

DATED

10th March

2025

(1) EAST SUFFOLK COUNCIL

-and-

(2) IPSWICH BOROUGH COUNCIL

-and-

(3) SUFFOLK COUNTY COUNCIL

-and-

(4) HOPKINS HOMES LIMITED

-and-

(5) BDW TRADING LIMITED

AGREEMENT UNDER SECTION 106 OF THE

TOWN AND COUNTRY PLANNING ACT 1990

relating to the development of land north-east of Humber Doucy Lane, Ipswich

IP/24/00172/OUTFL and DC/24/0771/OUT

Appeal References: APP/R3515/W/24/3350674 & APP/X3540/W/24/3350673



Howes Percival LLP
Flint Buildings
1 Bedding Lane
Norwich, NR3 1RG

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THIS AGREEMENT is made this 10th day of March

2025

BETWEEN

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT ("**ESC**"); and
- (2) **IPSWICH BOROUGH COUNCIL** of Grafton House, 15-17 Russell Road, Ipswich IP1 2DE ("**IBC**"); and
- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("**County**"); and
- (4) **HOPKINS HOMES LIMITED** (Company registration number: 02875798) whose registered office is situated at First and Second Floor, Blenheim House, Newmarket Road, Bury St. Edmunds IP33 3SB ("**First Owner**"); and
- (5) **BDW TRADING LIMITED** (Company registration number: 03018173) whose registered office is situated at Barratt House, Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire LE67 1UF ("**Second Owner**");

jointly to be referred to as "the Parties"

RECITALS

1. ESC is the local planning authority for the purposes of the Act in respect of the ESC Permission and is entitled to enforce the obligations contained in this Deed in so far as they relate to the ESC Permission.
2. IBC is the local planning authority for the purposes of the Act in respect of the IBC Permission and is entitled to enforce the obligations contained in this Deed in so far as they relate to the IBC Permission.
3. The County is the local highway authority (except for trunk roads), the local education authority, the local library authority, the waste disposal 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.

4. Certain obligations apply to both the ESC Site and the IBC Site and this Deed sets out a protocol whereby ESC and IBC will co-operate in respect of the discharge and enforcement of such obligations.
5. The First Owner and the Second Owner are the registered proprietors of the freehold of the Site which is registered at the Land Registry with title number SK424276.
6. The Applications were made to ESC and IBC by the First Owner and the Second Owner.
7. The First Owner and the Second Owner have appealed against the refusal of the Applications.
8. The Parties have agreed to enter into this Deed to regulate the Development in the event that the Appeal is allowed.
9. The First Owner, the Second Owner, ESC and IBC are satisfied that the planning obligations secured in the Second Schedule are necessary to make the Development acceptable in planning terms, are directly relevant to the Development and are fairly and reasonably related in scale and kind to the Development in compliance with Regulation 122 of the CIL Regulations.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1 DEFINITIONS

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

"100% Staircaser"	means a lessee of a Shared Ownership Dwelling under a Shared Ownership Lease who has exercised their right under that lease to purchase 100% of the equity in the Shared Ownership Dwelling or the owner of a Shared Equity Dwelling who has exercised their right to purchase the remaining equity
"Act"	the Town and Country Planning Act 1990 (as amended)

<p>"Additional First Homes Contribution"</p>	<p>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, 1.11, 3.8 or 3.9 of the Second Schedule, the lower of the following two amounts:</p> <ul style="list-style-type: none"> • 30% of the proceeds of sale; and • 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 <p>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</p>
<p>"Affordable Dwellings for Rent"</p>	<p>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 Relevant Council in writing;</p>
<p>"Affordable Dwellings"</p>	<p>means the Dwellings to be provided pursuant to the Planning Permission to be Occupied as Affordable Housing comprising of Affordable Dwellings for Rent, Intermediate Dwellings and in respect of the ESC only First Homes and in accordance with the Affordable Housing Policy Requirement and the Affordable Housing Scheme (unless otherwise agreed in writing with the Relevant Council)</p>

“Affordable Housing Contribution”

unless otherwise agreed in writing with ESC means a sum calculated in accordance with the formula below and approved by ESC as part of the Affordable Housing Scheme for an ESC Phase or Cross Boundary Phase to be paid to ESC as a proportionate contribution in lieu of any deficiency of Affordable Housing Policy Requirement being provided as part of the ESC Development 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:

$$A = B \times C$$

Where

A is the Affordable Housing Contribution payable;

B is the shortfall in Affordable Dwellings provided against the 1 in 3 Dwelling requirement of ESC’s development plan Policy SCLP5.10 (and for the avoidance of doubt in the case of a Cross Boundary Phase shall be calculated in respect of the ESC Dwellings only); and

C is the sum taken from the table appended to this Deed at Annex A

“Affordable Housing Mix Table”

means the table at Part 1A of the Second Schedule indicating the house types and tenure type of the Affordable Dwellings unless otherwise agreed in writing with the Relevant Council

“Affordable Housing Policy Requirement”

means (unless otherwise agreed with the Relevant Council):

- in the case of an ESC Phase, 1 in 3 of the Dwellings to be provided on that Phase shall be provided as Affordable Dwellings in accordance with the Affordable Housing Mix Table PROVIDED THAT if the 1 in 3 Dwellings results in a fraction of a

Dwelling, an Affordable Housing Contribution is to be paid in lieu of on-site provision for that fraction of a Dwelling

- in the case of an IBC Phase, 30% of the Dwellings to be provided on that Phase (rounded up to the nearest whole Dwelling) shall be provided as Affordable Dwellings;
- in the case of a Cross Boundary Phase, the Affordable Housing Policy Requirement shall be calculated as 1 in 3 of the ESC Dwellings to be provided on that Phase (PROVIDED THAT if the 1 in 3 Dwellings results in a fraction of a Dwelling, an Affordable Housing Contribution is to be paid in lieu of on-site provision for that fraction of a Dwelling) plus 30% of the IBC Dwellings (rounded up to the nearest whole Dwelling) to be provided on that Phase

