

Dated 16th January 2025

Planning Obligation by way of Unilateral Undertaking
pursuant to Section 106 of the
Town and Country Planning Act 1990 (as amended)
relating to land at Blackthorn Way and Campion Way,
Leavenheath, Suffolk

Given by:

- (1) Waterson Homes Limited

Given to:

- (2) Babergh District Council
and
(3) Suffolk County Council

APPEAL REF: APP/D3505/W/24/3352565

COUNCIL REF: DC/23/03653

We hereby certify this to be a true copy of the original

Date 16.01.2025

Holmes & Hills LLP
A12 Commercial Hub, 86 London Rd, Marks Tey, Essex, CO6 1ED



THIS DEED is made the
BY:

16th

day of

January

2025

- (1) **WATERSON HOMES LIMITED** (company number 08293835) of Kingsridge House, 601 London Road, Westcliff-on-Sea, Essex SS0 9PE ("the Owner")

and creates planning obligations which are enforceable by:

- (2) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich IP1 2BX ("the District Council")
- (3) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council")

INTRODUCTION

1. The District 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.
2. The County Council is the local highway authority (except for trunk roads), the local education authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
3. The Owner is the freehold owner of the Site registered with the Land Registry under title number SK401242.
4. The Application was submitted on behalf of the Owner to the District Council and the District Council determined to refuse the Application on 26 March 2024.
5. The Appeal has been lodged on behalf of the Owner with the Secretary of State against the District Council's refusal to grant planning permission for the Development.
6. The Appeal will be considered by an Inspector appointed by the Secretary of State and in the event that the Inspector or the Secretary of State decides to uphold the Appeal and grant Planning Permission the Owner agrees that Planning Permission should be granted subject to the planning obligations set out in this Deed.

7. This Deed is entered into for the purposes of providing planning obligations binding the estate and interest of the Owner in the Site under Section 106 of the Act in the event that Planning Permission is issued.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1. DEFINITIONS

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

“Act”	the Town and Country Planning Act 1990 (as amended);
“Affordable Housing”	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market in accordance with and as defined in Annex 2 to the National Planning Policy Framework (as may be amended and replaced from time to time)
“Affordable Housing Contribution”	the sum calculated in accordance with the District Council's affordable housing policies in place at the time to be paid to the District Council to spend on Affordable Housing within the administrative district of the District Council in the event that the Owner is unable to dispose of the Affordable Housing in accordance with the Second Schedule
“Affordable Housing Units”	means no less than 35% of the Dwellings to be provided on the Site as Affordable Housing (which based on a development of 23 (twenty three) Dwellings shall mean no less than 8 (eight) of the Dwellings to be provided on the Site as Affordable Housing pursuant to the Planning Permission and in accordance with the Agreed Mix and to be Occupied as Affordable Housing as shown in the Affordable Housing Scheme unless otherwise agreed in writing with the District Council with a tenure split of sixty two and a half percent (62.5%) Affordable Rented Housing Units Occupied by persons allocated in accordance with a Choice Based Letting Scheme to which the District Council is party or otherwise nominated by the District Council pursuant to the deed of nomination rights as varied from time to time and thirty seven and a half per cent (37.5%) Shared Ownership Dwellings Occupied by persons with a local connection to the District of Babergh and on a lease set out in the Homes England Capital Funding Guide (or any subsequent scheme) complying with the NDSS applicable at the time that the Affordable Housing Plan is approved (unless otherwise agreed in writing between the Owner and the District Council)

"Appeal"	Means the appeal lodged with the Secretary of State pursuant to Section 78 of the Act under reference APP/D3505/W/24/3352565 against the refusal of the District Council to grant Planning Permission for the Development
"Application"	the application for full planning permission for the Development and allocated reference number DC/23/03653 which the District Council refused on the 26 March 2024;
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly;
"Completion of the Development"	the date that the last Dwelling is first Occupied;
"Development"	the erection of 23 Dwellings on the Site with associated roads, parking, garages and outbuildings, construction of new vehicular access from the A134 and a footpath connection towards Maple Way, public access to the existing woodland and new public open space on the street frontage as set out in the Application;
"Dwelling"	any dwelling (including a house bungalow flat or maisonette and including both Market Housing Units and Affordable Dwelling Units) to be constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly;
"Habitat Regulations Mitigation Contribution"	means the sum of £3,129.94 (Three Thousand One Hundred and Twenty-Nine Pounds and Ninety Four Pence) Index Linked payable on or before Commencement of Development to be used in accordance with the Suffolk Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS)
"Index"	means the All In Tender Price Index published by the Building Cost Information Service or any successor organisation;
"Index Linked"	the increase in any sum referred to in the Third and Fourth

