposed of:

3.8.1 to the Council at the Discount Market Price; or

3.8.2 (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 3.10 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.

3.9 If the Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 3.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 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 3.6 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

3.10 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 3.8 or 3.9 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.

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

3.11.1 within twenty eight (28) Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.5 where such restriction has previously been registered against the relevant title; and

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

3.12 Any person who purchases a First Home free of the restrictions in Schedule 2 of this Deed pursuant to the provisions in paragraphs 3.9 and 3.10 shall not be liable to pay the Additional First Homes Contribution to the Council.

3.13 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 3.14–3.17 below.

3.14 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, 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.

3.15 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.

3.16 A letting or sub-letting permitted pursuant to paragraph 3.14 or 3.15 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.

3.17 Nothing in this paragraph 3 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.

3.18 An application fee will be payable on each and every application for a First Home in line with the Councils set charges for such applications

#### **4. NOTICES**

4.1 The Owners shall provide the S.106 Officer at the Council with written notification within fourteen days of the date of:

4.1.1 The Commencement of Development of any Phase under the Planning Permission or a Reserved Matters Approval.

4.1.2 Occupation of the first Market Dwelling in each Phase.

4.1.3 Occupation of 40% Market Dwellings in each Phase.

4.1.4 Occupation of 60% Market Dwellings in each Phase.

4.1.5 Occupation of 100% Market Dwellings in each Phase.

4.1.6 Practical Completion of the Affordable Dwellings in each Phase.

4.1.7 The Open Space being provided.

5. **HABITATS REGULATIONS MITIGATION CONTRIBUTION**

5.1 The Owners covenant on Commencement of Development of each Phase to pay to the Council the Habitats Regulations Mitigation Contribution for that Phase

5.2 The Owners covenant not to Commence Development of each Phase until the Habitats Regulations Mitigation Contribution has been paid to the Council in full for that Phase

6. **OPEN SPACE**

6.1 The Owners hereby covenant with the Council to submit the Open Space Plan and the Open Space Specification to the Council for approval prior to Commencement of Development in a Phase.

6.2 The Owners covenant not to Commence the Development or the development of any Phase unless and until the Open Space Plan and Open Space Specification have been approved by the Council in writing such approval not to be unreasonably withheld or delayed and FOR THE AVOIDANCE OF DOUBT the Open Space Specification will account for planting seasons extending beyond the provision trigger point in paragraph 6.4.

6.3 The Owners hereby covenant with the Council that prior to Occupation of 75% of the Dwellings or prior to Occupation of any Dwellings immediately adjacent to the Open Space, whichever is sooner, to lay out and complete the Open Space in accordance with the approved Open Space Plan and the Open Space Specification

6.4 Following the laying out and landscaping of the Open Space in accordance with the approved Open Space Specification the Owner covenants that it shall be properly maintained and managed in accordance with the approved Open Space Specification until such time as it has been transferred to an approved Management Company

6.5 The Owners shall use reasonable endeavours to transfer the Open Space to the Management Company within twelve (12) months of Occupation of the final Dwelling of the Development in accordance with the Open Space Transfer for the sum of One Pound (£1.00).

6.6 Following completion of the Open Space it shall (in perpetuity) unless otherwise agreed in writing with the Council:

(i) not be used for any purpose other than for the provision of public open space for the benefit of the members of the public;

(ii) be maintained and managed in a clean and tidy condition and free of defects and in accordance with the Open Space Specification; and

- (iii) not be built on or allowed to be built on any buildings on the Open Space, subject to any reasonable restrictions imposed in the interest of public safety or for the ancillary use of the public Open Space.

## 7. CUSTOM AND SELF-BUILD HOMES

- 7.1 Unless otherwise agreed in writing, the Owners will provide at least 5% of the total number of Dwellings as Custom and Self-build Plots PROVIDED THAT such provision is only required in the event that 100 Dwellings or more are to be provided on the Site
- 7.2 The Owner covenants to submit the Custom and Self-Build Statement and the Marketing Strategy and the Custom and Self-Build Design Code to the Council for approval prior to, or in conjunction with, the submission of a reserved matters application which is for 100 Dwellings or more, or if the reserved matters application results in the development of 100 or more Dwellings on the Site overall
- 7.3 Following approval of the Custom and Self-build Statement each Custom and Self-build Plot shall be developed in accordance with the agreed details, unless otherwise agreed with the Council
- 7.4 Following approval of the Marketing Strategy each Custom and Self-build Plot shall be Marketed Appropriately
- 7.5 The Owner covenants that no more than 50% of the Market Dwellings shall be Occupied until the Marketing Period has commenced
- 7.6 The Owner shall inform the Council and provide marketing materials on first advertising of the Custom and Self-build Plots to enable the Council to notify persons on the Council's Custom and Self-build Register
- 7.7 If at the end of the Marketing Period the Owner has been unable to sell one or more Custom and Self-build Plots and the Owner can provide evidence to the Council's satisfaction the Custom and Self-build Plots have been Marketed Appropriately the Owner shall be free to seek approval from the Council to convert the Custom and Self-build Plots to Market Dwellings and/or Affordable Housing, such approval not to be unreasonably withheld
- 7.8 Evidence that Custom and Self-build Plots have been Marketed Appropriately shall include:
  - 7.8.1 dated details of published marketing material,
  - 7.8.2 dated estate agent instructions,
  - 7.8.3 dated social media posts,