“Affordable Housing Scheme”

(unless otherwise agreed in writing by the Relevant Council (or Councils in the case of a Cross Boundary Phase)) means a scheme to be submitted and approved by the Relevant Council (or Councils in the case of a Cross Boundary Phase except where all Dwellings within that Phase lie in the administrative area of one Council where the Affordable Housing Scheme shall be approved by that Council) for the provision of the Affordable Dwellings on a Phase in accordance with the Affordable Housing Policy Requirement such Affordable Housing Scheme shall include details of:

- full details of the Affordable Housing mix on that Phase (such proposal to reflect the relevant Affordable Housing Mix Table unless otherwise agreed with the Relevant Council) PROVIDED THAT in the case of a Cross Boundary Phase the Affordable Housing mix shall be determined by reference to ESC's local plan policies as at the date of this Deed in relation to the ESC Dwellings and by

reference to IBC's local plan policies as at the date of this Deed in relation to the IBC Dwellings unless otherwise agreed in writing (both Councils acting reasonably to ensure that the Affordable Dwellings are appropriately located within the Phase));

- the name and registration number of the Registered Provider (if known at the time the Affordable Housing Scheme is agreed);
- a plan and schedule indicating the number, location, tenure, plot numbers, type and size (including number of occupants each dwelling can house) of Affordable Dwellings allocated to the Affordable Housing Scheme for that Phase;
- in the event that an Affordable Housing Contribution is payable to ESC, the amount of that contribution;
- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme for that Phase

"Affordable Housing"

means housing that will be available to eligible households and as defined in Annex 2 of the NPPF or any amending or subsequent 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 Relevant Council)

"Allocation Policy"

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

"Alternative Affordable Housing Scheme"

means a scheme to be submitted to the Relevant Council (or Councils in the case of a Cross Boundary Phase except where all Dwellings within that Phase lie in the administrative area of one Council where the Alternative Affordable Housing Scheme shall be submitted to that Council) for the provision of the Affordable Dwellings on a Phase in accordance with Part 1 of the Second Schedule shall include details of:

- full details of the Affordable Housing mix on that Phase;
- the name and registration number of the Registered Provider (if known and applicable at the time the Alternative Affordable Housing Scheme is submitted);
- a plan and schedule indicating the number, location, tenure, plot numbers, type and size (including number of occupants each dwelling can house) of Affordable Dwellings allocated to the Alternative Affordable Housing Scheme for that Phase;
- in the event that an Affordable Housing Contribution is payable to a Relevant Council, the amount of that contribution

“Appeal” means the conjoined appeals made to the Secretary of State against the refusal of the Applications and allocated appeal references APP/R3515/W/24/3350674 & APP/X3540/W/24/3350673 by the Planning Inspectorate

“Applications” means the ESC Application and the IBC Application

“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

“Authorities” means ESC, IBC and the County together

“BCIS Index Linked” the increase in any sum referred to in this Deed by an amount equivalent to the increase in the BCIS Index calculated in accordance with Clause 11 of this Deed

“BCIS Index” the All In Tender Price Index published by the Building Cost Information Service or any successor organisation

or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties

"Build Specification"	means the build specification appended at Part 2E
"Bus Service Provider"	the company or provider engaged by the Owner for the provision of a Bus Service in accordance with the Bus Service Scheme
"Bus Service Scheme"	<p>a scheme securing the provision or extension of a bus service into the development site and an increase in frequency of bus service from 30 to 20 minutes and which shall include (unless otherwise agreed in writing with County):</p> <ul style="list-style-type: none">- a plan of the bus service routes,- proposed bus stops,- details of the Bus Service Provider, and- a trigger for the Bus Service to be operational (which shall be the Occupation of the fiftieth 50th Dwelling unless it is demonstrated to the County's reasonable satisfaction that the residents of such Dwellings are able to access an existing bus stop within 300 metres of their Dwelling in which case a later trigger of 100 Dwelling Occupations (or later if agreed) shall be agreed to accord with Occupations of Dwellings which are more than 300 metres from an existing bus stop)- such other information as the County may reasonably require to enable approval of the Bus Service Scheme
"Bus Service"	the provision or extension of a fare paying passenger carrying bus service provided in accordance with the Bus Service Scheme which is to operate for a period of 6 years from the date of implementation of the service or

	until the service becomes self-funding (whichever is the earlier)
"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
"CIL Regulations"	Community Infrastructure Levy Regulations 2010 (as amended)
"CIL Tests"	the tests set out in regulation 122(2) of the CIL Regulations
"CIL"	means the Community Infrastructure Levy pursuant to the CIL Regulations
"Commencement"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence" shall be construed accordingly
"Communal Areas"	means all SUDs, drainage features (excluding any SUDS within the Open Space), estate roads and verges (where none of those elements have been adopted by a relevant statutory authority), public realm and all other areas available for communal use by Occupants of the Development
"Communal Areas Maintenance and Management Plan"	means a plan detailing the proposed maintenance and management arrangements for the Communal Areas included within each Phase of the Development

"Compliance Certificate"	means the certificate issued by the Relevant 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 of the Second Schedule applies the Eligibility Criteria (Local)
"Councils"	means both IBC and ESC and " Council " shall refer to either
"County Transfer Terms"	means the terms set out at paragraph 1 of Part 2C of the Third Schedule
"Cross Boundary Details"	means: <ul style="list-style-type: none"> (a) details submitted pursuant to conditions on the Planning Permissions where such details relate to Cross Boundary Development; (b) Cross Boundary Obligations; and (c) any other requirement to obtain a consent approval or other confirmation from a Council in relation to a Cross Boundary Phase
"Cross Boundary Development"	means those parts of the Development on either side of the boundary between the respective areas of ESC and IBC
"Cross Boundary Obligations"	means those obligations set out in this Deed that affect elements of the Development which cross the boundary between the respective administrative areas of ESC and IBC
"Cross Boundary Phase"	means a Phase which crosses the boundary between the respective administrative areas of ESC and IBC
"Custom and Self-build Design Code"	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: <ul style="list-style-type: none"> a) Layout, b) Plot size and shape, c) Developable footprint,