	Schedule by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable to be calculated in accordance with Clause 8 of this Deed;
"Inspector"	means a planning inspector appointed by the Secretary of State to hear/determine the Appeal
"Late Payment Interest"	interest at 4 per cent above the base lending rate of the Bank of England from time to time;
"Market Housing Units"	means those Dwellings forming part of the Development which are general market housing for sale or rent and which are not Affordable Housing Units
"Occupation"	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 and "Occupied" and "Occupy" shall be construed accordingly;
"Plan"	the plan attached to this Deed;
"Planning Permission"	the full planning permission bearing reference DC/23/03653 subject to conditions for the Development which may be granted by the Inspector pursuant to the Appeal;
"Primary School Transport Contribution"	the sum of £49,143.00 (Forty-Nine Thousand One Hundred and Forty Three Pounds) to be linked to the RPI Index and to be used to fund school transport for a minimum of 7 years for primary-age pupils (calculated as £1,404.10 (one thousand four hundred and four pounds and ten pence) per pupil per annum)
"RPI Index"	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
"Secondary School Transport Contribution"	The sum of £28,082.00 (Twenty-Eight Thousand Eighty-Two Pounds) to be linked to the RPI Index and to be used to fund school transport provision for a minimum of five years for secondary-age pupils (calculated as £1,404.10 (one thousand four hundred and four pounds and ten pence) per pupil per annum)
"Secretary of State"	the Secretary of State for Housing and Communities and Local Government or such other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State by the Act
"Site"	the land described in Schedule 1 against which this Deed may be enforced and as shown edged red for identification purposes only on the Plan;

"Working Days"	Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.
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CONSTRUCTION OF THIS DEED

- 1.1. Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 1.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.3. 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 interchangeably in that manner.
- 1.4. Wherever 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.
- 1.5. 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.
- 1.6. 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 District Council and County Council the successors to their respective statutory functions.
- 1.7. The headings are for reference only and shall not affect construction.
- 1.8. Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

2. LEGAL BASIS

- 2.1. This Deed is made pursuant to Section 106 of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other enabling powers.
- 2.2. The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council and the County Council in the case of covenants made with them as local planning authorities against the Owner or their successors in title.

3. CONDITIONALITY

- 3.1. This Deed is conditional upon:

3.1.1. the grant of the Planning Permission; and

3.1.2. the Commencement of Development

save for the provisions in clauses 5.1, 5.2, 6.1, 10, 11 and 12 which shall come into effect immediately upon completion of this Deed.

4. THE OWNER'S COVENANTS

- 4.1. The Owner covenants with the District Council as set out in the Second and Third Schedules so as to bind the Site and each and every part thereof.
- 4.2. The Owner covenants with the County Council as set out in the Fourth Schedule so as to bind the Site and each and every part thereof.
- 4.3. Subject to a specific finding by the Inspector or and Secretary of State in the Appeal decision notice or letter that the planning obligations contained in this Deed are compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) to observe the planning obligations contained in the Schedules to this Deed.

5. MISCELLANEOUS

- 5.1. The Owner covenants to pay to the District Council their reasonable legal costs

incurred in the negotiation, preparation and execution of this Deed prior to the completion on this Deed together with a monitoring fee of £476 per contribution payment trigger point.

- 5.2. The Owner covenants to pay to the County Council their reasonable legal costs incurred in the negotiation, preparation and execution of this Deed prior to the completion of this Deed together with a monitoring fee to the County Council of £476 per contribution payment trigger point.
- 5.3. No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 5.4. This Deed shall be registerable as a local land charge by the District Council.
- 5.5. 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.
- 5.6. This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 5.7. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 5.8. 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.
- 5.9. Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

