

Note: This draft is the draft provided by IBC on 21 January 2025, which includes IBC track amendments. The Appellant has incorporated comments separately provided by ESC (21 January 2025, highlighted blue) and SCC (15 January 2025, highlighted pink). Appellant comments / responses are highlighted in green and further drafting suggestions are tracked. Where further responses are not provided, a collective position needs to first be agreed between IBC and ESC and the Appellant, before drafting finalised. All amendments subject to final instructions.

DATED

2025⁴

(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



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

JZM/BXB/249655.0001

Commented [JM1]: Note that matters concerning alphabetisation and formatting will need to be corrected in due course prior to engrossment.

ESC and IBC comments have been incorporate and merged, who have in places suggested different approaches (including definitions and drafting) that need to be reconciled. There are certain principle matters that need to be agreed before the legal drafting can be incorporated. These primarily include, which are not considered complicated, but do need to be resolved between the parties:

- 1.Sense check of the cross-boundary obligations, including inclusion of provisions to ensure part payment of financial contributions for IBC infrastructure where CIL is charged on part of a dwelling that straddles the administrative boundary by ESC.
- 2.Provisions concerning self-build, including making clear that: a) self-build properties are to be accounted for when calculating affordable housing provision and fixed site wide contributions; but b) will separately pay those contributions on a per dwelling basis prior to commencement of that plot.
- 3.Affordable housing provisions - including cascade.
- 4.Final triggers for payments and other obligations.

The Appellant intends to meet with IBC and ESC urgently to resolve the above and agree the drafting principles, before finalising the draft.

THIS AGREEMENT is made this day of 2025⁵⁴

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 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 ~~accepting that those obligations are necessary to make the Development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development in compliance with Regulation 122 of the CIL Regulations.~~

Commented [JM2]: For the Inspector to determine as decision maker

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)

["Additional First Homes Contribution"]

means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with paragraphs ~~1.201-191.194.7, 4.19, 3.14-201.20203.8~~ or ~~4.30~~ 3.9 of the Second Schedule, the lower of the following two amounts:

- 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

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

["Affordable 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 the Council as a proportionate contribution in lieu of any deficiency of Affordable Housing Units/Dwellings being provided as part of the ESC Development against the requirements of the Council's development plan Policy SCLP5.10 (East Suffolk Council – Suffolk Coastal Local Plan (23 September 2020));

$$A = B \times C$$

Where

Commented [JW3]: Check paragraph numbers upon completion

Commented [JM4R3]: Agreed

Commented [BB5]: ESC definition requested

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

“Affordable Housing
Policy Requirement”

“Affordable Housing
Scheme”

A is the Affordable Housing Contribution payable;

B is the shortfall in Affordable ~~Housing Units~~Dwellings provided against the ~~33%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 £[125,000]

means (unless otherwise agreed with the Relevant Council):

- in the case of an ESC Phase, ~~33%1 in 3~~ of the Dwellings ~~(rounded down to the nearest whole number)~~ ~~(rounded down to the nearest whole number)~~ to be provided on that Phase shall be provided as Affordable ~~Housing Units~~Dwellings as set out in the Affordable Housing Table;
- in the case of an IBC Phase, 30% of the Dwellings to be provided on that Phase shall be provided as Affordable ~~Housing Units~~Dwellings;
- in the case of a Cross Boundary Phase, the Affordable Housing Policy Requirement shall be calculated as ~~33%1 in 3~~ of the ESC Dwellings to be provided on that Phase ~~(rounded down to the nearest whole number)~~ ~~(rounded up down to the nearest whole number)~~ plus 30% of the IBC Dwellings to be provided on that Phase

(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

Commented [KH6]: I think we need to append the commuted sums rather than an amount as its outline

Commented [BB7R6]: The Affordable Housing Contribution is an ESC policy requirement and is a fixed figure to reflect the cost of a single affordable dwelling. This is therefore a formula based definition where the shortfall will be determined at detailed stage and the payment calculated accordingly

Commented [BB8R6]: C – needs to be amended to reflect the appended sums rather than a specific sum as we don't know the shortfall at the moment in order to be able to set a figure

e.g C is the sum taken from the Affordable Housing Commuted Payment Schedule appended to this Deed at Annexe A

Commented [BB9]: It is necessary to include rounding down as ESC seek a contribution for a proportionate shortfall.

This accords with paragraph 5.3 of the ESC Affordable Housing SPD (which rounds 3.67 to a requirement to provide 3 affordable dwellings and a contribution in lieu of 0.67)

Commented [BB10R9]: Do not agree to inclusion of 'rounding down'
If the full policy requirement is provided on site no sum would need to be provided – the sum is there in the event it falls short of the policy requirement. The example used is 20 dwellings providing 6 on site but if 7 provided on site then no sum is due as 1 in 3 has been provided

Amended definition of Affordable Housing Contribution to refer to the policy requirement to tie together

Commented [BB11]: As above

Commented [BB12]: It is not acceptable for the ESC Dwellings not to be rounded down where there is a contribution payable specifically to cover the amount by which the dwellings are rounded down (i.e. for 20 dwellings, 1 in 3 would give 6 affordable units, with 2/3 shortfall for which c. £83,000 would be payable). Amended accordingly

by that Council) for the provision of the Affordable ~~Housing Units~~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) — Relevant Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Relevant Council ("Policies"))~~
PROVIDED THAT in the case of a Cross Boundary Phase the Affordable Housing mix shall be determined by reference to ESC's Policies in relation to the ESC Dwellings and by reference to IBC's Policies in relation to the IBC Dwellings unless otherwise agreed in writing (both Councils acting reasonably to ensure that the Affordable ~~Housing Units~~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 ~~Housing Units~~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

Commented [BB13]: First point to be added is: ~~-the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;~~

Commented [JM14]: Can a proposed mix be agreed now that needs to be complied with at RMA stage on each phase?

Commented [LF15R14]: AH table included with a mix of types and tenures

Commented [JW16R14]: In respect of IBC:
Affordable rent:
1 bed 20%
2 bed 30%
3 bed 20%
4 bed 30%

Affordable home ownership:
1 bed 20%
2 bed 35%
3 bed 35%
4 bed 10%

Commented [LE17R14]: IBC would assume there would be a tolerance within this.

Commented [JM18R14]: Part 1A of Second Schedule now includes these tables. The Appellant is reviewing.

"Affordable ~~Housing~~
~~Units~~Dwellings"

means the Dwellings to be provided pursuant to the Planning Permission to be Occupied as Affordable Housing in accordance with the Affordable Housing Policy Requirement and Affordable Housing Scheme (unless otherwise agreed in writing with the Council)

"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 NPPF including Intermediate Dwellings and Affordable ~~Rental Units~~Dwellings for Rent

"Affordable ~~Rental~~
~~Units~~Dwellings for Rent"

Affordable Housing let by a Registered Provider to Eligible Persons where the rent level is capped at 80% of the local market rent (including any service charges, where applicable) and within local housing allowance rates, or as otherwise agreed with the Relevant Council in writing; ~~means those Affordable Housing Units to be let by a Registered Provider with an appropriate agreement with Homes England for the provision of affordable rents being controls that limit the rent to no more than 80 per cent of local market rents including any service charges that does not exceed the local housing allowance or as otherwise agreed with the Council in writing~~

"Affordable Housing Mix
Table"

~~m~~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-~~ESC~~

"Allocation Policy"

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

"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

Commented [JW19]: This should be moved up so in alphabetical order

Commented [BB20R19]: Definitions to be alphabetised when draft agreed

Commented [BB21]: Delete and replace definition from SPD:

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);

Commented [BB22]: IBC to confirm if ESC definition is acceptable

	& 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
"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

Commented [JW23]: Move up to be in alphabetical order

Commented [JW24]: Move up to be in alphabetical order

Commented [JM25]: Trigger points are listed as 'Commencement of Development' definition to be amended to reflect this.

Appellant's view is that this is unnecessary, as we have "Development" separately defined.

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

"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 4.13 3.2 of the Second Schedule applies the Eligibility Criteria (Local)

"Councils" means both IBC and ESC and "Council" shall refer to either

"Cross Boundary Details" means :

(a) details submitted pursuant to conditions on the Planning Permissions where such details relate to Cross Boundary Development; and

~~(b) details submitted in relation to the following Cross Boundary Obligations:~~

~~(i) an Affordable Housing Scheme relating to a Cross Boundary Phase~~

~~(ii) an Open Space Specification relating to a Cross Boundary Phase~~

~~(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

Commented [JM26]: Reference to disposed – should be Disposed

Appellant agrees if IBC comfortable.

Commented [JW27]: Check para number

"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
<u>"Custom and Self-build Design Code"</u>	<p><u>Aa 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:</u></p> <ul style="list-style-type: none"> <u>a) Layout,</u> <u>b) Plot size and shape,</u> <u>c) Developable footprint,</u> <u>d) Building height or number of storeys,</u> <u>e) Orientation,</u> <u>f) Landscaping,</u> <u>g) Boundary treatment,</u> <u>h) Material palette,</u> <u>i) Number and location of car parking and cycle storage spaces, and</u> <u>j) Refuse storage</u>
<u>"Custom and Self-build Dwelling"</u>	<u>Aa Dwelling which meets the definition in section 1 of the Self Build and Custom Housebuilding Act 2015 (as amended).</u>
<u>"Custom and Self-build Plot"</u>	<u>Aa plot of land upon which a Custom and Self-build Dwelling is to be constructed</u> <u>such plots comprising 5% of the total number of ESC Dwellings on the ESC</u>

	Development in the event that 100 Dwellings or more are to be provided on the ESC Development
"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
"Developer Phase"	means a Phase of the Development as identified on the phasing plan to be agreed pursuant to the Planning Permission Phasing Plan save for a Phase on which Custom and Self-build Plots are to be provided
"Development"	the development of the Site for means of external access/egress to and from the site and 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
"Discount Market Price"	means a sum which is the Market Value of a First Home discounted by at least 30%

Commented [AT28]: Would this requirement be better placed in the clauses rather than the definitions?

Commented [JM29]: Delete - such plots comprising 5% of the total number of ESC Dwellings on the ESC Development in the event that 100 Dwellings or more are to be provided on the ESC Development

Appellant agrees. Obligations requiring 5% self-build now in Part 5 of the Second Schedule.

Commented [JM31R30]: Reinstate definition

Unnecessary for the above reasons. To discuss.

Commented [JM30]: Seems unclear as to what is required here and superfluous. I do not consider this offers any further protection to securing self-build over the existing provisions.

Commented [LF32]: ESC would require 5% self build plots which will need to be their own phase in a phasing plan. Payment of per dwelling or per plot contributions will need to be carefully considered, as the payment for all of the self build plots should be made at once to avoid an unacceptable number of trigger points

Commented [BB33R32]: Phasing plan is not defined

Commented [JM34R32]: NEW definition added for Custom Self Build Phase so should this be tied to that?
proposed wording could be:
means a Phase of the Development as identified on the Phasing Plan save for a Custom and Self Build Phase

Appellant agrees in principle, but collective agreement between the parties required as to how to deal with phasing and self / custom-build in terms of calculation of affordable housing and other obligations, and allowing for those per dwelling contributions to be paid by each plot separately prior to commencement.