	<ul style="list-style-type: none"> d) Building height or number of storeys, e) Orientation, f) Landscaping, g) Boundary treatment, h) Material palette, i) Number and location of car parking and cycle storage spaces, and j) Refuse storage
"Custom and Self-build Dwelling"	a Dwelling which meets the definition in section 1 of the Self-build and Custom Housebuilding Act 2015 (as amended)
"Custom and Self-build Plot"	a plot of land upon which a Custom and Self-build Dwelling is to be constructed
"Custom and Self-build Register"	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
"Custom and Self-build Sale Contract"	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
"Decision Letter"	means the decision letter(s) issued by the Inspector in determining the Appeal or where the Secretary of State recovers the Appeal for determination the decision letter of the Secretary of State;
"Default Interest Rate"	4% per annum above the base lending rate of the Bank of England from time to time unless otherwise provided by this Deed
"Development"	Phased Hybrid Application – Full Planning Application for the means of vehicle, cycle and pedestrian access to and from the site. Outline planning application (all matters reserved) for a mixed use development for up to 660 dwellings (Use Class C3), up to 400 sq m (net) of non-residential floorspace falling within Use Class E and/or Use Class F2(b), an Early Years facility, and associated

	vehicular access and highway works, formal and informal open spaces, play areas, provision of infrastructure (including internal highways, parking, servicing, cycle and pedestrian routes, utilities and sustainable drainage systems), and all associated landscaping and engineering works (or as otherwise set out in the Inspector's Decision Letter)
"Discount Market Price"	means a sum which is the Market Value of a First Home discounted by at least 30%
"Disposal"	<p>means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest other than:</p> <ul style="list-style-type: none"> (a) a letting or sub-letting of a First Home in accordance with paragraph 3 of the Second 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 (c) an Exempt Disposal <p>and "Dispose" "Disposed" and "Disposing" shall be construed accordingly</p>
"Dwelling"	any dwelling (including a house flat maisonette or bungalow) to be constructed in accordance with the Planning Permission
"Early Years (Off-Site) Contribution"	means the sum of £2,468.27 (two thousand four hundred and sixty eight pounds and twenty seven pence) per IBC (Contribution) Dwelling BCIS Index Linked payable to the County to be used towards the provision of new off-site early years facilities serving the Development (unless otherwise agreed in writing with County)
"Early Years Contribution"	means the sum of £2,946.89 (two thousand nine hundred and forty six pounds and eighty nine pence) per Dwelling

BCIS Index Linked payable to the County to be used towards the provision of new early years facilities serving the Development (unless otherwise agreed in writing with County)

"Early Years Facility Land" means an area of land of minimum size 0.32ha within the Mixed Use Development Parcel for the development of and use as an Early Years Facility to be agreed pursuant to paragraphs 1.1 of Part 2A or Part 2B of the Third Schedule (as relevant) (unless otherwise agreed in writing with County)

"Early Years Facility Scheme" means a scheme for the provision of the Early Years Facility to include (unless otherwise agreed in writing with County):

- the design and specification of the Early Years Facility which shall be substantially in accordance with the Build Specification and to accommodate a minimum 90 place setting;
- the timetable for implementation and provision of the Early Years Facility; and
- details of the proposed Operator

or any scheme subsequently approved by the County

"Early Years Facility" means the facility for early years education provision (for children aged between 0 and 5) to be provided on the Early Years Facility Land

"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 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

"Eligibility Criteria (National)"	<p>means criteria which are met in respect of a purchase of a First Home if:</p> <ul style="list-style-type: none"> (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"	a person or persons on the housing register maintained by a Council or who is otherwise approved by a Council as being in need of separate or alternative accommodation and unable to buy housing generally available on the open market
"ESC Affordable Dwellings"	means any Affordable Dwellings to be delivered pursuant to the ESC Development
"ESC Application"	the planning application for the ESC Development validated by ESC on 5 March 2024 and allocated reference number DC/24/0771/OUT
"ESC Development"	means that part of the Development which will be constructed on the ESC Site
"ESC Dwelling"	means any Dwelling to be constructed on the ESC Site and for the avoidance of doubt will include any Dwelling where 50% or more of that Dwelling's floorspace lies within the ESC Site
"ESC Permission"	means the planning permission for the ESC Development that may be granted by the Secretary of State or the Inspector pursuant to the Appeal

"ESC Phase"	means a Phase which lies wholly within ESC's administrative area
"ESC Site"	means the part of the Site which lies within the administrative boundary of ESC as shown on the Location Plan
"Exempt Disposal"	<p>means the Disposal of a First Home in one of the following circumstances:</p> <ul style="list-style-type: none"> (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 1.11 of Part 1 of the Second Schedule shall apply to such sale) <p>provided that in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraph 3 of Part 1 of the Second Schedule</p>
"First Homes Owner"	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <ul style="list-style-type: none"> (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 paragraphs of the Second Schedule

"First Homes"	means Dwellings 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 Option Period"	the period commencing the date the Early Years Facility Land is agreed pursuant to paragraphs 1.1 of Part 2A or Part 2B of the Third Schedule (as relevant) ending on the date the 125th Dwelling is first Occupied
"First Time Buyer"	means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003.
"Fully Serviced"	a Custom and Self-build Plot that has access to a public highway and has connections for electricity, water, waste water and telecommunications.
"Healthcare Contribution"	means the sum of £576.06 per IBC (Contribution) Dwelling up to a maximum sum of £380,220 (BCIS Index Linked) to be paid to IBC and passed to NHS Suffolk and North East Essex Integrated Care Board to increase the capacity of primary healthcare facilities at Two Rivers Medical Centre 30 Woodbridge Rd E, Ipswich IP4 5PB serving the Development
"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;
"Household Waste Contribution"	means the sum of £138 per IBC (Contribution) Dwelling BCIS Index Linked to be paid to the County to be used to provide new and improved household waste disposal

services serving the Development including services forward funded by the County

"IBC (Contribution) Dwelling"

means:

- the whole of any Dwelling whose floorspace is constructed wholly within the IBC Site; and
- in the case of a Dwelling whose floorspace is not wholly within the IBC Site, the proportion of that Dwelling's floorspace which lies within the IBC Site (such that by way of example where 40% of a Dwelling's floorspace lies within the IBC Site, that Dwelling shall constitute 0.4 of an IBC (Contribution) Dwelling)

PROVIDED THAT it is hereby acknowledged and agreed that prior to the date any payment due under this Deed which applies to such dwelling(s), IBC and the Owner (acting fairly and reasonably), may agree to adopt an alternative approach to apportioning such payments and where agreement cannot be reached, either party may refer the matter to an expert pursuant to the provisions of clause 13 of this Deed

"IBC Affordable Dwelling(s)"

means any Affordable Dwellings to be delivered pursuant to the IBC Development

"IBC Application"

the planning application for the IBC Development validated by the Council on 5 March 2024 and allocated reference number IP/24/00172/OUTFL

"IBC Development"

means that part of the Development which will be constructed on the IBC Site

"IBC Dwelling"

means any Dwelling to be constructed on the IBC Site and for the avoidance of doubt will include any Dwelling where more than 50% of that Dwelling's floorspace lies within the IBC Site

"IBC Marketing Strategy"

means written proposals setting out what measures the Owners will take over what time period to advertise the availability of IBC Affordable Dwellings to the public to

	help the Registered Provider raise awareness about the availability of such units to suitable households
"IBC Permission"	means the planning permission for the IBC Development that may be granted by the Secretary of State or the Inspector pursuant to the Appeal
"IBC Phase"	means a Phase which lies wholly within IBC's administrative area
"IBC Site"	means the part of the Site which lies within the administrative boundary of IBC as shown on the Location Plan
"Inspector"	an inspector appointed by the Secretary of State to determine the Appeal
"Intermediate Dwellings"	means Dwellings to be made available as Affordable Dwellings which will take the form of Shared Ownership Dwellings and/or Shared Equity Dwellings (unless otherwise agreed in writing with the Relevant Council)
"Ipswich Strategic Planning Area Contribution"	means the sum of £493,060.90 (four hundred and ninety three thousand and sixty pounds and ninety pence) BCIS Index Linked payable to the County to be used in accordance as set out in the table at Annex B to fund a scheme of walking and cycling improvements including officer time, legal expenses, works and all other ancillary expenses
"Land Specification"	means the land specification appended at Part 2D
"Libraries Contribution"	means the sum of £216 (two hundred and sixteen pounds) per IBC (Contribution) Dwelling (BCIS Index Linked) to be paid to the County to be used for the provision and improvement of library services serving the Development
"Local Connections Cascade"	means the Relevant Council's local connections criteria to be applied to each and every let or sale of an Affordable Dwelling as set out in the Seventh Schedule

"Location Plan"	means the plan attached to this Deed at the first schedule titled "Site Location Plan" with reference HDL-PRP-XX-XX-DR-A-08200 Rev P01
"Management Company"	means a company or body to be approved in writing by the Relevant Council who will take over responsibility for the future maintenance and management of the Open Space and Communal Areas and which may include a residents association established for this purpose or a private limited company whose memorandum and articles of association shall provide that all profits are to be applied to the management and maintenance of the Open Space and the Communal Areas and for the avoidance of doubt multiple Management Companies may take responsibility for different parts of the Site
"Market Dwelling"	that part of the Development which is general market housing for sale on the open market at Market Value 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;
"Marketed Appropriately"	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 ESC, the Custom and Self-build Plots have been Fully Serviced, have defined boundaries, and are available for immediate purchase as agreed through the Marketing Strategy;
"Marketing Period"	a period of not less than 12 months within which the Custom and Self-build Plots shall be Marketed Appropriately as agreed through the Marketing Strategy;

“Marketing Scheme”

means a scheme setting out the details of the marketing exercise to be undertaken in relation to the Early Years Facility Land as approved in writing by the County

“Marketing Strategy”

a document setting out the marketing arrangements for each Custom and Self-build Plot, which shall include (unless otherwise agreed in writing with ESC):

- a) The Marketing Period during which the Custom and Self-build 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 clearly demarcated and be in a clear and tidy state.

The Owner should set out methods to enable potential plot purchasers to gain safe access

into the site to view the 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 Owner 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

"Mixed Use Development Parcel"

the mixed-use development parcel allocated within the land use parameters plan for the Development referenced HDL-PRP-XX-XX-DR-A-08201_P01 Parameter Plan - Land Use or as otherwise agreed pursuant to the Planning Permission

"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"	the agreement to be entered into by the Relevant Council and the Registered Provider in respect of rights for the Relevant Council to nominate Eligible Persons for the Affordable Dwellings for Rent in the form provided by the Relevant Council a draft of which is appended to this Deed at the Sixth Schedule
"NPPF"	means the National Planning Policy Framework (December 2024) as amended or any successor document
"Occupation" "Occupy" and "Occupied"	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
"Offer Documentation"	means plans, drawings, specifications and other documentation which the Registered Provider may reasonably require in order to make an offer for the Affordable Dwellings including the following documents relating to the Affordable Dwellings which shall be provided by the Owners to a Registered Provider:- <ul style="list-style-type: none"> (a) drawings showing the size, layout and design of the Affordable Dwellings; (b) site layout showing the position of the Affordable Dwellings in relation to the Market Dwellings and the nature of the Market Dwellings; (c) a copy of the Planning Permission and reserved matters consent; and (d) a copy of this Deed