- 5.10. The Owner covenants from the date that this Deed takes effect to allow the District Council, County Council and their respectively duly authorised officers or agents at all reasonable times to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed.
- 5.11. The Owner covenants and warrants to the District Council and the County Council that they have full power to enter into this Deed and there is no other person 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.
- 5.12. The obligations in this Deed will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.
- 5.13. The obligations in this Deed will not be enforceable against a purchaser an occupier or tenant or mortgagee of the completed Dwellings or against any successor in title or against anyone deriving title from any of them except for the Affordable Housing provisions will be enforceable against the Registered Provider and the Owners and Occupiers of the Affordable Dwellings and their Mortgagees.
- 5.14. A mortgagee of the Site will not incur any liability for any breach of the obligations contained in this Deed unless and until it becomes a mortgagee in possession of the Site, and 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.
- 5.15. The obligations in this Deed will not be enforceable against the individual owners or occupiers or mortgagees of the Dwellings constructed on the Site pursuant to the Planning Permission nor anyone deriving title from such owners, occupiers or mortgagees nor against anyone whose only interest in the Site is in the nature of the benefit of an easement or covenant.

6. CHANGE IN OWNERSHIP

- 6.1. The Owner agrees with the District Council and County Council to give each of them immediate written notice of any change in ownership of any of their interests in the Site (save for disposals of individual Dwellings) occurring before all the obligations

under this Deed have been discharged such notice quoting the District Council's reference DC/23/03653 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 and a copy of the registered title and plan thereto.

7. INDEXATION

7.1. Any sum referred to in the Second Schedule, Third Schedule and Fourth Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index or RPI Index (unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

7.1.1. A is the sum payable under this Deed;

7.1.2. B is the original sum calculated as the sum payable;

7.1.3. C is the Index for the month 2 months before the date on which the sum is payable;

7.1.4. D is the Index for the month 2 months before the date of this Deed; and

7.1.5. C/D is greater than 1

8. INTEREST

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

9. VAT

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

10. NOTICE

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

- a) Commencement of Development;
- b) Occupation of the first (1st) Dwelling;
- c) Occupation of 50% of the Market Dwellings;
- d) Occupation of 80% of the Market Dwellings;

- e) Completion of the Development.
- 10.2. All notices given or served or required to be given or served under this Deed shall be given or served as follows:
- 10.2.1. by personal delivery by hand (in which case service is immediately effected)
 - 10.2.2. by first class post (in which case service is effected on the second day after posting)
- 10.3. The address for service of notices:
- 10.3.1. for the County Council shall be at the County Council's address at the head of this Deed and marked for the attention of Executive Director of Growth, Highways and Infrastructure; and (b) quote the planning application reference DC/23/03653;
 - 10.3.2. for the District Council shall be at the District Council's address at the head of this Deed and marked for the attention of Steven Stroud, Chief Planning Officer; and (b) quote the planning application reference DC/23/03653; and
 - 10.3.3. to the Owner as set out above.

11. JURISDICTION

- 11.1. This Deed is governed by and interpreted in accordance with English law and shall be determined in the courts of England.

12. 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.

EXECUTED as a **DEED** by)
WATERSON HOMES LIMITED
acting by a Director

In the presence of:

Signature of witness:

Name of witness:

Address of witness:

Occupation of witness:

Nina Wauklett

HOLMES & HILLS LLP
A12 Commercial Hub
86 London Road
Marks Tey
Colchester
ESSEX CO6 1ED

Trainee solicitor.

FIRST SCHEDULE

Details of the Owner's Title, and description of the Site

1. The freehold land shown edged red on the Plan being land east of Blackthorn Way and Campion Way, Leavenheath, Suffolk the title to which is registered at the Land Registry under title number SK401242.