- 7.8.4 dated correspondence with the Council in respect of marketing to those on the Council's custom and self-build housing register,
  - 7.8.5 dated records of sales enquiries and outcomes of those, and
  - 7.8.6 dated changes in sales price.
- 7.9 The Custom and Self-build Dwellings shall be constructed in accordance with the approved Custom and Self-build Design Code
- 7.10 The Owner covenants to act in good faith in trying to agree both the terms of and the exchange of the Custom and Self-build Sale Contract and not to take any unreasonable steps which would otherwise frustrate such exchange

## SCHEDULE 3

### OWNER'S COVENANTS WITH THE COUNTY COUNCIL

#### 1. NOTICES

1.1 The Owners shall give the County Council no less than one (1) months' written notice of the anticipated date for:

1.1.1 Commencement of Development or the development of any Phase; and

1.1.2 the first Occupation of the first Dwelling.

1.2 The Owners shall within five (5) Working Days given written notice to the County Council following:

1.2.1 the date of Occupation of the first Dwelling in a Phase;

1.2.2 the date of Occupation of 20% of the Dwellings in a Phase;

1.2.3 the date of Occupation of 45% of the Dwellings in a Phase; and

1.2.4 the date of Completion of the Development of a Phase.

#### 2. EARLY YEARS CONTRIBUTION

2.1 The Owners covenants ~~to~~ not to Occupy or cause or permit Occupation of more than 25% of the Dwellings in a Phase unless and until:

2.1.1 the Projected Dwelling Mix for that Phase has been submitted to the County Council; and

2.1.2 a calculation of the Early Years Contribution for that Phase has been submitted to the County Council; and

2.1.3 50% of the Early Years Contribution as calculated in accordance with paragraph 2.1.2 above has been paid to the County Council.

2.2 The Owners covenants ~~to~~ not to Occupy or cause or permit Occupation of more than 50% of the Dwellings in a Phase unless and until a further 50% of the Early Years Contribution (for a total of 100%) as calculated in accordance with paragraph 2.1.2 above has been paid to the County Council.

#### 3. PRIMARY SCHOOL CONTRIBUTION

3.1 The Owners covenants ~~to~~ not to Occupy or cause or permit Occupation of more than 25% of the Dwellings in a Phase unless and until:

- 3.1.1 the Projected Dwelling Mix for that Phase has been submitted to the County Council; and
  - 3.1.2 a calculation of the Primary School Contribution for that Phase has been submitted to the County Council; and
  - 3.1.3 50% of the Primary School Contribution as calculated in accordance with paragraph 3.1.2 above has been paid to the County Council.
- 3.2 The Owners covenants [REDACTED] not to Occupy or cause or permit Occupation of more than 50% of the Dwellings in a Phase unless and until a further 50% of the Primary School Contribution (for a total of 100%) as calculated in accordance with paragraph 3.1.2 above has been paid to the County Council.

#### **4. TRAVEL PLAN MONITORING CONTRIBUTIONS**

- 4.1 The Owners covenants [REDACTED] to pay to the County Council the Travel Plan Monitoring Contribution prior to first Dwelling Occupation and thereafter to pay a further Travel Plan Monitoring Contribution on each anniversary of the date of the first Dwelling Occupation for a minimum period of five (5) years or until one year after the first Occupation of the final Dwelling on the Site whichever is the longer period.
- 4.2 The Owners covenants [REDACTED] not to Occupy or permit the first (1st) Dwelling Occupation until the first Travel Plan Monitoring Contribution has been paid to the County Council.
- 4.3 The Owners covenants [REDACTED] not to Occupy or permit further Dwelling Occupations beyond the anniversary each year until the relevant payment has been made each year in accordance with clause 4.1 of this Schedule.

#### **5. PUBLIC RIGHT OF WAY CONTRIBUTION**

- 5.1 The Owners covenants [REDACTED] to pay to the County Council the Public Right Of Way Contribution prior to first Dwelling Occupation
- 5.2 The Owners covenants [REDACTED] not to Occupy or permit Occupation of the first Dwelling until the Public Right Of Way Contribution has been paid to the County Council
- 5.3 The Owners covenants [REDACTED] to upon written request by the County Council following compliance with the condition attached to the Planning Permission which requires submission of details of the PRoW improvement of the Felixstowe Footpath 12 and delivery of the improvements to Felixstowe Footpath 12 prior to first occupation and without unreasonable delay thereafter provide all reasonable cooperation to the County Council to secure the legal upgrade in status to bridleway and widening of the Felixstowe Footpath 12 as shown indicatively on drawing number, GN003-CPT-01 Revision H attached to this Deed at Appendix E to 4 metres width of highway

maintainable at public expense via agreement with the Owners to dedicate or legal order made by the County Council and shall seek no compensation in respect of the widening or change in status of the aforementioned public right way.