"Open Space Specification"	<p>means (unless otherwise agreed in writing with the Relevant Council) the plan for the delivery of the Open Space (including any SUDS within the Open Space) on a Phase including:</p> <ul style="list-style-type: none"> a) specifications plans and drawings showing the layout and design of the Open Space for that Phase in accordance with the Planning Permission to include any required multi-use games areas, local areas of play, local equipped areas of play and any neighbourhood areas of play; b) details of the maintenance and management arrangements for the Open Space for that Phase; and c) any additional details the Relevant Council may require concerning the specification, delivery and/or use of the Open Space
"Open Space"	<p>the area of open space provided by the Owner for public use and enjoyment of the residents of the Development in accordance with details in the Open Space Specification and to include any formal and equipped open space provision including any multi-use games areas, local areas of play, local equipped areas of play and any neighbourhood equipped areas of play</p>
"Operator Transfer Terms"	<p>means the terms set out at paragraph 2 of Part 2C of the Third Schedule</p>
"Operator"	<p>means an approved provider of early years provision registered with Ofsted for the provision of early years care such that they meet the Statutory Framework for the Early Years Foundation Stage</p>
"Owners"	<p>means the First Owner and the Second Owner together</p>
"Passenger Transport Contribution"	<p>means the sum of £1,113,770.80 (one million one hundred and thirteen thousand seven hundred and seventy pounds and eighty pence) RPI Index Linked payable to the County to be used towards the extension of Ipswich Buses or alternative bus service operator</p>

	service into the development site for a total of 6 years and increase the frequency to 20 minutes from 30 minute
"Phase"	means any phase of the Development as identified on the phasing plan to be agreed pursuant to the Planning Permission (including any phase with sub-phase(s) containing Custom and Self-build Plots)
"Planning Permission"	means the IBC Permission and the ESC Permission together
"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;
"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 and "Practically Complete" shall be construed accordingly;
"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: <ul style="list-style-type: none"> a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable 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 chargee or mortgagee 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.

“PRoW Contribution” means the sum of £110,149 (one hundred and ten thousand one hundred and forty nine pounds) BCIS Index Linked payable to the County to be used towards the provision of signage and resurfacing of footpaths 45 and 48 and bridleway 1 including officer time

“Qualifying Persons” 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 Relevant Council in accordance with government policy)

“RAMS Mitigation Contribution” the sum of £142.27 per RAMS Zone A Dwelling and £374.29 per RAMS Zone B Dwelling (each BCIS Index Linked) payable to the Relevant Council (being the Council within whose administrative area a particular Dwelling is location) towards the cost of mitigating the impact of additional visitors upon European Protected Sites as a result of the Development pursuant to the relevant local plan policies and appropriate assessments as at the date of this Deed, and the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document published May 2021

“RAMS Zone A Dwelling” means any Dwelling to be wholly constructed within Zone A as defined in the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (May 2021)

"RAMS Zone B Dwelling"	means any Dwelling to be constructed wholly or partially within Zone B as defined in the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (May 2021) and for the avoidance of doubt will include any Dwelling where any of that Dwelling's floorspace lies within Zone B
"Reasonable Consideration"	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
"Reasonable Endeavours"	means that it is agreed by the Parties that the Party under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto and to other terms of this Deed such Party will be bound to attempt to fulfil the relevant obligation by the expenditure of such effort and/or sums of money and the engagement of such professional or other advisers as in all the circumstances (including the importance to the other parties of the fulfilment of the relevant obligation) may be reasonable to expect: in the case of the Owners, of a competent commercial Owner in the context of the Development; and in the case of ESC and IBC, of a competent local planning authority acting reasonably in the context of its statutory functions; and in the case of the County, of a competent local planning highway or education authority acting reasonably in the context of its statutory functions
"Record of Sales Enquiries"	<p>A record of enquiries made by individuals in relation to each plot which shall include:</p> <ul style="list-style-type: none"> a) Date of enquiry; b) Nature of enquiry; c) Whether the enquirer visited the site; and

- d) Reason/s why the enquirer did not purchase the plot or find it suitable.

"Registered Provider" or
"RP"

for the purposes of this Deed means either: -

- 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
 - 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
 - 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 Relevant Council and which has objects demonstrably similar to or compatible with or promoting those of a registered social landlord;
- to be approved in writing by the Relevant Council

"Relevant Authority"

means either ESC, IBC or the County depending on the context in which the term is used in this Deed

"Relevant Council"

means either ESC or IBC depending on the context in which the term is used in this Deed and for the avoidance of doubt the Relevant Council will be ESC in relation to an ESC Dwelling and IBC in relation to an IBC Dwelling PROVIDED FURTHER that where an obligation relates to a Cross Boundary Phase, except as otherwise provided 'Relevant Council' shall be construed as referring to both ESC and IBC and clause 18 will apply

"Reserved Matters
Application"

means any application submitted for approval of reserved matters pursuant to the Planning Permission

"Residential Travel Plan"

the travel plan relating to the residents of the Dwellings to be approved pursuant to the Planning Permission

"RPI Index Linked"	the increase in any sum referred to in this Deed by an amount equivalent to the increase in the RPI Index calculated in accordance with Clause 11 of this Deed
"RPI Index"	means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Owners and the Councils or County (as relevant)
"SDLT"	means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect
"Second Option Period"	a period from the date of the end of the marketing period until the date 150 Dwellings are Occupied pursuant to paragraph 2.2.2 of Part 2B of the Third Schedule
"Secondary Education Contribution"	means the sum set out in the following table per IBC (Contribution) Dwelling BCIS Index Linked payable to the County to be used towards the provision of additional capacity through the expansion, improvement and enhancement including forward funding of existing secondary schools serving the Development

1 bed flat	£498.98
2+ bed flat	£1,408.89
1 bed house	£1,761.12
2+ bed house	£4,490.85