SECOND SCHEDULE

The Owner Covenants with the District Council

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
"Affordable Dwellings"	means no less than 35% of the Dwellings to be provided on the Site as Affordable Housing (which based on a development of 23 Dwellings shall mean no less than 8 (eight) of the Dwellings to be provided on the Site as Affordable Housing pursuant to the Planning Permission and in accordance with the Agreed Mix and to be Occupied as Affordable Housing in accordance with the Affordable Housing Scheme unless otherwise agreed in writing with the District Council with a tenure split of sixty two and a half percent (62.5%) Affordable Dwellings for Rent Occupied by persons allocated in accordance with a Choice Based Letting Scheme to which the District Council is party or otherwise nominated by the District Council pursuant to the Nomination Agreement as varied from time to time and thirty seven and a half percent Shared Ownership Dwellings to be transferred to persons with a local connection to the District of Babergh pursuant to a Shared Ownership Lease as set out in the Homes England Capital Funding Guide (or any subsequent scheme) complying with the NDSS applicable at the time that the Affordable Housing Scheme is approved (unless otherwise agreed in writing between the Owner and the District Council) and in accordance with the Nominations Agreement.
"Affordable Dwellings for Rent"	means the Dwellings made available by a Registered Provider to an Eligible Person as either Social Rent or Other Affordable Housing for Rent as to be agreed as part of the Affordable Housing Scheme
"Affordable Housing"	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market in accordance with and defined in Annex 2 of the National Planning Policy Framework (December 2024) ("NPPF") or any amending or subsequent national planning policy that may be published by the Government
"Affordable Housing Contribution"	the sum calculated in accordance with the District Council's affordable housing policies in place at the time to be paid to the District Council to spend on

	Affordable Housing within the administrative district of the District Council in the event that the Owner is unable to dispose of the Affordable Housing in accordance with the Second Schedule.
"Affordable Housing Scheme"	means a scheme to be submitted to and approved by the District Council in accordance with paragraph 1.1 Part 2 of the Second Schedule which shows the following:
	<ul style="list-style-type: none"> i) the plots and locations; ii) bedroom numbers per Affordable Housing Unit; iii) Affordable Housing Unit size; and iv) tenure. or any amendment to such scheme provided any such amended scheme is first approved in writing by the District Council
"Agreed Mix"	Means unless such other mix is agreed in writing by the District Council the mix shall comprise five (5) Dwellings as Affordable Dwellings for Rent and three (3) Dwellings as Shared Ownership Dwellings and the mix shall accord with the Affordable Housing Table contained in the Second Schedule unless agreed otherwise.
"Allocation Policy"	means the policy and procedure adopted by the District Council to determine the eligibility and priority for allocation of the Affordable Dwellings for Rent
"Chargee"	any mortgage or chargee of the Registered Provider or any receiver or manager (including an administrative receiver) appointed by such mortgagee or charge or any other person appointed by such mortgagee or charge under its security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (howsoever appointed) including a housing administrator;
"Choice Based Lettings"	means the allocation process that the Council has adopted for allocating social housing or any allocation process which may succeed it.
"Eligible Person"	means a person or persons either in respect of Social Rent or Other Affordable Housing for Rent on the housing register maintained by the District Council and chosen through a Choice Based Lettings system for which the District Council is party. In respect of the Shared Ownership Units a person or persons who could not achieve home ownership through the open market as defined by Homes England

“Homes England“	the non-departmental public body responsible for creating thriving communities and affordable homes in England or such other body that may replace it
“Market Dwellings“	those dwellings which are general market housing for sale or rent on the open market and which are not Affordable Dwellings
“NDSS”	The nationally described space standards published from time to time by HM Government.
“Nomination Agreement“	an agreement substantially in the form set out in the Fifth Schedule (unless otherwise agreed in writing with the District Council and subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units
“Other Affordable Housing for Rent“	means low-cost rental accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) where the rent level is capped at 80% of the local market rent (including any service charges, where applicable) and which has the meaning ascribed to it at Annex 2 of the NPPF
“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 charge or mortgagee of the person names a) – c) above
	(e) any Mortgagee of a shared Ownership Dwelling lawfully exercising the mortgage protection provisions within that Shared Ownership Lease
“Qualifying Person“	means a person or persons unable to buy housing generally available on the open market and whose household income is below £80,000.00 (or such other amount agreed in writing with the Council in

	accordance with government policy);
“Reasonable Consideration“	offer prices from Registered Providers which give the Owner a reasonable consideration having regard to current market conditions in the acquisition of affordable housing of a similar type and location by Registered Providers on a grant free basis via section 106 planning obligations
“Registered Provider“ or “RP“	A registered provider of social housing as defined in section 80(2) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator of Social Housing under Chapter III of that Act. For the avoidance of doubt this could also include the District Council under the Housing Act 1985
“Social Rent“	has the meaning ascribed to it at Annex 2 of the NPPF
“Shared Ownership Dwellings“	those dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed £80,000 (eighty thousand pounds) per annum or such other household income for the time in force in accordance with the terms as set out in HE’s capital funding guide and Shared Ownership Dwellings shall be construed accordingly
“Shared Ownership Lease“	means a lease in a form approved by Homes England or where there is no such form in a form approved by the council, such lease to provide for the following:
	i) 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
	ii) power to the purchaser to increase their ownership up to 100%
	iii) 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 published by the Office of National Statistics (or if such index ceases to be published such other index the Council shall reasonable determine) plus 1% or such other rent as complies within the requirements from time to time of Homes England

1. AFFORDABLE HOUSING

1.1. The Owner covenants not to Commence Development until they have submitted the

Affordable Housing Scheme to the District Council for approval and shall not Commence Development until the Affordable Housing Scheme has been approved in writing by the District Council.