"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 1.27 to 1.303 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) and including Affordable Housing Units and Open Market Dwellings to be constructed in accordance with the Planning Permission
"Early Years Contribution"	<p>means the sum of £2,946.89 (two thousand, nine hundred and forty six pounds and eighty nine pence) £3,004.17 (three thousand and four pounds and seventeen pence) per IBC Dwelling RPI-BCIS Index Linked payable to the County to be used towards [the provision of new early years facilities serving the Development unless otherwise agreed]</p>
"Early Years School Site Land Option Period"	the period of 5405 years from [the date that the Development is fully Occupied that the location of the Early Years School Site Land is agreed by the Owner and the County or deemed to be agreed pursuant to the provisions of paragraph 1.3 of Part 2 of the Third Schedule
"Early Years School Site Land"	means an area of land of minimum size [0.432ha] to be used as a pre-school to be agreed pursuant to

Commented [LF35]: The SCC consultation response indicates this is both ESC and IBC dwellings

Commented [BB36R35]: Amended to require payment for all dwellings

Figure amended to accord with County evidence – to be confirmed by County that this is agreed

paragraphs 1.1 to 1.3 of Part 2 of the Third Schedule unless otherwise agreed

"Early Years School Site Specification" means the specification for the Early Years School Site Land appended to this agreement or such other specification as may be agreed in writing with the County

Commented [BB37]: Specification to be added once principles of EY provision agreed

"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

Commented [JM38]: Reference to disposed – should be Disposed

Appellant agrees if IBC comfortable.

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

Commented [BB39]: IBC to confirm whether they have local eligibility criteria

Commented [JW40R39]: Awaiting instructions from IBC

"Eligibility Criteria (National)" means criteria which are met in respect of a purchase of a First Home if:

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

"Eligible Person" a person or persons on the housing waiting list maintained by a Council or who is otherwise approved by a Council as being in need of separate or alternative

Commented [BB41]: Flexibility for either Council to nominate – for Councils to ensure they secure own AH in nominations

	accommodation and unable to buy housing generally available on the open market
"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 Shared Equity Dwellings"	<u>means those Shared Equity Dwellings to be provided pursuant to the ESC Development</u>
"ESC Site"	means the part of the Site which lies within the administrative boundary of ESC and shown edged [xxx] on the Location Plan
"Exempt Disposal"	means the Disposal of a First Home in one of the following circumstances: <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

Commented [BB42]: Amend to means any Dwelling to be constructed on the ESC Site

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 4.394.7** shall apply to such sale)

provided that in each case other than (d) the person to whom the Disposal is made complies with the terms of **paragraph 4.243** of the Second Schedule]

["First Homes Owner"]

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

- (a) a developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (b) the freehold a tenant or sub-tenant of a permitted letting under **paragraph 4.243** of the Second Schedule]

["First Homes"]

means Dwellings which may be ~~disposed~~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 **(First Home)** does not exceed **£250,000**the Price Cap

["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 Dwelling up to a maximum sum of £380,220] **(XX Index)** to be paid to IBC and passed to NHS Suffolk and North East Essex

Commented [JM43]: Reference to disposed – should be Disposed

occupation should be Occupation

Appellant agrees if IBC comfortable.

Commented [JM44]: Remove reference to "(First Homes)" after "its first Disposal"

Appellant agrees if IBC comfortable.

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 Dwelling BCIS Index Linked (XX Index) to be paid to ICB the County to be used to provide new and improved household waste disposal services serving the Development including services forward funded by the County

Commented [BB45]: Amended in accordance with County comments

"IBC Affordable Dwelling(s)"

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

"IBC Affordable Housing Contribution"

[TBC]

"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

Commented [BB46]: Suggest definition is amended as per ESC Dwelling definition
means any Dwelling to be constructed on the IBC Site

"IBC Market Dwellings"

means those Market Dwellings to be delivered pursuant to the IBC Development

"IB Marketing Strategy"

means written proposals setting out what measures the Owner 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 and shown edged [xxx] 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 Housing Units Dwellings which will take the form of Shared Ownership Dwellings and/or Shared Equity Dwellings (unless otherwise agreed in writing with the Council)
<u>"Ipswich Strategic Planning Area Contribution"</u>	<u>means the sum of £747.21 (seven hundred and forty seven pounds and twenty one pence) per Dwelling BCIS Index Linked payable to the County to be used [to fund a scheme of walking and cycling improvements on Cemetery Lane, Tuddenham Road, Bolton Lane and Soane Street to provide a safe and suitable connection between Ipswich Town Centre and Sidegate Lane West]</u>
"Libraries Contribution"	means the sum of £216 per IBC Dwelling (BCIS Index LinkedXX Index to be paid to ICB the County to be used for the provision and improvement of library services serving the Development
"Local Connections Cascade"	the local connections criteria to be applied to each and every let or sale of an Affordable Housing Unit Dwelling as set out in the Seventh Schedule

Commented [JM47]: Per dwelling figure calculated as £493,161 divided by 660
Appellant to confirm whether alternative to be presented to the Inspector and considering further

"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 of the open space 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 for the avoidance of doubt multiple Management Companies may take responsibility for different parts of the Site

"Marketing Strategy"
"Market Dwelling" ~~Means written proposals setting out what measures the Owner will take over what time period to advertise the availability of Affordable Housing Units to the public to help the Registered Provider raise awareness about the availability of such units to suitable households, 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;~~

"Affordable Housing Marketing Strategy" ~~means written proposals setting out what measures the Owner will take over what time period to advertise the availability of Affordable Dwellings to the public to help the Registered Provider raise awareness about the availability of such units to suitable households~~

"Market Value" means the best price at which the sale of an interest in a Dwelling would have been completed unconditionally for cash consideration on the date of valuation assuming (i) a willing seller and a willing buyer in an arm's-length transaction (ii) any restrictions imposed on a Dwelling by this Agreement (iii) there has been a reasonable period to completion within which to negotiate the sale (iv) the Dwelling has been freely exposed to the market (v) both

Commented [BB48]: Delete definition and amend to SPD wording:
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;

Commented [JM49]: Marketing strategy for affordable units is most unusual and not considered necessary. Deadline for delivery by reference to market operations already included, in addition to approval of RP if not one of the already approved ones from the Eighth Schedule;

Commented [BB50]: Duplicates self build, so renamed

the buyer and seller acted knowledgeably prudently and without compulsion

"Marketed Appropriately" mMarketing the Custom and Self-build Plots in accordance with the agreed Marketing Strategy for a period of not less than 12 months. This will commence when the Marketing Strategy has been agreed between the applicant and the Council ESC, the Custom and Self-build Plots have been Fully Serviced, have defined boundaries, and are available for immediate purchase.

"Marketing Period" A period of not less than 12 months within which the Custom and Self-build Plots shall be Marketed Appropriately.

~~"Mortgages"~~"Marketing Strategy" ~~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 Housing Unit including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring an Affordable Housing Unit~~A document setting out the marketing arrangements for each Custom and Self-build Plot, which shall include:

a) The period in 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;
- h) The site visit arrangements;
- i) The Plot Passport for each custom and self-build plot;

j) 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;

~~k) The arrangements for the delivery of any Custom and Self build Plots not taken up after the minimum 12 months marketing period; and~~

~~l) Any alternative or additional marketing in the event that interest in a Custom and Self-Build Plot is low~~

Commented [JM51]: Seems unnecessary and may conflict with any cascade. To discuss

"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 Housing UnitDwelling including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring an Affordable Housing UnitDwellingwho has a registered charge over the Site;

"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~~means an agreement substantially in accordance with the nomination agreement at the Sixth Schedule~~

"NPPF"

means the National Planning Policy Framework (December 2024⁴³) 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" ~~"Open Market Dwelling"~~

means plans, drawings, specifications and other documentation which the Registered Provider may reasonably require in order to make an offer for the Affordable Housing Units including the following documents relating to the Affordable Housing Units which shall be provided by the Owner to a Registered Provider:-

(a) drawings showing the size, layout and design of the Affordable Housing Units;

(b) site layout showing the position of the Affordable Housing Units in relation to the Open Market Dwellings and the nature of the Open Market Dwellings;

(c) a copy of the Planning Permission [and reserved matters consent]; and

~~(a)(d) a copy of this Deed means any Dwelling other than an Affordable Housing Unit~~

"Offer Period" means a period of six (6) months from receipt of the Offer Documentation by a Registered Provider during which the Registered Provider may submit an offer for the purchase of the Affordable Housing Units

~~"Open Market Dwelling" means any Dwelling other than an Affordable Housing Unit~~

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

"Open Space Specification" 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:

Commented [JM52]: Not part of ESC SPD wording proposed – reference to Affordable Housing Unit (this definition has been amended)

Appellant considers this should be deleted, as these obligations are unnecessary and onerous.

Commented [JM53]: Not part of ESC SPD wording proposed – reference to Affordable Housing Unit (this definition has been amended)

Appellant considers this should be deleted, as these obligations are unnecessary and onerous.

Commented [JW54]: This should be moved down so in alphabetical order

Commented [KH55]: Move in alphabetical order

- a) specifications plans and drawings showing the layout and design of the Open Space for that Phase in accordance with the Planning Permission;
- b) programme for the delivery of Open Space on that Phase; and
- c) details of the maintenance arrangements for the Open Space for that Phase

“Open Space”

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

Commented [JW56]: This should be moved up so in alphabetical order

“Owners”

means the First Owner and the Second Owner together

“Passenger Transport Contribution”

means the sum of £1,687.43 (one thousand six hundred and eighty seven pounds and forty three pence) per Dwelling [xxx] Index Linked payable to the County to be used towards the [extension of Ipswich Buses service number 6 into the development site for a total of 6-years and increase the frequency to 20 minutes from 30 minute]

Commented [BB57]: Per dwelling figure calculated as £1,113,700.80 divided by 660

Appellant to confirm whether alternative to be presented to the inspector

“Phase”

means any phase of the Development as identified on the phasing plan to be agreed pursuant to the Planning Permission and which includes the development of residential dwellings other than a Custom and Self-build Phase

Commented [BB58]: SCC requested some flexibility over the service cited in the event that the No.6 bus service ceases / route names change (we have had this happen before). It would be preferable not to cite a specific service.

Commented [BB59]: On phasing, proposed that a self-build phasing will be agreed through the permission, and to be confirmed whether this will include all plots, or if each plot will be an individual phase for the purposes of phasing

Definition to also exclude an infrastructure phase in the event this is proposed

We would welcome ESC comments on payment on a per plot or lump sum basis

“Custom and Self-build Phase”

means a phase of the Development as identified on the phasing plan to be agreed pursuant to the Planning Permission in which only Custom and Self-build Plots will be provided

Commented [BB60]: To be alphabetised once agreed

“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

"Practical Completion"

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.

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;~~means the completion of a Dwelling to a standard which is wind and watertight and fit for habitation in terms of heating, plumbing, electrics and sanitation and "Practically Complete" shall be construed accordingly.~~

"Primary Education Contribution"

means the sum of £9,238.06 (nine thousand two hundred and thirty eight pounds and six pence) per IBC Dwelling RPI Index Linked payable to the County to be used towards the provision of [new primary school facilities serving the Development]

Commented [LF61]: The SCC consultation response indicates this will be covered by S106 in both ESC and IBC areas

Commented [BB62R61]: SCC have agreed this can be removed

"Price Cap"

means the amount for which the First Home is sold after the application of the Discount Market Price which on its first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be set locally or published from time to time by the Secretary of State;

"Protected Person"

means any person who:

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

- c) a 100% Staircaser;
- d) any successor in title to a ~~Ce~~chargee or ~~mortgagee~~ ~~mm~~ 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.