"Secretary of State"	the Secretary of State for Housing, Communities and Local Government or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the Act
"SEND Contribution"	means the sum set out in either: <ul style="list-style-type: none"> - Table A in Annex C; OR - Table B in Annex C

(whichever the Secretary of State or the Inspector determines pursuant to the Appeal to be in accordance with the CIL Tests) per IBC (Contribution) Dwelling BCIS Index Linked payable to the County to be used towards the provision of new or improved SEND provision serving the Development including provision which has been forward funded

“Service Charge Terms” means the terms to be included in the legal transfer or lease of each Dwelling whereby the transferee or lessee (and its successors in title) covenant to pay a proportionate share of the total costs incurred by the Management Company in the management and maintenance of the Communal Areas and any other shared areas outside individual boundaries (including, but not limited to open space, parking courtyard areas etc) that have not been adopted by the local highway authority or other relevant statutory authority

“Shared Equity Dwellings” means (unless otherwise agreed in writing) Affordable Dwellings to be purchased at no more than seventy-five percent (75%) Market Value on a freehold basis with a second charge (“the Second Charge”) for the remaining twenty-five (25%) in favour of the RP by persons for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in Homes England’s capital funding guide. The Second Charge shall have no interest payable in relation to it and shall not involve any consideration being due on initial sale. The Second Charge shall not be redeemed or removed by the purchaser otherwise than on or after the second anniversary of the first Occupation of the Shared Equity Dwelling and only for consideration the equivalent of twenty-five percent (25%) of the Market Value at that time, or, if at any point during the term the Shared Equity Dwelling is sold, then the proceeds of sale shall be

divided on the basis of seventy-five percent (75%) of the proceeds to the vendor and twenty-five percent (25%) to the Registered Provider or Relevant Council and the Second Charge shall thereafter be redeemed and removed from the title on completion of the sale

"Shared Equity Sales Procedure"

means the procedure approved in writing by the Relevant Council to verify the Market Value of the Shared Equity Dwellings and eligibility of purchasers which may include engagement with the Registered Provider that will hold the Second Charge in relation to the Shared Equity Dwellings

"Shared Ownership Dwellings"

means Affordable Dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in Homes England's capital funding guide

"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 Relevant Council, such lease to provide for the following:

- i. not more than seventy-five percent (75%) and not less than ten percent (10%) of the equity (or such other percentages the Relevant Council may agree) shall be initially sold to the purchaser by the Registered Provider;
- ii. power to the purchaser to increase their ownership up to one hundred percent (100%);
- iii. an initial rent not exceeding two point seven five percent (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 Relevant Council shall reasonably determine) plus 1% or such other rent as complies

with the requirements from time to time of Homes England

"Site Mortgagee" means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority who has a registered charge over the Site;

"Site" means the land to the north-east of Humber Doucy Lane, Ipswich against which this Deed may be enforced and shown for identification purposes only edged red on the Location Plan

"Sixth Form Contribution" means the sum set out in either:

- Table A in Annex C; OR
- Table B in Annex C

(whichever the Secretary of State or the Inspector determines pursuant to the Appeal to be in accordance with the CIL Tests) per IBC (Contribution) Dwelling BCIS Index Linked payable to the County to be used towards the provision of additional capacity through the expansion, improvement and enhancement of sixth form provision serving the Development including forward funding

"SUDS" means the sustainable urban drainage system(s) (including all sustainable urban drainage systems features) to be approved pursuant to the Planning Permission

"Traffic Regulation Order Contribution" means the sum of £15,000 (fifteen thousand pounds) RPI Index Linked payable to the County to be used towards the costs of implementing a traffic regulation order to extent the 30mph speed limit on Tuddenham Road north of the junction with Church Lane including officer time, legal costs, administrative costs, the costs of resolving any challenge made to the order and any other ancillary costs incurred

"Travel Plan Evaluation and Support Contribution"	one thousand and two hundred pounds (£1,200.00) per annum RPI Index Linked to provide the County suitable resource to engage with the travel plan coordinator appointed by the applicant for the Residential Travel Plan
"Valuer"	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer acting in an independent capacity
"Working Day(s)"	Mondays to Fridays (excluding days that in England and Wales are public holidays or on which the Council offices are closed and the period between Boxing Day and New Year's Day) inclusive

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 the 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 Unless stated otherwise in this Deed any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.5 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 Authorities the successor to their respective statutory functions.
- 2.6 The headings are for reference only and shall not affect construction.

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 under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by ESC and/or IBC and/or the County as appropriate in the case of covenants made with it as local planning authority against the Owners and their successors in title.

4 CONDITIONALITY

The obligations set out in the Second and Third Schedule are conditional upon:

- (i) the grant of the ESC Permission or the IBC Permission (whichever is earlier); and
- (ii) the Commencement of Development;

save in respect of any obligations in the Second or Third Schedules that require compliance prior to the Commencement of Development which shall come into effect on the grant of the ESC Permission or the IBC Permission (whichever is the earlier) and the remainder of the provisions set out in this Deed shall take effect immediately upon completion of this Deed.

5 THE OWNERS COVENANT

- 5.1 The Owners covenant with ESC as set out in the Second Schedule.
- 5.2 The Owners covenant with IBC as set out in the Second Schedule.
- 5.3 The Owners covenant with the County as set out in the Third Schedule.

6 THE COUNCILS' AND COUNTY'S COVENANTS

6.1 Each Council covenants with the Owners as set out in the Second and Fourth Schedule.

6.2 The County covenants with the Owners as set out in the Third and Fifth Schedule.

7 LEGAL AND MONITORING FEES

7.1 Immediately prior to the completion of this Deed the Owners shall pay ESC's, IBC's and the County's reasonable legal costs properly incurred in connection with the negotiation preparation and execution of this Deed.

7.2 Within 10 Working Days of the Appeal being allowed, the Owners shall pay ESC the total sum of £8,010 towards the monitoring of the performance of the planning obligations that the Owners are required to observe and perform to ESC.