- 1.2. Prior to Commencement of Development to notify the District Council of the identity of the Registered Provider or other body to which the Affordable Dwellings are to be transferred.
- 1.3. Prior to Occupation of any Dwelling to agree with the District Council the identity of the Registered Provider or other body to which the Affordable Dwellings are to be transferred and such agreement not to be unreasonably withheld or delayed.
- 1.4. The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission and to a standard of construction which meets Homes England approval (unless otherwise agreed in writing) which complies with NDSS, the Affordable Housing Scheme and the Agreed Mix.
- 1.5. The Owner covenants that not more than 50% of the Market Dwellings shall be Occupied until 50% of the Affordable Dwellings have been constructed in accordance with the Planning Permission made ready for Occupation and transferred to a Registered Provider.
- 1.6. The Owner covenants that no more than 80% of the Market Dwellings shall be Occupied until 100% of the Affordable Dwellings have been constructed in accordance with the Planning Permission, made ready for residential Occupation and transferred to the Registered Provider.
- 1.7. The Owner covenants 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 in accordance with the Affordable Housing Scheme subject to the provisions herein.
- 1.8. Any transfer to a Registered Provider of the land on which the Affordable Housing Units will be constructed shall be:
 - 1.8.1 with vacant possession;

- 1.8.2 free from any encumbrance other than existing at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker);
 - 1.8.3 subject to grant by the Owner to the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units; and
 - 1.8.4 subject to a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the construction, operation, use, maintenance and management of the Development
 - 1.8.5 a requirement to enter into the Nomination Agreement with the District Council
- 1.9 The Affordable Housing Units shall be Occupied for no other purpose than as Affordable Housing save where provided otherwise in paragraphs 1.10 and 1.11 below
- 1.10 The Owner agrees that the obligations and restrictions contained in this Second Schedule paragraph 1 shall not bind Protected Persons.
- 1.11 The affordable housing provisions in this Agreement shall not be binding on a 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 mortgagee or chargee or Receiver PROVIDED THAT:
- 1.11.1 such mortgagee or chargee or Receiver 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 Dwellings to another registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
 - 1.11.2 if such disposal has not completed within the three-month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this Agreement which

provisions shall determine absolutely

PROVIDED THAT at all times the rights and obligations in this paragraph 1.11 shall not require the Chargee to act contrary to its duties and rights under the charge or mortgage

1.12 In the event that the Registered Provider (within forty (40) Working Days' of written invitation) is unable to make an offer for Reasonable Consideration to purchase the affordable Dwellings or no longer wants to purchase the Affordable Dwellings to enable the Owner to transfer the Affordable Dwellings to the Registered Provider pursuant to paragraph 1.8 of this Second Schedule the Owner shall:

- 1.12.1 notify the District Council 3 months prior to the Practical Completion of the Affordable Housing Units;
- 1.12.2 set out the reasons (together with any supporting evidence) in writing why a transfer to the Registered Provider has not been entered into pursuant to paragraph 1.8 of this Second Schedule
- 1.12.3 submit any other information reasonably requested by the District Council to satisfy why the Owner have not been able to enter into a transfer with the Registered Provider pursuant to paragraph 1.8 of this Second Schedule
- 1.12.4 calculate a commuted sum to be agreed by and paid to the District Council (or such other body as the District Council may elect) in lieu of providing the Affordable Housing Units on the Site but for the avoidance of doubt shall be calculated in accordance with the District Council's policies (if any) as are applicable at the time of the calculation and shall be paid to the District Council in phases in accordance with any phasing of the Development to be agreed with the District Council
- 1.12.5 any commuted sum payment received by the District Council (or such other body as the District Council may elect) shall be ring-fenced and shall be used for investment in Affordable Housing within the Babergh district
- 1.12.6 upon the commuted sum payment being received by the District Council (or such other body as the District Council may elect) the provisions of this paragraph 1 of Part 2 of this Second Schedule shall no longer be applicable in respect of those Dwellings that were the Affordable Housing Units and the Owner shall be free to dispose of said Dwellings as Market Dwellings