Commented [JM63]: (e) Mortgagee to be capital
Appellant agrees if IBC comfortable.

Commented [BB64]: These are not defined terms, as specific to this definition

“PRoW Contribution”

means the sum of £166.89 (one hundred and sixty six pounds and eighty nine pence) per Dwelling BCIS Index Linked payable to the County to be used towards the ~~improvement of signage for footpaths 45 and 49 and improvement of surfacing on bridleway 01~~ signage and resurfacing of footpaths 45 and 48 and bridleway 1

Commented [BB65]: Per dwelling figure calculated as £110,149 divided by 660

Commented [BB66]: BCIS Indexed

Commented [BB67]: Should read: signage and resurfacing of footpaths 45 and 48 and bridleway 1

“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 Local Plan Policies and the Appropriate Assessments of the Local Plans, and the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document published ~~evidence~~ May 2021

“RAMS Zone A Dwelling”

means any Dwelling to be constructed within Zone A as defined in the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (May 2021) and for the avoidance of doubt will include

Commented [JM68]: Please amend to : means any Dwelling to be constructed within Zone A as defined in the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (May 2021)

Appellant agrees, save we do need a mechanism to determine whether Zone A or B is payable for a dwelling that straddles the zones, hence our tailpiece wording?

any Dwelling where less than 50% of that Dwelling's floorspace lies within Zone A

"RAMS Zone B Dwelling" means any Dwelling to be constructed 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 50% or more 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"

A record of enquiries made by individuals in relation to each plot which shall include:

Commented [JM69]: Please amend to : means any Dwelling to be constructed within Zone A as defined in the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (May 2021)

Appellant agrees, save we do need a mechanism to determine whether Zone A or B is payable for a dwelling that straddles the zones, hence our tailpiece wording?

Commented [KH70]: Referred to in the AH part but not capitals

- 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) the registered providers identified in the Eighth Schedule; or

a)b) 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)c) 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;

d) 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

Commented [JW71]: Clarion Housing Group, Flagship Housing Group, Heylo Housing, Orbit East, Orwell Housing Association, Suffolk Housing (Iceni Homes) or an alternative affordable housing provider (tbc by IBC)

Commented [BB72R71]: IBC and ESC to confirm if these RPs would essentially be 'pre-approved' such that further approval is not required

	provided 'Relevant Council' shall be construed as referring to both ESC and IBC and clause 18 ⁴⁸ will apply
"Residential Travel Plan"	the travel plan relating to the residents of the Dwellings approved pursuant to condition [X] of 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
"Secondary Education Contribution"	means the sum of £5,616,454.490.85 (five four thousand six four hundred and sixteen ninety pounds pound and forty fortyeighty five pence) per IBC Dwelling RPI-BCIS Index Linked payable to the County to be used towards <u>the provision of additional capacity through the expansion, improvement and enhancement including forward funding of existing secondary schools serving the Development</u> [the provision of new secondary school facilities serving the Development]
"Secretary of State"	the Secretary of State for Levelling Up Housing and Communities or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the 1990 Act
"SEND Contribution"	means <u>either</u> the sum of <u>£</u>

Commented [BB73]: Conditions in DC SoC only propose a non-resi travel plan is conditioned – this is contrary to comments in County SoC

Councils to comment on need for travel plan. However, appellants consider that the s106 need only secure a monitoring contribution and therefore drafting applies

Commented [BB74R73]: SCC agree travel plan will be secured by condition – reference to be confirmed

Commented [BB75]: In accordance with SCC comments Contribution to be clarified on basis of bedroom numbers of relevant dwellings

Appellant to confirm whether alternative to be presented to the Inspector

Commented [BB76]: Purposes clarified by Appellant

Commented [BB77]: In accordance with SCC comments Contribution to be clarified on basis of bedroom numbers of relevant dwellings

Appellant to confirm alternative to be presented to the Inspector

a) £1,548.90 ~~[TBC]~~ (one thousand five hundred and forty eight pounds and ninety pence~~[TBC]~~) per IBC Dwelling ~~RPI~~ BCIS Index Linked OR

b) [£XX per IBC Dwelling BCIS Index Linked]

whichever the Secretary of State or the Inspector determines pursuant to the Appeal to be in accordance with the CIL Tests 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~~[new SEND facilities serving the Development]~~

"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 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

"Shared Equity Dwellings"

means (unless otherwise agreed in writing) Affordable ~~Housing Units~~ 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

Commented [KH78]: Not ESC

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 local help to buy agent or the Registered Provider that will hold the Second Charge in relation to the Shared Equity Dwellings

“Shared Ownership Dwellings”

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” 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 of

a) ~~£1,498.88~~542.31 (one thousand ~~four—five~~ hundred and ~~ninety ninety-eight~~forty two pounds and ~~eighty—eight~~thirty-one pence) per IBC Dwelling ~~RPI-BCIS~~ Index Linked

b) [£829.46 per IBC Dwelling of two or more bedrooms BCIS Index Linked]

whichever the Secretary of State or the Inspector determines pursuant to the Appeal to be in accordance with the CIL Tests 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~~[the provision of new sixth form facilities serving the Development unless otherwise agreed]~~

“Skylark Mitigation Obligation”

means the planning obligation to be entered into by the Owners to provide compensatory land for the mitigation of the impact of the Development on skylarks and substantially in the form annexed at Appendix [TBC] of this Deed

Commented [JM79]: Contribution to be clarified on basis of bedroom numbers of relevant dwellings

Commented [BB80]: Purposes clarified by Appellant

“Traffic Regulation Order Contribution” means the sum of £15,000 (fifteen thousand pounds) [xxx] 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]

Commented [BB81]: To be confirmed whether this is a per dwelling payment or a lump sum

“Travel Plan Evaluation and Support Contribution” one thousand and two hundred pounds (£1,200.00) per annum RPI Indexed to provide the County suitable resource to engage with the travel plan coordinator appointed by the applicant for the Residential Travel Plan

Commented [BB82]: Should read: 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

“Verification Fee/Valuer” means the reasonable fee to be charged by the Relevant Council or its agent for verification of the Open Market Value and subsequent Affordable Housing Contribution in accordance with paragraph 1.14.31-13.3 of the Second Schedule ~~means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer acting in an independent capacity;~~

Commented [BB83]: County have confirmed in their latest correspondence that the £1,300 per annum stated in evidence is incorrect

Commented [BB84]: Not required in ESC SPD. Includes ESC and is a fee payable for checking market value and the contribution where RPs cant be found (but the AH contribution definition only relates to ESC?) Not agreed for ESC dwellings

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

Commented [BB85]: Not defined

“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

and the rest 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.

Commented [BB86]: All monitoring fees proposed to be paid prior to commencement of development as per IBC figures, on the basis that all substantive obligations are conditional on this

Figures to be confirmed by ESC

- 7.2 Prior to the ~~Commencement of Development~~ ~~Commencement of Development~~ completion of this Deed the Owners shall pay ESC the total sum of £~~445 per trigger~~ towards the monitoring of the performance of the planning obligations that the Owners are required to observe and perform to ESC.

Commented [BB87]: ESC Monitoring fee to be payable within 10 Working Days of any ESC Permission

Commented [JM88R87]: Appellant considers prior to commencement is suitable, unless a modest monitoring fee (to monitor commencement) is required beforehand.

Commented [KH89]: TBC once all obligations are agreed

- 7.3 Prior to the Commencement of Development the Owners shall pay IBC the total sum of £~~400 per obligation~~ towards the monitoring of the performance of the planning obligations that the Owners are required to observe and perform to IBC.

- 7.4 Prior to the ~~Commencement of Development~~ the Owners shall pay the County the total sum of £~~476-519 per obligation~~ towards the monitoring of the performance of the planning obligations that the Owners are required to observe and perform to the County.

Commented [BB90]: Monitoring fee requested within 10 working days of the Appeal being allowed

Commented [JM91R90]: As above.

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 at the beginning of this Deed; and
- 9.5.2 Second Owner: at the address at the beginning of this Deed; and
- 9.5.3 ESC: shall be addressed to the Section 106 Officer at the address set out aforesaid;
- 9.5.4 IBC: marked for the attention of Operations Manager (Planning and Development) and Principal Planning Officer - Special Projects, at the address set out aforesaid;

9.5.5 County Council: shall be addressed to the Executive Director of Growth Highways and Infrastructure at the address 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 contained in this Deed shall not apply and not have any force nor effect if the Inspector appointed to determine the Appeal finds in his/her Decision Letter in respect of the Appeal that a particular obligation or part thereof is not a material consideration in the granting of the Planning Permission pursuant to the Appeal or in accordance with the CIL Tests or should the Inspector find in his/her Decision Letter that a particular obligation as defined or provided for in this Deed should be deleted or amended so as to ensure compliance with the CIL Tests or to otherwise enable the grant of Planning Permission such contribution and/or obligation in this Deed shall be treated as so amended in accordance with the Inspector's decision.

9.11 Save for the obligations contained in Paragraph 1 of the Second Schedule which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable ~~Housing Units~~ 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;

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.

Commented [BB92]: This should be Part 1 of the Second Schedule (not just paragraph 1) to cover all the obligations

* Part 2 Open Space para 6 – would the Owners be the individual property owners at the time of any potential lack of maintenance/management?

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.

10 WAIVER

No waiver (whether expressed or implied) by ESC or ~~IBCS~~^{IBS} 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 ~~IBS~~^{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: for the month two (2) months before the date of this Deed ~~as of the following date:~~

~~i. for the purposes of the indexation of the RAMS Mitigation Contribution from [April 2024];~~

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.

ii.iii. ~~for any other purposes the date of this Deed;~~

C/D is equal to or greater than 1.

Commented [BB93]: Indexation for RAMS required to run from April on the basis of the latest update in the relevant mitigation strategy

Commented [BB94R93]: Amendment to the indexation of RAMS – not agreed. The RAMS contribution should be subject to the same indexation as other contributions so D1 to be deleted

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 covenants to inform ESC, IBC and County by way of written notice within fourteen (14) Working Days following:

- (i) Commencement of Development;
- (ii) First Occupation of the first (1st) Dwelling in each Phase; and
- (iii) First Occupation of the final Dwelling in each Phase.

Commented [BB95]: County require notices to be reviewed on agreement of trigger points

Commented [BB96R95]: I think we need further notifications of trigger points to be added once they are agreed

Commented [KH97]: Of each phase?

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, if 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) ~~use Reasonable Endeavours to~~ 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 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.

~~18.2~~18.3 The Owners shall use Reasonable Endeavours to submit for approval Cross Boundary Details to each Council on the same day.

~~18.3~~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~~18.4.

~~18.4~~18.5 In the event that a payment under this Deed is made to a Council who is not the Relevant Council in respect of that payment, the Councils agree that such payment will be passed to the correct Council as soon as reasonably practicable.

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.

~~19.3~~19.4 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

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

- (a) ESC has adopted CIL; and
- (b) IBC has not adopted CIL.