7.3 Within 10 Working Days of the Appeal being allowed, the Owners shall pay IBC the sum of £16,000 (Sixteen Thousand Pounds) towards the monitoring of the performance of the planning obligations that the Owners are required to observe and perform to IBC PROVIDED THAT in the event that there are more than 4 (Four) Phases of the IBC Development an additional monitoring fee of £4,000 (Index Linked) shall be payable for each additional phase of IBC Development and shall be paid to IBC prior to Commencement of each such additional phase.

7.4 Within 10 Working Days of the Appeal being allowed, the Owners shall pay the County the total sum of £8,304 towards the monitoring of the performance of the planning obligations that the Owners are required to observe and perform to the County.

8 INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Relevant Authority by the date it is due, the Owners shall pay interest on that amount at the Default Interest Rate. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

9 MISCELLANEOUS

9.1 The Owners covenant and warrant to the Authorities that they are the freehold owners of the legal and beneficial title to the Site respectively and have full power and capacity

to enter into this Deed and that there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

9.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

9.3 This Deed shall be registered as a local land charge by the Council.

9.4 Where the agreement, approval, consent or expression of satisfaction is required by the First Owner or the Second Owner from ESC, IBC or the County under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.

9.5 Any notice or written communication to be served or given by one party to any other party under the terms of this Deed shall be deemed to have been properly served or given if delivered by hand or sent by first class post or registered or recorded delivery to the following addresses:

9.5.1 First Owner: at the address as set out at the beginning of this Deed; and

9.5.2 Second Owner: at the address as set out at the beginning of this Deed; and

9.5.3 ESC: shall be addressed to the Section 106 Officer at the address as set out at the beginning of this Deed; and

9.5.4 IBC: marked for the attention of Head of Planning and Development and Special Projects Team Leader, at the address as set out at the beginning of this Deed; and

9.5.5 County Council: shall be addressed to the Executive Director of Growth Highways and Infrastructure at the address as set out at the beginning of this Deed; or

9.5.6 such other address as may be notified in writing from time to time.

9.6 Following the performance and satisfaction of all the obligations contained in this Deed the Relevant Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

- 9.7 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.
- 9.8 Subject to clause 9.7 and clause 17 of this Deed, this Deed shall cease to have effect (insofar only as it has not already been complied with):
- 9.8.1 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;
- 9.8.2 in respect of the ESC Development only, if the ESC 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; or
- 9.8.3 in respect of the IBC Development only, if the IBC 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.
- 9.9 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 the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or part of the Site) shall constitute an interest for the purposes of this Clause.
- 9.10 Any obligation (or part thereof as relevant) contained in this Deed save (unless otherwise agreed between the Owners and the Relevant Council) the obligations contained in the Second Schedule:
- 9.10.1 shall not apply and not have any force nor effect if the Inspector appointed to determine the Appeal finds in the Decision Letter that a particular obligation or part thereof in this Deed is not compliant with the CIL Tests or is not a material consideration or otherwise unnecessary to enable the grant of

Planning Permission and in such circumstances the Owners shall not be obliged to comply with such obligation;

9.10.2 shall be amended and construed accordingly if the Inspector appointed to determine the Appeal confirms in the Decision Letter that a particular obligation in this Deed should be amended in order to meet the CIL Tests or otherwise enable the grant of Planning Permission whether this is in respect of the level or amount of any contribution or trigger or deadline for compliance; and/or

9.10.3 shall be amended and construed accordingly if the Inspector appointed to determine the Appeal confirms in the Decision Letter that particular paragraphs parts or schedules or any other provisions of this Deed should be deleted or amended so as to comply with the CIL Tests or otherwise enable the grant of Planning Permission.

9.11 Save for the obligations contained in Part 1 of the Second Schedule which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Dwellings subject to the provisions contained therein, the covenants, restrictions and requirements contained in this Deed shall not be enforceable against:

9.11.1 owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them;

9.11.2 a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owners to that statutory undertaker; or

9.11.3 any mortgagee or chargee of the whole or any part of the Owners' interest in the Site unless such mortgagee or chargee takes possession of the Site or part thereof in which case it will be bound by the obligations as a person deriving title from the Owners.

9.12 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.

- 9.13 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Councils or the County under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.
- 9.14 The Owners covenant from the date that this Deed takes effect to allow the Authorities and their duly authorised officers or agents at all reasonable times on reasonable notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed and in doing so the Authorities shall have regard to all health and safety requirements when visiting the Site.
- 9.15 The Owners hereby agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.
- 9.16 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 against each of them individually unless there is an express provision otherwise.

10 WAIVER

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

11 INDEXATION

Any sum referred to in the Second Schedule or the Third Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index or the RPI Index (as applicable) using the application of the formula $A = B \times (C/D)$ where:

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

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

D is the BCIS Index or RPI Index (as applicable) as of the following date:

- i. for the purposes of the indexation of the RAMS Mitigation Contribution from April 2024;
- ii. for any other purposes the date two months before the date of this Deed.

C/D is equal to or greater than 1.

12 VAT

- 12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.
- 12.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

13 DISPUTE PROVISIONS

- 13.1 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 to the dispute in equal shares.

- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 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 (or suitable person holding appropriate professional qualifications) to determine the dispute such solicitor or other person acting as an expert and his decision shall be final and binding on all parties to the dispute 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 to the dispute in equal shares.
- 13.3 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.
- 13.4 The expert shall be required to give notice to each of the said parties to the dispute 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 CHANGES IN OWNERSHIP OF THE SITE

The Owners shall give ESC, IBC and the County within ten (10) Working Days written notice of any change in ownership of their freehold interest in the Site or of any other disposal of any part of the Site occurring before all the obligations under this Deed have been discharged such notice 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 purchased by reference to a plan save that this requirement shall not apply to any such disposals to individual Dwelling purchasers or disposals of any part of the Site to a statutory undertaker.