2. AFFORDABLE DWELLINGS FOR RENT AND SHARED OWNERSHIP DWELLINGS

- 2.1 The Owner shall transfer the Affordable Housing to the Registered Provider with a covenant that the Registered Provider shall enter into a Nomination Agreement with the District Council and shall not let dispose or otherwise permit the Occupation of any of the Affordable Dwellings for Rent until such Nomination Agreement has been entered into.
- 2.2 The Owner acknowledges that on the first and any subsequent letting of an Affordable Dwelling for Rent the Registered Provider will (unless otherwise agreed in writing) nominate Eligible Persons in accordance with the District Council's Allocation Policy and the Nomination Agreement
- 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 short hold 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 any other Registered Provider nor prevent any Registered Provider from charging the Affordable Dwellings in whole or part.
- 2.4 The Owner will notify the District Council within 28 days of the 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. Unless otherwise agreed in writing or provided herein, the Shared Ownership Dwellings shall only be disposed of (which term shall include a freehold sale or a sale of a registerable lease) to a Qualifying Person.
- 2.6 Subject to Homes England funding requirements, any capital receipts received by the RP for shares of the Shared Ownership Dwellings sold between 81% and 100% must be reinvested by the RP in additional Affordable Housing Units within the District of Babergh within five (5) years of receipt. Any capital receipts not reinvested within five years may be spent on Affordable Housing outside of the District of Babergh.

Affordable Housing Table
Shared Ownership = 3 Dwellings
2 x 2Bed 4P 1 x 3Bed 5P
Affordable Housing for Rent = 5 Dwellings
2 x 1B2P 2 x 2B4P 1 x 3B5P

THIRD SCHEDULE

The Owner Covenants further with the District Council

~~1. HABITAT REGULATIONS MITIGATION CONTRIBUTION~~

- ~~1.1 The Owner covenants to pay the Habitat Regulations Mitigation Contribution to the District Council prior to Commencement of Development.~~
- ~~1.2 The Owner covenants not to Commencement Development unless and until the Habitat Regulations Contribution has been paid to the District Council.~~

2. OPEN SPACE

"Management Company"	means a company or body who will take over responsibility for the future maintenance of the Open Space and which may include a residents association established for this purpose or a private limited company;
"Open Space"	the areas of open space on the Development provided by the Owner for public use and enjoyment of the residents of the Development in accordance with the Open Space Specification to be agreed in writing with the District Council and to be provided in phases if so agreed in writing with the District Council;
"Open Space Specification"	means a plan for the delivery of the Open Space including the specifications plans and drawings showing but not limited to the layout and design of the Open Space which may be provided in phases if the Owner so agrees with the District Council including details of any proposed play area and equipment landscaping, paths and access arrangements, woodland, street furniture and fencing together with details of the proposed future management regime for the Open Space to be agreed in writing with the District Council;
"Open Space Transfer"	a transfer of the Open Space to be approved in writing by the District Council and which inter alia shall contain the following provisions: b) the Owner shall transfer the fee simple

	estate free from encumbrances save those set out in the title;
	c) all easements and rights necessary in relation to access for the benefit of the Open Space;
	d) any exceptions and reservations in relation to drainage and services, support and access of light and air for the benefit of the Development;
	e) restrictive covenants by the Management Company (if any);
	f) 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;
	g) 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;

2. OPEN SPACE

- 2.1 The Owner covenants with the District Council that it shall submit the Open Space Specification for approval prior to Commencement of the Development (such specification to include a programme for the delivery of the Open Space areas within the Development and the Transfer of the Open Space to a Management Company together with details of the maintenance arrangements for the Open Space).
- 2.2 The Owner further covenants to lay out the Open Space in accordance with the programme for delivery of the Open Space set out in the approved Open Space Specification within the Development prior to Occupation of more than 75% (seventy five percent) of the Dwellings on the Development or before Occupation of any Dwellings adjacent to the Open Space, whichever is sooner, in accordance with the Open Space Specification as approved by the District Council.
- 2.3 Following the laying out and the landscaping of the Open Space in accordance with the approved Open Spaces Specification the Open Space shall be properly maintained and

managed in accordance with the principles of good estate management and in accordance with the approved Open Space Specification until such time as the relevant Open Spaces has been transferred to the Management Company.