Commented [BB98]: Partial payment in the context of a cross boundary dwelling to be incorporated (i.e. payment on the basis of percentage of the floorspace in IBC)

20.219.5

~~The Authorities covenant that in the event any payment is made for a purpose for which CIL is payable such payment will be refunded to the person who made the payment within 28 days of the Authority to whom such payment was made being notified of the erroneous payment.~~

Commented [KH99]: Is this where a CIL charge is payable and they also end up paying a S106 charge?

Commented [BB100R99]: Reverted to all Authorities. This provision covers a payment for example made in error which may be to any authority, in which case it would be unreasonable to retain such a payment when notified.

Commented [EO101]: Recital 8 sets out that all parties acknowledge the obligations are 122 compliant - as such, no future CIL payment is relevant as the obligations are all site specific.

Commented [JM102R101]: This serves a different purpose and ensures that should CIL be payable in respect of infrastructure that is also covered and paid via s.106 (i.e. duplication) then the s.106 refund will be made. In terms of CIL compliance recital 8 has been amended as the Inspector needs to determine this in the usual manner.

20 MORTGAGEE CONSENT

~~The Parties acknowledge and agree that any 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.~~

21 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

SECOND SCHEDULE

The Owner's Owners' Covenants with the Councils Council

Part 1 – Affordable Housing

DRAFTING FOR PART 1 WITH IBC COMMENTS BELOW

The Owners hereby covenant with the Councils as follows (unless otherwise agreed in writing by the Owners and the Relevant Council):

1.1 Unless otherwise agreed in writing by the Relevant Council not to Commence Development or allow the Commencement of Development on any Phase unless or until an Affordable Housing Scheme for that Phase has been submitted to and approved by the Relevant Council PROVIDED THAT in the case of a Cross Boundary Phase the Affordable Housing Scheme for that Cross Boundary Phase shall be submitted to the Councils and approved in accordance with clause 18.

IBC Affordable Dwellings – Paragraphs 1.2 to 1.10

1.2 Upon Commencement of Development to submit the IBC Marketing Strategy to IBC and upon approval of the IBC Marketing Strategy to provide Offer Documentation in relation to the IBC Affordable Dwellings to all of the Registered Providers and at the same time to supply a copy of the Offer Documentation to IBC.

1.3 Where any Registered Provider has not responded to the initial circulation of the Offer Documentation [within [four (4) weeks] of the date of initial circulation of the Offer Documentation] to send at least one (1) follow up email to such Registered Provider seeking a response to the Offer Documentation.

1.4 To use Reasonable Endeavours to dispose of the IBC Affordable Dwellings during the Offer Period (and beyond this period if negotiations with particular Registered Providers continue).

1.5 The Owners shall not Occupy more than 50% (fifty per cent) of the IBC Market Dwellings until 50% (fifty per cent) of the IBC Affordable Dwellings have been:

1.5.1 Practically Completed in accordance with the covenants and obligations in this Schedule and made ready for Occupation; and

Commented [JM103]: This schedule is an amalgamation of the ESC and IBC comments shared on 21 January 2025.

Amendment have been proposed to create a consistent schedule to apply to all affordable housing, to ensure consistency, clarity and ease of enforcement

We suggest a meeting between the relevant parties would be beneficial to agree the principles before the detailed drafting is updated.

We also need to agree the principle of a cascade mechanism, with parity between IBC and ESC. The Appellant proposes: a) if no demand from an RP after reasonable endeavours to dispose after 6 months; b) those affordable units may be provided as first homes; c) if after 3 months those first homes cannot be disposed of, then d) they may be provided as market subject to payment of an affordable housing contribution in lieu. If this is agreed, the Appellant may provide the drafting.

Commented [BB104]: Please note that the comments provided separately by ESC and IBC have both been included (with the ESC preferred schedule a distinct section below).

The Appellant notes that the principles of the affordable housing will need to be agreed between ESC and IBC before the drafting can progress, in particular in relation to whether separate schedule parts will be required but in any event the position regarding cross-boundary phases and dwellings will need to be agreed between ESC and IBC

1.5.2 transferred to a Registered Provider.

1.6 The Owners shall not Occupy more than 75% (seventy five per cent) of the IBC Market Dwellings until 100% (one hundred per cent) of the IBC Affordable Dwellings have been:

1.6.1 Practically Completed in accordance with the covenants and obligations in this Schedule and made ready for Occupation; and

1.6.2 transferred to a Registered Provider.

1.7 If a Registered Provider cannot be found for any of the IBC Affordable Dwellings on a Phase (with the exception of the First Homes) throughout England within six months from the date of Practical Completion of the IBC Affordable Dwellings on that Phase despite the Owners' Reasonable Endeavours to do so the Owners will provide written notification of such to the IBC's satisfaction (IBC at all times acting reasonably) that demand from Registered Provider has not been forthcoming for Reasonable Consideration.

1.8 If IBC is satisfied that demand from Registered Providers has not been forthcoming for Reasonable Consideration IBC will enter into written negotiations with the Owners to seek an agreed way forward.

1.9 In the event that no offers to purchase the IBC Affordable Dwellings are received from a Registered Provider within 12 months of their Practical Completion and following compliance with paragraphs 1.2 to 1.8 of this Schedule to:

1.9.1 Notify IBC of that fact within fourteen (14) days thereof; and

1.9.2 Submit evidence of their compliance with paragraphs 1.2 to 1.8 of this Schedule to IBC together with evidence from the Registered Provider that they are not willing to so purchase all the IBC Affordable Dwellings.

1.10 In the event that the Relevant Council confirms (acting reasonably) in writing that it is satisfied that:

1.10.1 The Owners have used all Reasonable Endeavours to dispose of the IBC Affordable Dwellings in accordance with paragraph 1.2 to 1.8 of this Schedule; and

1.10.2 Offers have not been received from a Registered Provider to purchase all the IBC Affordable Dwellings on any of the terms and conditions in paragraphs 1.2 to 1.8 of this Schedule;

the Owners shall be free to dispose of the relevant IBC Affordable Dwellings on the open market at the open market value SUBJECT TO the following provisions;

1.10.3 The Owners shall first pay to IBC the Verification Fee;

1.10.4 The Owners shall pay twenty-five percent (25%) of the total IBC Affordable Housing Contribution attributable to the relevant IBC Affordable Dwelling to IBC within twenty-five (25) Working Days of the sale of twenty-five percent (25%) of the IBC Affordable Dwellings on the open market;

1.10.5 The Owners shall pay the remaining seventy-five percent (75%) of the total IBC Affordable Housing Contribution attributable to the relevant IBC Affordable Dwellings to IBC within twenty-five (25%) Working Days of the sale of seventy-five percent (75%) of the IBC Affordable Dwellings being on the open market; and

1.10.6 The relevant IBC Affordable Dwellings shall not be Occupied on the open market unless and until the total IBC Affordable Housing Contribution attributable to such IBC Affordable Dwellings has been paid to IBC;

1.10.7 On payment of the total IBC Affordable Housing Contribution attributable to the relevant IBC Affordable Dwellings the Owners shall be released from all obligations in this Second Schedule relating to those particular IBC Affordable Dwellings.

1.11 If after three calendar months of handover of the Affordable Dwellings on a Phase to the Registered Provider there remains any Affordable Dwellings not leased or sold the Registered Provider shall be free to seek written agreement of the Relevant Council to convert those Affordable Housing Units to an alternative form of affordable housing as defined within the NPPF.

1.12 The Owner covenants that no more than 40% of the Dwellings on an ESC Phase or Cross Boundary Phase shall be Occupied until the Affordable Housing Contribution for that ESC Phase or Cross Boundary Phase has been paid to ESC (if applicable)

1.13 Subject to the provisions of this paragraph 1 the Owners covenant to transfer all of the Affordable ~~Housing Units~~Dwellings on a Phase to a Registered Provider ~~[SAVE FOR the First Homes]~~ AND SAVE FOR the ESC Shared Equity Dwellings (if provided) in the event they are sold directly by the Owners in which case the Owners shall agree the Shared Equity Sales Procedure for that Phase with ~~the Relevant Council~~ESC (or Councils in the case of a Cross Boundary Phase in which case clause 18 shall apply) for approval in writing prior to marketing the Shared Equity Dwellings.

Commented [BB105]: Reinserted, as first homes will not be sold to an RP

1.2 Subject to the provisions of this paragraph 1 from the date of Practical Completion of the Affordable ~~Housing Units~~Dwellings they shall not be used other than for the purposes of Affordable Housing for Eligible Persons or Qualifying Persons ~~for First Time Buyers (in the case of First Homes)]~~ in accordance with the Affordable Housing Scheme subject however to the provisions herein.

1.3 The Owners covenant not to Occupy or allow Occupation of more than ~~[xx%]~~ 40% of the Open Market Dwellings on an ESC Phase or Cross Boundary Phase until the Affordable Housing Contribution has been paid to ESC (if relevant).

Unless otherwise agreed in writing by the Council the Owners covenant not to Occupy or allow Occupation of more than ~~[xx%]~~ 40% of the Open Market Dwellings on a Phase until a contract has been entered into with a Registered Provider for transfer of all the Affordable Housing UnitsDwellings on that Phase (save for any dwellings to be sold directly by the Owners subject to the Shared Equity Sales Procedure and ~~[(save for any First Homes)]~~) and the Owners have notified the

Commented [BB106]: Reinserted in the event JBC require shared equity

~~Relevant Council as to the identity of Registered Provider and the plot numbers to be transferred eighty percent (80%) of the Open Market Dwellings on a Phase until one hundred percent (100%) of the Affordable Dwellings on a Phase have reached Practical Completion~~

~~Unless otherwise agreed in writing by the Council the Owners covenant not to Occupy or allow Occupation of more than [xx%]60% of the Open Market Dwellings on a Phase unless and until all of the Affordable Housing UnitsDwellings on that Phase are Practically Complete and either transferred to a Registered Provider (and for the avoidance of doubt the term "transferred" in this Second Schedule shall mean transfer of the freehold interest) or marketed for sale to Qualifying Persons or First Time Buyers (in the case of First Homes) in accordance with the terms of this Deed.~~

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~~The Owner covenants that from the date of Practical Completion the Affordable Dwellings shall not be used other than for the purposes of Affordable Housing for Eligible Persons or Qualifying Persons or First Time Buyers in accordance with the Affordable Housing Scheme subject however to the provisions herein~~

1.14 Nothing in this Schedule shall be binding on a Protected Person or any Mortgagee or Chargee of a Protected Person or any receiver appointed by such Mortgagee or Chargee or any person deriving title from any such person

2. Affordable Dwellings for Rent and Shared Ownership Dwellings

~~1.4 The Owners will notify the Relevant Council within twenty eight (28) days of the transfer of any Affordable Housing Units to a Registered Provider of the plot number, street address, house type, size and tenure of each dwelling and date of transfer.~~

~~1.51.15~~ The Registered Provider shall enter into a Nomination Agreement with the Relevant Council (and for the avoidance of doubt in the case of a Cross Boundary Phase a Nomination Agreement shall be entered into with both Councils) and shall not let ~~Dispose~~ or otherwise permit Occupation of any of the Affordable ~~Rental UnitsDwellings for Rent~~ on a Phase until such Nomination Agreement(s) covering that Phase has been entered into on terms acceptable to the Relevant Council in respect

of the Affordable ~~Rental Unit~~Dwellings for Rent unless otherwise agreed in writing with the Relevant Council.