15 NOTICES

The Owners covenant (unless otherwise agreed in writing with the Relevant Authority) to inform ESC, IBC and County by way of prior written notice of no less than fourteen (14) Working Days (unless otherwise stated below) of the following:

- (i) 25 days prior to any Reserved Matters Application;
- (ii) Commencement of Development;
- (iii) Commencement of works above slab level;
- (iv) Commencement of each and every Phase;
- (v) First Occupation of the first (1st) Dwelling in each Phase;
- (vi) First Occupation of 40% of the Dwellings in each Phase;
- (vii) First Occupation of 40% of the Market Dwellings in each Phase;
- (viii) First Occupation of over 45% (forty-five percent) of the Dwellings in each Phase;
- (ix) First Occupation of 50% of Dwellings on the ESC Site;
- (x) First Occupation of 60% of the Market Dwellings in each Phase;
- (xi) First Occupation of 75% of the Dwellings in each Phase;
- (xii) First Occupation of the final Dwelling in each Phase;
- (xiii) First Occupation of the twenty-fourth (24th) Dwelling;
- (xiv) First Occupation of the forty-ninth (49th) Dwelling;
- (xv) First Occupation of the fifty-ninth (59th) Dwelling;
- (xvi) First Occupation of the eighty-ninth (89th) Dwelling;

- (xvii) First Occupation of the hundredth (110th) Dwelling;
- (xviii) First Occupation of the one hundred and twenty-fifth (125th) Dwelling;
- (xix) First Occupation of the one hundred and forty-ninth (149th) Dwelling;
- (xx) First Occupation of the two hundred and forty-ninth (249th) Dwelling; and
- (xxi) First Occupation of the final Dwelling.

16 JURISDICTION

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

17 FUTURE PERMISSIONS

- 17.1 Nothing in this agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.
- 17.2 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act:
 - 17.2.1 the obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act; and
 - 17.2.2 the definitions of Application, ESC Permission, IBC Permission and Planning Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any 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.

18 APPROVAL OF CROSS BOUNDARY OBLIGATIONS

18.1 Subject to clause 18.2, in the event that a Council receives a request to approve Cross Boundary Details, it shall use Reasonable Endeavours to:

- (a) notify the other Council that it has received the Cross Boundary Details;
- (b) liaise with the other Council on the submitted Cross Boundary Details as soon as reasonably practicable and in any event not less than twenty (20) Working Days from receipt of such details;
- (c) reach agreement with the other Council on the submitted Cross Boundary Details; and
- (d) issue a decision within sixty (60) Working Days from the date of receipt of such details or within such other timescale as agreed between the Councils and the Owners in writing.

18.2 The obligations on ESC and IBC set out in clause 18.1 are conditional upon:

- 18.2.1 the submitted Cross Boundary Details being reasonably considered appropriate and sufficient to allow a Council to issue a decision;
- 18.2.2 it being acknowledged and agreed by the Parties that a Council shall be entitled to request any additional or revised Cross Boundary Details it considers reasonably necessary to allow a decision to be issued and where additional details are requested, the timeframe to issue a decision as detailed in clause 18.1(d) shall recommence from the date the additional detail requested is received by a Council or within such other timescale as may be agreed between the Council and the Owners in writing; and
- 18.2.3 it being acknowledged and agreed that nothing in this clause 18 shall fetter the discretion of the Council to determine the submission of any Cross Boundary Details.

18.3 The Owners shall use Reasonable Endeavours to submit for approval Cross Boundary Details to each Council on the same day.

18.4 If such a request to approve Cross Boundary Details is received then the County shall consider such application acting reasonably but shall not be bound by any of the requirements in clause 18.1.

18.5 In the event that:

18.5.1 a payment due under this Deed is made to the incorrect Relevant Council such payment shall be passed to the correct Relevant Council as soon as reasonably practicable following the Owners' written request or the date on which the receiving Relevant Council becomes aware of the error; or

18.5.2 the Owners mistakenly make a payment due under this Deed which is greater than the amount actually due, the Relevant Council shall, as soon as reasonably practicable following the Owners' written request or the date on which the receiving Relevant Council becomes aware of the Owners' mistake, refund the mistakenly paid amount to the Owners.

19 ENFORCEMENT OF CROSS BOUNDARY OBLIGATIONS

19.1 Subject to clause 19.3, in the event that a Council intends to enforce against a breach of a Cross Boundary Obligation, the relevant Council shall, where practicable, notify the other Authorities of that fact in writing providing details of:

(a) the alleged breach;

(b) the proposed enforcement action;

(c) the proposed timescales for bringing enforcement action; and

(d) the proposed remedy required.

19.2 Following such notice and so far as is reasonably practicable, the Councils shall use Reasonable Endeavours to reach agreement as to the enforcement action to be brought with the intention that any action brought by a Council in respect of a breach shall be consistent with any action brought by the other Council and the Councils shall use Reasonable Endeavours to bring enforcement action on a joint basis.

- 19.3 Nothing in this clause 19 shall fetter the Councils' discretion to take any such enforcement action it considers reasonably necessary and expedient.
- 19.4 Nothing in this Agreement shall fetter the Councils' discretion in relation to the determination of any Reserved Matters Application.
- 19.5 For the avoidance of doubt the County shall not be required to submit to or be bound by the provisions of this clause.

20 CIL

The Parties acknowledge that as at the date of this Deed:

(a) ESC has adopted CIL; and

(b) IBC has not adopted CIL.

21 MORTGAGEE CONSENT

The Parties acknowledge and agree that any Site Mortgagee will only be liable for any breach of the provisions of this Deed during such period as it is a mortgagee in possession of the whole or any part of the Site when it becomes bound by the obligations as if it were a person deriving title from the Owners. It will not be liable for any breach of the provisions of this Deed after it has parted with or released its interest in the Site save for any prior breach for which it shall continue to be liable.

22 DELIVERY

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

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

FIRST SCHEDULE

Location Plan