- 2.4 The Owner shall transfer all the Open Space to the Management Company within 12 months of Occupation of the final Dwelling constructed pursuant to the Planning Permission.
- 2.5 Until such time as the relevant Open Space is transferred the Owner shall maintain or procure the maintenance of the Open space in accordance with the approved Open Space Specification.
- 2.6 Following completion of the Open Space it shall (in perpetuity):
 - 2.6.1 not be used for any purposes other than as public open space for benefit of members of the public;
 - 2.6.2 Be maintained and managed in a clean and tidy condition in accordance with the Open Space Specification;
 - 2.6.3 Not be allowed to be built on with any building, subject to any reasonable restrictions imposed in the interest of public safety or for the ancillary use of the Open Space.

FOURTH SCHEDULE

The Owner covenants with the County Council

1. PRIMARY SCHOOL TRANSPORT CONTRIBUTION

- 1.1 The Owner covenants to pay to the County Council the Primary School Transport Contribution prior to the first Occupation of the first (1st) Dwelling.
- 1.2 The Owner hereby covenants not to Occupy or permit the Occupation of any Dwelling until the Primary School Transport Contribution has been paid to the County Council.

2. SECONDARY SCHOOL TRANSPORT CONTRIBUTION

- 2.1 The Owner covenants to pay to the County Council the Secondary School Transport Contribution prior to the first Occupation of the first (1st) Dwelling.
- 2.2 The Owner hereby covenants not to Occupy or permit the Occupation of any Dwelling until the Secondary School Transport Contribution has been paid to the County Council.

FIFTH SCHEDULE

Draft Nomination Agreement

is made [enter date at completion]

BETWEEN

(1) [ENTER NAME OF RP]

and

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

Relating to

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

[Enter Planning Application reference]

[Enter Date of S106 Agreement:]

Legal Services

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

West Suffolk House

Western Way

Bury St Edmunds

IP33 3YU

Part I

Provisions relating to Affordable Rent Units – Pages 3 to 11

Part II

Provisions relating to Shared Ownership Units – Pages 11 to 19

(Delete this page if only one part is used)

DRAFT

THIS DEED OF NOMINATION RIGHTS

is made [enter date at completion]

BETWEEN:

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

(‘the RP’) and

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

(‘the Council’)

‘the Parties’

Part I - Provisions relating to Affordable Rent Units

1. Definitions

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

- 1.2. 'Affordable Housing Location Plan' means a document consistent with the provision of Affordable Housing Units pursuant to the Planning Permission detailing the following:
- i) the Affordable Housing Units and their location;
 - ii) the number of bedrooms per Dwelling;
 - iii) street name and postal address; and
 - iv) tenure.
- 1.3. 'Affordable Housing Unit' means [enter number] Dwellings ([enter percentage number]% of the Dwellings) which shall be Affordable Rent Units (unless otherwise agreed by the Council) and 'Affordable Housing Units' shall be construed accordingly.
- 1.4. 'Affordable Rent' means rent charged at a level up to 80% of the equivalent Market Rent including any service charges applicable. Rents will be set, and may be adjusted over time, in accordance with the Government's policy for Affordable Rents as set out in the Rent Standard of April 2023 and any subsequent update or such Government policy which may succeed it.
- 1.5. 'Affordable Rent Unit' means an Affordable Housing Unit made available by a RP as low-cost rental accommodation (as defined in Section 69 of the Housing and Regeneration Act 2008).
- 1.6. 'Allocations Policy' means the policy adopted by the Council which governs households that are eligible to Occupy Affordable Housing, in line with its statutory duties.
- 1.7. 'Chargee' means any mortgagee or chargee of the RP or any receiver or manager (including an administrative receiver) appointed by such a mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator.
- 1.8. 'Choice Based Lettings Scheme' means the allocation process that the Council has adopted for allocating social housing or any allocation process which may succeed it.
- 1.9. 'Dwelling' means a dwelling (including a house flat maisonette or bungalow and including both market housing units and Affordable Housing Units) to be constructed pursuant the

Planning Permission and 'Dwellings' shall be construed accordingly.