1.16 On the first and any subsequent letting of an Affordable ~~Rental Unit~~Dwelling for Rent the Relevant Council will (unless otherwise agreed in writing) nominate eligible applicants in accordance with the Allocation Policy and Nomination Agreement (and priority will go to applicants who have a local connection in accordance with the Local Connection Cascade provided at the Seventh Schedule).

1.17 The Registered Provider shall not Dispose of any interest in any of the Affordable Dwellings for Rent other than by way of an assured tenancy or an assured shorthold tenancy under the Housing Act 1988 (or any form of residential tenancy prescribed by statute in substitution for or in addition to those) PROVIDED THAT nothing in this paragraph shall be deemed to prohibit the sale of the Affordable Dwellings individually or together (in any numerical combination) as one transaction (whether or not subject to any tenancy) to a Registered Provider nor prevent any Registered Provider from charging the Affordable Dwellings in whole or part.

1.18 The Owners will notify the Relevant 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.

~~4.1 If a Registered Provider cannot be found for any of the Affordable Housing Units on a Phase (with the exception of the First Homes) throughout England within six months from the date of Practical Completion of the Affordable Housing Units on that Phase despite the Owners' Reasonable Endeavours to do so the Owners will provide written notification of such to the Relevant Council's satisfaction (the Relevant Council at all times acting reasonably) that demand from Registered Provider has not been forthcoming for Reasonable Consideration.~~

~~4.2 If the Relevant Council is satisfied that demand from Registered Providers has not been forthcoming for Reasonable Consideration the Relevant Council will enter into written negotiations with the Owners to seek an agreed way forward that does not disadvantage or fetter the Owners' ability to continue construction or occupation of the Development on the Phase whilst maximising the provision of Affordable Housing~~

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1.3 If after three calendar months of handover of the Affordable Housing Units on a Phase to the Registered Provider there remains any Affordable Housing Units not leased or sold the Registered Provider shall be free to seek written agreement of the Relevant Council to convert those Affordable Housing Units to an alternative form of affordable housing as defined within the NPPF.

~~In the event that no offers are received from a Registered Provider for Reasonable Consideration within the Offer Period to purchase some or all of the Affordable Housing Units/Dwellings in respect of a Phase on the terms and conditions of paragraph of this Schedule to:~~

~~Notify the Councils of that fact within fourteen (14) days thereof; and~~

~~Submit evidence of their compliance with paragraph of this Schedule/reasonable endeavours to find an RP to purchase the Affordable Dwellings on a Phase to the Relevant Council together with evidence from the Registered Provider that they are not willing to sell purchase all the relevant Affordable Housing Units/Dwellings including the details of those Affordable Dwellings ("Relevant Units")~~

~~In the event that the Relevant Council confirms (acting reasonably) in writing that it is satisfied that:~~

~~The Owners have used all Reasonable Endeavours to dispose of the Affordable Housing/Relevant Units in accordance with paragraph 1.12 of this Schedule for Reasonable Consideration; and~~

~~Offers have not been received from a Registered Provider to purchase all the Affordable Housing Units/the Relevant Units during the Offer Period on the terms and conditions of paragraph 1.12 of this Schedule for Reasonable Consideration;~~

~~The Owners shall be free to dispose of the Relevant Affordable Housing Units on the open market at the open market value SUBJECT TO the following provisions:~~

~~The Owners shall first pay to the Relevant Council the Verification Fee;~~

Commented [JM107]: As above, it would be prudent and much more straightforward to have a singular cascade for all dwellings irrespective of whether IBC or ESC

Commented [BB108]: Time limit for notification is unclear as it would be reasonable for the owner to continue negotiations beyond the offer period if it was considered these may be successful. Notification can be any time after the end of the Offer Period

~~The Owners shall pay twenty five percent (25%) of the total Affordable Housing Contribution attributable to the relevant Affordable Housing Relevant Units to the Relevant Council within twenty five (25) Working Days of the sale of twenty five percent (25%) of the Affordable Housing Units on the open market;~~

Commented [BB109]: Affordable Housing Contribution is defined and drafting updated accordingly. IBC and ESC to comment

~~The Owners shall pay the remaining seventy five percent (75%) of the total Affordable Housing Contribution attributable to the Relevant relevant Affordable Housing Units to the Relevant Council within twenty five (25%) Working Days of the sale of seventy five percent (75%) of the Relevant Affordable Housing Units on the open market; and~~

~~The relevant Affordable Housing Units shall not be Occupied on the open market unless and until the total Affordable Housing Contribution attributable to such Affordable Housing Units has been paid to the Relevant Council;~~

Commented [BB110]: Restriction is unnecessary as there are specific triggers for payments, which take effect after the sale of the relevant units

~~On payment of the total Affordable Housing Contribution attributable to the relevant Affordable Housing Relevant Units the Owners shall be released from all obligations in this Second Schedule relating to those particular Affordable Housing Units on the Site;~~

~~Not to permit (unless the Owners are entitled to dispose of the Affordable Housing Units on the open market pursuant to paragraph 1.13 of this Second Schedule);~~

~~Occupation of more than fifty percent (50%) of the Open Market Dwellings until fifty percent (50%) of the Affordable Housing Units on an IBC Phase have reached Practical Completion~~

~~Occupation of more than seventy five percent (75%) of the Open Market Dwellings until one hundred percent (100%) of the Affordable Housing Units on an IBC Phase have reached Practical Completion~~

~~Any transfer of the Affordable Housing Units shall contain reasonable provisions ensuring that the Affordable Housing Units remain affordable in perpetuity in~~

Commented [BB111]: Protected Persons and mortgagees covered separately in schedule

~~accordance with paragraphs 1.10 and 1.11 of this Schedule but nothing in this paragraph 1.15 shall apply upon:~~

- ~~— The exercise by any person of a statutory right to buy, right to acquire or right to staircase out and take a subsequent freehold interest under the terms of a Shared Ownership Lease~~
- ~~— The exercise of its power of sale by a mortgagee of any individual Affordable Housing Unit or the sale by a receiver appointed by such mortgagee pursuant to statutory powers or the provisions of any mortgage or charge as required by court order or~~
- ~~— Any subsequent disposition of the Affordable Units following a disposal falling within paragraph 1.15.1 or 1.15.2 above~~

4.6.1.19 In the event 100% of a Shared Ownership Dwelling is purchased:

~~4.6.1.19.1~~ the proceeds from the final sale of the Shared Ownership Dwelling are to be ringfenced by the RPR Registered Provider for five (5) years for the provision of Affordable Housing within the same administrative district (being the East Suffolk District or the Ipswich Borough District as relevant), and should the owner of the Shared Ownership Dwelling wish to sell it he must notify the RP and allow the RP to purchase the Shared Ownership Dwelling back in the first instance at Market Value;

~~4.6.21.19.2~~ in the event the RPR Registered Provider purchases the Shared Ownership Dwelling in accordance with this clause at ~~4.13.12.5.1~~ the Shared Ownership Dwelling will be marketed as such subject to the terms of this Deed; and

1.1.1 in the event the RPR Registered Provider declines to purchase the Shared Ownership Dwelling or fails to notify the owner of the Shared Ownership Dwelling of its intention to make an offer to purchase the dwelling within twenty-eight (28) days of the notification as specified in this clause at ~~1.14.11.13.11.131.13.12.5.1~~, then the owner of the Shared Ownership Dwelling may sell it on the open market from the terms of this Deed.

3-First Homes

~~4.7~~1.20 The First Home shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

- a. the Eligibility Criteria (National); and
- b. the Eligibility Criteria (Local).~~1~~

~~4.8~~1.21 [If after a First Home has been actively marketed for ~~six (6)~~ three (3) months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph ~~b.1.14~~1.143.1 shall cease to apply.]

~~4.9~~1.22 [Subject to paragraphs ~~1.221.10~~1.103.6 to ~~1.271.26~~1.231.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than ~~fifty percent (50%)~~ % of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee]

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

~~4.10~~1.23 the Relevant Council has been provided with evidence that:

~~4.10.1~~1.23.1 the intended purchaser meets the Eligibility Criteria (National) and unless paragraph ~~1.191.18~~1.151.153.2 applies meets the Eligibility Criteria (Local) (if any);

~~4.10.2~~1.23.2 the Dwelling is being Disposed of as a First Home at the Discount Market Price; and

~~4.10.3~~1.23.3 the transfer of the First Home includes:

- a. a definition of the "Council" which shall be East Suffolk Council in the case of an ESC Dwelling or Ipswich Borough Council in the case of an IBC Dwelling
- b. a definition of "First Homes Provisions" in the following terms:

"means the provisions set out in paragraphs ~~1.14 to 1.22~~ 3 of the Second Schedule of the S106 Agreement a copy of which is attached hereto as the Annexure."

Commented [JW112]: To be checked at completion

- c. a definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated [] made between and entered into between (1) East Suffolk Council (2) Ipswich Borough Council (3) Suffolk County Council (4) Hopkins Homes Limited and (5) BDW Trading Limited
- d. a provision that the First Home is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the First Home or any part of it other than in accordance with the First Homes Provisions
- e. a copy of the First Homes Provisions in an Annexure

~~and the Relevant Council has issued the Compliance Certificate and the Relevant Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 1.201.191.16 and 1.21.14.20.11.17.1 have been met]~~

1.1.1 ~~[and the Relevant Council has issued the Compliance Certificate and the Relevant Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 1.163.3 and 1.17.13.4.1 have been met]~~

~~1.11.24~~ 3.5 On the first Disposal of each and every First Home to apply to the Chief Land Registrar pursuant to Rule 91 of and Schedule 4 to the Land Registration Rules 2003 for the entry on the register of the title of that First Home of the following restriction:

~~1.11.1.24.1~~ In the case of an ESC Dwelling:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being

a charge registered before the entry of this restriction, is to be registered without a certificate signed by East Suffolk Council of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

~~4.11.21.24.2~~ In the case of an IBC Dwelling:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Ipswich Borough Council of Grafton House, 15-17 Russell Road, Ipswich IP1 2DE or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

~~4.11.31.24.3~~ The owner of a First Home may apply to the Relevant Council to Dispose of it other than as a First Home on the grounds that either:

~~4.11.31.24.3~~ the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses ~~01.17.1.143.1.14~~ and ~~1.191.181.151.153.2~~ (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs ~~1.201.191.161.163.3~~ and ~~1.21.11.20.11.171.17.13.4.1~~; or

~~4.11.41.24.4~~ requiring the First Homes Owner to undertake active marketing for the period specified in paragraph ~~1.23.11.22.11.191.19.13.6.1~~ before being able to Dispose of the Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship]

~~4.12~~1.25 [Upon receipt of an application served in accordance with paragraph ~~14.221.191.193~~3.6 the Relevant Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price]

~~4.13~~1.26 [If the Relevant Council is satisfied that either of the grounds in paragraph ~~4.49~~3.6 above have been made out it shall confirm in writing within twenty-eight (28) days of receipt of the written request made in accordance with paragraph ~~14.221.191.193~~3.6 that the relevant Dwelling may be Disposed of:

~~4.13.1~~1.26.1 to the Relevant Council at the Discount Market Price; or

~~4.13.2~~1.26.2 (if the Relevant Council confirms that it does not wish to acquire the relevant Dwelling) other than as a First Home

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph ~~1.274.261.231.233~~3.10 which shall cease to apply on receipt of payment by the Relevant Council where the relevant Dwelling is ~~Dis~~disposed of other than as a First Home]

~~4.14~~1.27 [If the Relevant Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph ~~4.49~~3.6 above have been made out then it shall within twenty-eight (28) days of receipt of the written request made in accordance with paragraph ~~14.221.191.193~~3.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Relevant Council in accordance with paragraph ~~14.221.191.193~~3.6 following which the Relevant Council must within ~~twenty-eight~~ (28) days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home]

~~4.15~~1.28 [Where a Dwelling is Disposed of other than as a First Home or to the Relevant Council at the Discount Market Price in accordance with paragraphs ~~1.254.241.211.243~~3.8 or ~~1.264.251.221.223~~3.9 above the owner of the First Home shall pay to the Relevant Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution]

~~4.16~~1.29 [Upon receipt of the Additional First Homes Contribution the Relevant Council shall:

~~4.16.1~~1.29.1 within twenty-eight (28) Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph ~~3.1.14-214.184.183.5~~ where such restriction has previously been registered against the relevant title

~~4.16.2~~1.29.2 apply all monies received towards the provision of Affordable Housing]

~~4.17~~1.30 [Any person who purchases a First Home free of the restrictions in the Second Schedule of this Deed pursuant to the provisions in paragraphs ~~1.264.254.224.223.9~~ and ~~1.274.264.234.233.10~~ shall not be liable to pay the Additional First Homes Contribution to the Relevant Council]

~~4.18~~1.31 [Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs ~~1.314.304.273.14~~ – ~~4.27~~ – ~~1.344.334.30303.17~~ below.
1

~~4.19~~1.32 [A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Relevant Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.-]

~~4.20~~1.33 [A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Relevant Council and the Relevant Council consents in writing to the proposed letting or sub-letting. The Relevant Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- a. the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;

- b. the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- c. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- d. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- e. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- f. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.]

~~4.241.34~~ [A letting or sub-letting permitted pursuant to paragraph ~~1.314.301.271.273.14~~ or ~~1.324.311.281.283.15~~ must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.]

~~4.221.35~~ [Nothing in this Second Schedule prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation (except where other local policies restrictions apply) provided that the First Home remains at all times the First Home Owner's main residence.]

~~1.23~~ [Nothing in this Second Schedule shall be binding on a Protected Person or any mortgagee or chargee of a Protected Person or any receiver appointed by such mortgagee or chargee or any person deriving title from any such person.]

1.1 [An application fee will be payable on each and every application for a First Home in line with the Relevant Council's set charges for such applications.]

~~4.~~ Shared Equity Dwellings

~~4.241.36~~ The maximum price payable in respect of the Disposal of a Shared Equity Dwelling (if provided) shall not exceed seventy-five (75%)% of the Market Value (for sale or leasehold purposes) as certified by a ~~suitably qualified valuer~~ Valuer.

~~4.25~~1.37 The Shared Equity Dwellings shall only be Disposed of (which term shall include a freehold sale or sale of a registrable lease) to a Qualifying Person in accordance with the Local Connections Cascade and on the terms specified herein PROVIDING THAT in the event they are transferred to a RP clauses ~~1.37~~~~4.38~~~~1.35~~ 4.4 ~~to 4.6~~ of this Schedule shall not apply:

~~4.26~~1.38 In respect of the ESC Shared Equity Dwellings ~~The~~ Owners covenant to agree the Shared Equity Sales Procedure with the ~~Relevant Council~~ ESC no less than eight ~~(8)~~ weeks prior to marketing an ESC Shared Equity Dwelling for its first sale.

~~4.27~~1.39 Any dispute over the Market Value is to be determined by an independent expert who is a chartered surveyor of not less than ~~ten~~ (10) years' ~~years~~ standing who is experienced in the field of valuing and selling residential property such as the ESC Shared Equity Dwellings.

~~4.28~~1.40 No purchaser of a Shared Equity Dwelling shall sub-let or otherwise rent out such Shared Equity Dwelling (unless approved in writing by the Relevant Council).

~~4.29~~1.41 In the event one hundred percent (100%) ~~%~~ of the Shared Equity Dwelling is purchased:

~~4.29.1~~~~4.41~~1.1 the net proceeds from the sale of the Second Charge of the Shared Equity Dwelling are to be ring-fenced by the Registered Provider for five ~~(5)~~ years for the provision of Affordable Housing within the same administrative district (being the East Suffolk District or the Ipswich Borough District as relevant); and

~~4.29.2~~~~4.41~~1.2 the owner of the Shared Equity Dwelling may sell it on the open market free from the terms of this Deed.

Mortgagee Protection

~~4.30~~1.42 The Affordable Housing obligations in this Second Schedule shall not apply to any Mortgagee or Chargee (or any receiver (including an administrative receiver appointed by such Mortgagee or Chargee) or any other person appointed under any security documentation to enable such Mortgagee or Chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Housing Units ~~[Dwellings]~~ or any

individual First Home] or any persons or bodies deriving title through such Chargee, Mortgagee or Receiver PROVIDED THAT:

~~4.30.41.42.1~~ such Chargee or Receiver of an Affordable ~~Rental Unit~~Dwellings for Rent or Shared Ownership Dwelling or a Shared Equity Dwelling shall first give written notice to the Relevant Council of its intention to dispose of the Affordable ~~Housing Units~~Dwellings and shall have used ~~reasonable~~~~r~~Reasonable endeavours ~~e~~Endeavours over a period of ~~three~~~~twelve~~ (12) months from the date of the written notice to complete a ~~disposal~~Disposal of the Affordable ~~Housing Units~~Dwellings to another ~~registered provider~~Registered ~~p~~Provider or to the Relevant 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

Commented [KH113]: This is defined but for other purposes?

Commented [BB114R113]: Suggested that defined term is not used as this refers to a mortgagee/chargee who are not a party within the definition. Reasonable endeavours is to have its ordinary meaning.

~~4.30.21.42.2~~ if such disposal of the Affordable ~~Rental Units~~Dwellings for Rent or Shared Ownership Dwellings or a Shared Equity Dwellings has not completed within the ~~three~~~~twelve~~ (12) month period, the Chargee or Receiver shall be entitled to dispose of the Affordable ~~Rental Units~~Dwellings for Rent or Shared Ownership Dwellings or a Shared Equity Dwellings free from the Affordable Housing provisions in this ~~Agreement~~Deed which provisions shall determine absolutely

~~4.30.31.42.3~~ [such Mortgagee or Receiver of a First Home shall first give written notice to the Relevant Council of its intention to Dispose of the relevant Dwelling; and]

~~4.30.41.42.4~~ [once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Relevant Council the Mortgagee or Receiver shall be free to sell that First Home subject only to paragraph ~~1.41.51.42.51.39.54.7.5~~ at its full Market Value]

~~4.30.51.42.5~~ [following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Relevant Council the Additional First Homes Contribution.]-

~~4.30.61.42.6~~ following receipt of notification of the Disposal of the relevant First Home the Relevant Council shall:

- i. forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph ~~3.1.14.211.181.183.5~~; and
- ii. apply all such monies received towards the provision of Affordable Housing]

ESC PROPOSED DRAFTING FOR PART 1 BELOW

The Owners hereby covenant with the Councils as follows (unless otherwise agreed in writing by the Owners and the Relevant Council):

Commented [BB115]: Please note ESC has provided some comments on the drafting previously provided, but the full preferred schedule part has been inserted

- 1.1 Unless otherwise agreed in writing by the Relevant Council not to Commence Development or allow the Commencement of Development on a Phase unless or until an Affordable Housing Scheme for that Phase has been submitted to and approved by the Relevant Council PROVIDED THAT in the case of a Cross Boundary Phase the Affordable Housing Scheme for that Cross Boundary Phase shall be submitted to the Councils and approved in accordance with clause 18.
- 1.2 The Owner covenants that no more than 40% of the Dwellings of a Phase shall be Occupied until the Affordable Housing Contribution for that ESC Phase or Cross Boundary Phase has been paid to ESC (if applicable)
- 1.3 Unless otherwise agreed in writing by the Council the Owners covenant not to Occupy or allow Occupation of more than 40% of the Market Dwellings on a Phase until a contract has been entered into with a Registered Provider for transfer of all the Affordable Dwellings on that Phase (save for any Dwellings to be sold directly by the Owners subject to the Shared Equity Sales Procedure and save for any First Homes) and the Owners have notified the Relevant Council as to the identity of Registered Provider and the plot numbers to be transferred.
- 1.4 Unless otherwise agreed in writing by the Council the Owners covenant not to Occupy or allow Occupation of more than 60% of the Market Dwellings on a Phase unless and until all of the Affordable Dwellings on that Phase are Practically Complete and either transferred to a Registered Provider (and for the avoidance of doubt the term "transferred" in this Second Schedule shall mean transfer of the freehold interest) or marketed for sale to Qualifying Persons or First Time Buyers (in the case of First Homes) in accordance with the terms of this Deed.
- 1.5 The Owner covenants that from the date of Practical Completion the Affordable Dwellings shall not be used other than for the purposes of Affordable Housing for Eligible Persons or Qualifying Persons or First Time Buyers in accordance with the Affordable Housing Scheme subject however to the provisions herein

1.6 In the event that a Registered Provider cannot be found for any of the Affordable Dwellings (save for any Affordable Dwellings to be sold directly by the Owner subject to the Shared Equity Sales Procedure or First Homes) throughout England despite the Owner's reasonable endeavours to do so the Owner will be required to prove to the Relevant Council's satisfaction (the Relevant Council at all times acting reasonably) that demand from Registered Providers has not been forthcoming for Reasonable Consideration.

1.6.1 If the Relevant Council is satisfied that demand from Registered Providers has not been forthcoming for Reasonable Consideration the Relevant Council will enter into written negotiations with the Owner to seek an agreed way forward that does not disadvantage the Owner whilst maximising the provision of Affordable Housing.

1.7 If after three calendar months of handover of the Affordable Dwellings to the Registered Provider there remains any Affordable Dwellings not leased or sold and the Registered Provider can provide evidence to the Relevant Council's satisfaction there are no prospective occupants the Registered Provider shall be free to seek written agreement of the Relevant Council to convert those Affordable Dwellings to an alternative form of Affordable Housing defined within Annex 2 to the NPPF

1.8 Nothing in this Schedule shall be binding on a Protected Person or any Mortgagee or Chargee of a Protected Person or any receiver appointed by such Mortgagee or Chargee or any person deriving title from any such person

Mortgagee Protection

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

1.10 such Chargee or Receiver of an Affordable Dwellings for Rent or Shared Ownership Dwelling or a Shared Equity Dwelling shall first give written notice to the Relevant 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 Relevant 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 if such disposal of the Affordable Dwellings for Rent or Shared Ownership Dwellings or a Shared Equity Dwellings has not completed within the three month period, the Chargee or Receiver shall be entitled to dispose of the Affordable Dwellings for Rent or Shared Ownership Dwellings or a Shared Equity Dwellings free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely

1.12 such Mortgagee or Receiver of a First Home shall first give written notice to the Relevant Council of its intention to Dispose of the relevant Dwelling; and

- 1.13 once notice of intention to Dispose of the relevant First Home has been given by the Mortgagee or Receiver to the Relevant Council the Mortgagee or Receiver shall be free to sell that First Home subject only to paragraph 4.7.5 at its full Market Value
- 1.14 following the Disposal of the relevant First Home the Mortgagee or Receiver shall following the deduction of the amount due and outstanding under the relevant security documentation including all accrued principal monies, interest and reasonable costs and expenses pay to the Relevant Council the Additional First Homes Contribution.
- 1.15 following receipt of notification of the Disposal of the relevant First Home the Relevant Council shall:
- 1.16 forthwith issue a completed application to the purchaser of that Dwelling to enable the removal of the restriction on the title set out in paragraph 3.5; and
- 1.17 apply all such monies received towards the provision of Affordable Housing

2. Affordable Dwellings for Rent and Shared Ownership Dwellings

- 2.1 The Registered Provider shall enter into a Nomination Agreement with the Relevant Council (and for the avoidance of doubt in the case of a Cross Boundary Phase a Nomination Agreement shall be entered into with both Councils) and shall not let Dispose or otherwise permit Occupation of any of the Affordable Dwellings for Rent on a Phase until such Nomination Agreement(s) covering that Phase has been entered into on terms acceptable to the Relevant Council in respect of the Affordable Dwellings for Rent unless otherwise agreed in writing with the Relevant Council.
- 2.2 On the first and any subsequent letting of an Affordable Dwelling for Rent the Relevant Council will (unless otherwise agreed in writing) nominate eligible applicants in accordance with the Allocation Policy and Nomination Agreement (and priority will go to applicants who have a local connection in accordance with the Local Connection Cascade provided at the Seventh Schedule).
- 2.3 The Registered Provider shall not Dispose of any interest in any of the Affordable Dwellings for Rent other than by way of an assured tenancy or an assured shorthold tenancy under the Housing Act 1988 (or any form of residential tenancy prescribed by statute in substitution for or in addition to those) PROVIDED THAT nothing in this paragraph shall be deemed to prohibit the sale of the Affordable Dwellings individually or together (in any numerical combination) as one transaction (whether or not subject to any tenancy) to a Registered Provider nor prevent any Registered Provider from charging the Affordable Dwellings in whole or part.
- 2.4 The Owner will notify the Relevant 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 In the event 100% of a Shared Ownership Dwelling is purchased:
- 2.5.1 the proceeds from the final sale of the Shared Ownership Dwelling are to be ringfenced by the Registered Provider for 5 years for the provision of Affordable Housing within the same administrative district (being the East Suffolk District or the Ipswich Borough District as relevant), and should the owner of the Shared Ownership Dwelling

wish to sell it he must notify the Registered Provider and allow the Registered Provider to purchase the Shared Ownership Dwelling back in the first instance at Market Value;

2.5.2 in the event the Registered Provider purchases the Shared Ownership Dwelling in accordance with this clause at 2.5.1 the Shared Ownership Dwelling will be marketed as such subject to the terms of this Deed; and

2.5.3 in the event the Registered Provider declines to purchase the Shared Ownership Dwelling or fails to notify the owner of the Shared Ownership Dwelling of its intention to make an offer to purchase the dwelling within twenty-eight days of the notification as specified in this clause at 2.5.1, then the owner of the Shared Ownership Dwelling may sell it on the open market from the terms of this Deed.

3. First Homes

3.1 The First Home shall be marketed for sale and shall only be sold (whether on a first or any subsequent sale) as First Homes to a person or person(s) meeting:

a. the Eligibility Criteria (National); and

b. the Eligibility Criteria (Local).

3.2 If after a First Home has been actively marketed for 3 months (such period to expire no earlier than three (3) months prior to Practical Completion) it has not been possible to find a willing purchaser who meets the Eligibility Criteria (Local), paragraph 3.1 b shall cease to apply.

3.3 Subject to paragraphs 3.6 to 3.10, no First Home shall be Disposed of (whether on a first or any subsequent sale) unless not less than 50% of the purchase price is funded by a first mortgage or other home purchase plan with a Mortgagee

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

3.4.1 the Relevant Council has been provided with evidence that:

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

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

3.4.1.3 the transfer of the First Home includes:

a. a definition of the "Council" which shall be East Suffolk Council in the case of an ESC Dwelling or Ipswich Borough Council in the case of an IBC Dwelling

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

"means the provisions set out in paragraphs 3 of the Second Schedule of the S106 Agreement a copy of which is attached hereto as the Annexure."

c. a definition of "S106 Agreement" means the agreement made pursuant to Section 106 of the Town and Country Planning Act 1990 dated

[] made between and entered into between (1) East Suffolk Council (2) Ipswich Borough Council (3) Suffolk County Council (4) Hopkins Homes Limited and (5) BDW Trading Limited

d. a provision that the First Home is sold subject to and with the benefit of the First Homes Provisions and the transferee acknowledges that it may not transfer or otherwise Dispose of the First Home or any part of it other than in accordance with the First Homes Provisions

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

3.4.2 and the Relevant Council has issued the Compliance Certificate and the Relevant Council hereby covenants that it shall issue the Compliance Certificate within twenty eight (28) days of being provided with evidence sufficient to satisfy it that the requirements of paragraphs 3.3 and 3.4.1 have been met

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

In the case of an ESC Dwelling:

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

In the case of an IBC Dwelling:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by Ipswich Borough Council of Grafton House, 15-17 Russell Road, Ipswich IP1 2DE or their conveyancer that the provisions of clause XX (the First Homes provision) of the Transfer dated [Date] referred to in the Charges Register have been complied with or that they do not apply to the disposition"

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

3.6.1 the Dwelling has been actively marketed as a First Home for six (6) months in accordance with Clauses 3.1 and 3.2 (and in the case of a first Disposal the six (6) months shall be calculated from a date no earlier than six (6) months prior to Practical Completion) and all reasonable endeavours have been made to Dispose of the Dwelling as a First Home but it has not been possible to Dispose of that Dwelling as a First Home in accordance with paragraphs 3.3 and 3.4.1; or

3.6.2 requiring the First Homes Owner to undertake active marketing for the period specified in paragraph 3.6.1 before being able to Dispose of the

Dwelling other than as a First Home would be likely to cause the First Homes Owner undue hardship

3.7 Upon receipt of an application served in accordance with paragraph 3.6 the Relevant Council shall have the right (but shall not be required) to direct that the relevant Dwelling is disposed of to it at the Discount Market Price

3.8 If the Relevant Council is satisfied that either of the grounds in paragraph 3.6 above have been made out it shall confirm in writing within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 that the relevant Dwelling may be Disposed of:

3.8.1 to the Relevant Council at the Discount Market Price; or

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

and on the issue of that written confirmation the obligations in this Deed which apply to First Homes shall cease to bind and shall no longer affect that Dwelling apart from paragraph 3.10 which shall cease to apply on receipt of payment by the Relevant Council where the relevant Dwelling is Disposed of other than as a First Home

3.9 If the Relevant Council does not wish to acquire the relevant Dwelling itself and is not satisfied that either of the grounds in paragraph 3.6 above have been made out then it shall within twenty eight (28) days of receipt of the written request made in accordance with paragraph 3.6 serve notice on the owner setting out the further steps it requires the owner to take to secure the Disposal of a Dwelling as a First Home and the timescale (which shall be no longer than six (6) months). If at the end of that period the owner has been unable to Dispose of the Dwelling as a First Home he may serve notice on the Relevant Council in accordance with paragraph 3.6 following which the Relevant Council must within 28 days issue confirmation in writing that the Dwelling may be Disposed of other than as a First Home

3.10 Where a Dwelling is Disposed of other than as a First Home or to the Relevant Council at the Discount Market Price in accordance with paragraphs 3.8 or 3.9 above the owner of the First Home shall pay to the Relevant Council forthwith upon receipt of the proceeds of sale the Additional First Homes Contribution

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

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

3.11.2 apply all monies received towards the provision of Affordable Housing

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

3.13 Each First Home shall be used only as the main residence of the First Homes Owner and shall not be let, sub-let or otherwise Disposed of other than in accordance with the terms of this Deed PROVIDED THAT letting or sub-letting shall be permitted in accordance with paragraphs 3.14 – 3.17 below.

3.14 A First Homes Owner may let or sub-let their First Home for a fixed term of no more than two (2) years, provided that the First Homes Owner notifies the Relevant Council in writing before the First Home is Occupied by the prospective tenant or sub-tenant. A First Homes Owner may let or sub-let their First Home pursuant to this paragraph more than once during that First Homes Owner's period of ownership, but the aggregate of such lettings or sub-lettings during a First Homes Owner's period of ownership may not exceed two (2) years.

3.15 A First Homes Owner may let or sub-let their First Home for any period provided that the First Homes Owner notifies the Relevant Council and the Relevant Council consents in writing to the proposed letting or sub-letting. The Relevant Council covenants not to unreasonably withhold or delay giving such consent and not to withhold such consent in any of circumstances (a) – (f) below:

- a. the First Homes Owner is required to live in accommodation other than their First Home for the duration of the letting or sub-letting for the purposes of employment;
- b. the First Homes Owner is an active Armed Services Member and is to be deployed elsewhere for the duration of the letting or sub-letting;
- c. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to escape a risk of harm;
- d. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of relationship breakdown;
- e. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting as a result of redundancy; and
- f. the First Homes Owner reasonably requires to live elsewhere for the duration of the letting or sub-letting in order to provide care or assistance to any person.

3.16 A letting or sub-letting permitted pursuant to paragraph 3.14 or 3.15 must be by way of a written lease or sub-lease (as the case may be) of the whole of the First Home on terms which expressly prohibit any further sub-letting.

3.17 Nothing in this Second Schedule prevents a First Homes Owner from renting a room within their First Home or from renting their First Home as temporary sleeping accommodation (except where other local policies restrictions apply) provided that the First Home remains at all times the First Home Owner's main residence.

3.18 An application fee will be payable on each and every application for a First Home in line with the Relevant Council's set charges for such applications.

4. Shared Equity Dwellings

4.1 The maximum price payable in respect of the Disposal of a Shared Equity Dwelling (if provided) shall not exceed 75% of the Market Value (for sale or leasehold purposes) as certified by a Valuer.

4.2 The Shared Equity Dwellings shall only be Disposed of (which term shall include a freehold sale or sale of a registrable lease) to a Qualifying Person in accordance with the Local Connections Cascade and on the terms specified herein PROVIDING THAT in the event they are transferred to a RP clauses 4.4 to 4.6 of this Schedule shall not apply:

- 4.3 The Owners covenant to agree the Shared Equity Sales Procedure with the Relevant Council no less than 8 weeks prior to marketing a Shared Equity Dwelling for its first sale.
- 4.4 Any dispute over the Market Value is to be determined by an independent expert who is a chartered surveyor of not less than 10 years standing who is experienced in the field of valuing and selling residential property such as the Shared Equity Dwellings.
- 4.5 No purchaser of a Shared Equity Dwelling shall sub-let or otherwise rent out such Shared Equity Dwelling (unless approved in writing by the Relevant Council).
- 4.6 In the event 100% of the Shared Equity Dwelling is purchased:
- 4.6.1 the net proceeds from the sale of the Second Charge of the Shared Equity Dwelling are to be ring-fenced by the Registered Provider for 5 years for the provision of Affordable Housing within the same administrative district (being the East Suffolk District or the Ipswich Borough District as relevant); and
 - 4.6.2 the owner of the Shared Equity Dwelling may sell it on the open market free from the terms of this Deed.