- 1.10. 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings Scheme (or any replacement or similar system in place at the time).
- 1.11. 'Homes England' means the non-departmental public body known as Homes England or any successor organisation who is charged with the function of investing in the provision of Affordable Housing.
- 1.12. 'Initial Let' means the first tenancy of a newly constructed and previously unoccupied Affordable Rent Unit.
- 1.13. 'Local Connection' means a connection to the District of [enter name] and as defined in the Allocations Policy.
- 1.14. 'Local Connection Criteria' means the requirements that need to be met for a Local Connection as set out in the Allocations Policy.
- 1.15. 'Market Rent' means, in relation to accommodation, an estimate of its market rent inclusive of all service charges at the time the tenancy is granted that is based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors.
- 1.16. 'Notice of Practical Completion' means a written notice (in a form to be agreed between the RP and the Council) to be given to the Council within two (2) weeks from the issue date of the certificate of Practical Completion. The function of such notice being the notification to the Council by the RP of the expected date on which the construction and fitting out of the Affordable Rented Units will be complete and ready to let.
- 1.17. 'Occupation' means the action of living in or using an Affordable Housing Unit as an only and principal home, for the purposes permitted by the Planning Permission, not including occupation by personnel engaged in construction, fitting out, decoration, marketing or display; or occupation in relation to security operations and 'Occupy' and 'Occupied' shall be construed accordingly.
- 1.18. 'Plan' means the location plan bearing drawing number [insert number] annexed to this deed.

- 1.19. 'Planning Permission' means the planning permission which may be granted pursuant to the planning application reference number [insert number] subject to conditions, and also to obligations in the section 106 (Town and Country Planning Act 1990) agreement dated [insert date].
- 1.20. 'Practical Completion' means issue of a certificate of practical completion by the RP's surveyor or, if the Affordable Housing Units are constructed by a party other than the RP, the issue of a certificate of practical completion by that other party's surveyor.
- 1.21. 'Property' means the land at [enter full address of land] shown edged red on the Plan.
- 1.22. 'Registered Provider' or 'RP' means a registered provider of social housing as defined in section 80(2) of the Housing and Regeneration Act 2008 and listed in the register kept by the Regulator of Social Housing under Chapter III of that Act. For the avoidance of doubt this could also include the Council under the Housing Act 1985.
- 1.23. 'Rent Standard' means the Government's Policy Statement on rents for social housing updated in April 2023, and any subsequent update or policy which may succeed it.
- 1.24. 'Service Level Agreement' or 'SLA' means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made between the RP and the Council.
- 1.25. 'Tenancy Agreement' means a contract in a form prepared by the RP which sets out the legal terms and conditions of the tenancy, and which conforms with the requirements of the Tenancy Standard.
- 1.26. 'Tenancy Standard' means the Government's standards in respect of the letting of Affordable Housing published on 1 April 2012, as updated, and any such Government policy which may succeed it.
- 1.27. 'Void' means an Affordable Rent Unit which is vacant, otherwise than as a result of the tenant having:
- 1) moved to other accommodation due to a temporary decant provided by the RP;
 - 2) moved to other accommodation under a reciprocal arrangement between the Council or RP and another Council or RP; or

- 3) moved to other accommodation by way of a mutual exchange.

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

2. Enabling Provisions

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

3. Procedure

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

4. Initial Let

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

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

5. Voids

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

6. RP covenants

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

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

7. Variation of nomination rights

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

8. Notices

Any notice required to be served hereunder shall be sufficiently served on the Parties at the address indicated below or such other address notified by one party to the other in writing and any notice shall be deemed to have been served two (2) working days after posting or, in the case of electronic mailing, the day on which such notice was transmitted by the party serving the notice or, if served after 4.30 pm, one (1) working day after electronic mailing.

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

9. Transfer to other RPs

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

10. Disputes

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

11. Agreements and declarations

The Parties agree:

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

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

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

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

11.3.1.1. Such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Housing Units and

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

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

11.3.2 Any tenant that:

- 11.3.2.1 has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- 11.3.2.2 is a successor in title to the above; or any person or body deriving title through or from any of the parties mentioned in this clause 11.3.

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

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

Signatories:

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

Registered Provider