Part 1A – Affordable Housing Mix Table

Commented [JM116]: Appellant reviewing

<u>ESC</u>	<u>% of 1 bed homes</u>	<u>% of 2 bed homes</u>	<u>% of 3 bed homes</u>	<u>% of 4 bed homes</u>
<u>Total homes (%)</u>	<u>30</u>	<u>40</u>	<u>25</u>	<u>5</u>
	-		-	
<u>Affordable rent</u>	<u>15</u>	<u>20</u>	<u>12</u>	<u>3</u>
<u>M4(2/3)</u>	<u>8</u>	<u>10</u>	<u>6</u>	<u>0</u>
<u>Total SO</u>	-		-	
<u>Shared Ownership</u>	<u>8</u>	<u>10</u>	<u>6</u>	<u>1</u>
<u>M4(2/3)</u>	<u>4</u>	<u>5</u>	<u>3</u>	<u>0</u>
<u>Total FH</u>	-		-	
<u>First Homes</u>	<u>8</u>	<u>10</u>	<u>6</u>	<u>1</u>
<u>M4(2/3)</u>	<u>4</u>	<u>5</u>	<u>3</u>	<u>0</u>
<u>Grand total (%)</u>	<u>31</u>	<u>40</u>	<u>24</u>	<u>5</u>

<u>IBC</u>	<u>% of 1 bed homes</u>	<u>% of 2 bed homes</u>	<u>% of 3 bed homes</u>	<u>% of 4 bed homes</u>
<u>Total homes (%)</u>				
	-		-	
<u>Affordable rent</u>	<u>12</u>	<u>18</u>	<u>12</u>	<u>18</u>
<u>Intermediate Dwellings and First Homes</u>	<u>8</u>	<u>14</u>	<u>14</u>	<u>4</u>
<u>Grand total (%)</u>	<u>20</u>	<u>32</u>	<u>26</u>	<u>22</u>

Commented [BB117]: IBC have provided percentage breakdown of unit sizes, but not a breakdown between the two.

Inserted figures are calculated on the basis of a requirement for 60% rented, in accordance with policy CS12.

IBC to comment.

Part 2 - Open Space

The Owners hereby covenant with the Councils as follows (unless otherwise agreed in writing by the Owners and the Relevant Council):

1 The Owners covenant with the Relevant Council that they shall submit the Open Space Specification for a Phase to the Relevant Council for written approval prior to Commencement of Development of the first Occupation of any Dwelling~~Commencement of Development on~~ that Phase PROVIDED THAT in the case of a Cross Boundary Phase the Open Space Specification for that Cross Boundary Phase shall be submitted to the Councils and approved in accordance with clause 18~~18~~.

~~The Owners covenant not to Commence Development on any Phase until the Open Space Specification for that Phase has been approved by the Relevant Council in writing.~~

2 Unless otherwise agreed with the Relevant Council in writing the Owners further covenant to lay out the Open Space in a Phase prior to first Occupation ~~of more than 75%~~ of the Dwellings on that Phase or prior to first Occupation of any of the Dwellings immediately adjacent to the Open Space, wherever is sooner. in accordance with the Open Space Specification as approved by the Relevant Council.

~~The Owners covenant not to Occupy the Dwellings on any Phase until the Open Space has been laid out and completed in accordance with the approved Open Space Specification for that Phase.~~

3 Unless otherwise agreed with the Relevant Council in writing the Owners shall transfer the Open Space for each Phase to a Management Company or such other organisation as may subsequently be agreed in writing with the Relevant Council within twelve (12) months of Occupation of the final Dwelling constructed pursuant to the Planning Permission and for the avoidance of doubt parts of the Open Space may be transferred to separate Management Companies.

4 Unless otherwise agreed with the Relevant Council in writing t~~The Owners covenant that they# shall:~~

4.1 Not dispose of any of the Dwellings:

Commented [BB118]: Should the trigger point be prior to Occupation of the first dwelling? Rather than dispose which isn't linked to a definition

4.1.1 until the details of the Management Company and the Service Charge Terms have been submitted to and approved by the Council in writing;

4.1.2 without the inclusion of the approved Service Charge Terms in the sale/lease documents;

4.1.3 until a sum of money has been paid to the Management Company to fund the management and maintenance of the Open Space during the period up until the point in time that funds received from future owners of the Dwellings pursuant to the Service Charge Terms are sufficient to fully fund such management and maintenance such sum having been previously approved by the Relevant Council;

4.2 Not dispose of the Open Space other than to the approved Management Company; and

4.3 To ring fence funds paid to the Management Company pursuant to paragraph 4.1.3 and the Service Charge Terms for use solely in relation to the management and maintenance of the Open Space.

Commented [BB119]: Its an Owner covenants but how much control do they have over the ring fencing of money paid to the management company? Perhaps reference to procure that the MC ring fences the money?

5 Following the laying out and landscaping of the Open Space on a Phase in accordance with the approved Open Space Specification for that Phase 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 for that Phase until such time as the Open Space has been transferred to a Management Company or such other organisation as may be agreed with the Relevant Council.

6 In the event that:

6.1 The Open Space is not managed and maintained in accordance with this Schedule; and/or

6.2 The Management Company either ceases to exist or goes into administration

the Relevant Council may upon providing not less than twenty-eight (28) days' written notice enter the Site and carry out any works reasonably required to remedy the defect

Commented [BB120]: How is it proposed that the Council(s) recovers the funds if the Management Company ceases to exist and the Council(s) undertakes maintenance works?

and recover the proper and reasonable costs and expenses incurred form the Owners or the Management Company (as applicable).

4

27 Following completion of the Open Space it shall (in perpetuity):

2.27.1 Not to be used for any purpose other than as public open space for the benefit of members of the public;

2.27.2 Be maintained and managed in a clean and tidy condition in accordance with the approved Open Space Specification;

2.27.3 Not to be built on or allowed to be built on any building on the Open Space, subject to any reasonable restrictions imposed in the interest of public safety or for the ancillary use of the Open Space.

38 Any transfer of any Open Space pursuant to paragraph 33 above shall be in accordance with the following terms (unless otherwise agreed in writing between the Owners and the Relevant Council):

3.48.1 in consideration of the sum of one pound (£1.00) to be paid to the Owners and shall contain a covenant by the transferee not to use or suffer or permit to be used the land transferred otherwise than for the purpose of providing public recreation and amenity facilities or for the maintenance of the Open Space;

3.28.2 a covenant from the transferee to maintain the Open Space in accordance with the Open Space Specification in perpetuity;

3.38.3 free of all financial charges and other encumbrances that may materially affect use of the Open Space for such purposes; and

3.48.4 with vacant possession;

and the Owners shall furnish a copy of the transfer referred to in paragraph 36 above to the Relevant Council

49 Prior to any transfer of the Open Space to a Management Company the Owners shall:

~~4.49.1~~ Create or engage a Management Company; and

~~4.29.2~~ Submit the proposed memorandum, articles of association and the form of transfer of the Open Space to the Management Company in relation to the future maintenance of the same in perpetuity (including any contributions or other payments to be made by occupants of the Development from time to time or any other party) to the Councils (or Relevant Council where appropriate) for approval in writing (such approval not to be unnecessarily delayed or withheld).

~~510~~ Where a Management Company is to be constituted (as opposed to appointed) solely for the purpose of maintaining the Open Space it shall be constituted to ensure that an appropriate mechanism is in place for securing that future owners of the Dwellings enter into direct covenants with the Management Company in respect of the maintenance costs for the Open Space for all Dwellings.

Part 3 - RAMS Mitigation Contributions

The Owners hereby covenant with the Councils as follows (unless otherwise agreed in writing by the Owners and the Relevant Council):

1 Not to Commence Development or allow the Commencement of Development on a Developer Phase until the RAMS Mitigation Contribution for that Phase has been paid to the Relevant Council.

Commented [BB121]: Pre-commencement triggers agreed, but further thought to be given to phasing

42 Not to begin the Marketing Period for the Custom and Self Build Plots until the RAMS Mitigation Contribution for all of the Custom and Self Build Plots has been paid to the Relevant Council.

Commented [LF122]: Suggest we have 'Developer Phase' as a definition, and the rams is payable for each developer phase prior to commencement of that phase and the rams for all of the self build plots is paid before marketing of any plots for simplicity

Part 4 – Healthcare Contribution

Commented [BB123]: IBC to provide relevant details

The Owners hereby covenant with ~~IBC-the Councils~~ as follows (unless otherwise agreed in writing by the Owners and ~~the Relevant Council~~ IBC):

1 Not to Occupy more than [xx] of Dwellings on a Phase until [xx%] of the Healthcare Contribution for that Phase has been paid to IBC.

2 Not to Occupy more than [xx] of Dwellings on a Phase until [xx%] of the Healthcare Contribution for that Phase has been paid to IBC.

Part 5 – Custom and Self Build

The Owners hereby covenant with ESC as follows (unless otherwise agreed in writing by the Owners and ESC):

Custom and Self Build Marketing Strategy

Commented [BB124]: Triggers subject to instructions

4.7 4.1—Unless otherwise agreed in writing, the Owner will provide 5% of the total number of ESC Dwellings on the ESC Development as Custom and Self Build Plots PROVIDED THAT such provision is only required in the event that 100 Dwellings or more are to be provided on the ESC Development

4.8 The Owner covenants to submit the Marketing Strategy for the Custom and Self Build Plots to the Relevant Council for approval prior to, or in conjunction with, the submission of the first reserved matters application

Commented [BB125]: If IBC aren't going to have CB/SB then I think we can refer to ESC not Relevant Council here

~~1.2 Following approval of the Marketing Strategy each Custom and Self-build Plot shall be Marketed Appropriately~~

Commented [BB126]: We suggest that 1.2 is removed as 1.3 provides comfort the marketing will be undertaken in a timely way

Commented [BB127R126]: To be reinstated

1.3 The Owner covenants that no more than 50% of the Market Dwellings shall be Occupied until the Marketing Period has commenced

1.4 The Owner shall inform the Relevant Council and provide marketing materials on first advertising of the Custom and Self-build Plots to enable the Relevant Council to notify persons on the Relevant Council's Custom and Self-build Register

Commented [BB128]: If IBC aren't going to have CB/SB then I think we can refer to ESC not Relevant Council here

1.5 ~~If~~ at the end of the Marketing Period the Owner has been unable to sell one or more Custom and Self-build Plots and the Owner can provide evidence to the Relevant Council's satisfaction the Custom and Self-build Plots have been Marketed Appropriately the Owner shall be free to ~~seek approval from the Relevant Council to~~ convert the Custom and Self-build Plots to Market Dwellings and/or Affordable Housing (at the election of the Owner), such approval not to be unreasonably withheld or delayed.

Commented [BB129]: Re-instate original wording

Commented [BB130]: In the event that there is no demand and the Council is satisfied with the marketing undertaken, the Owner should be free to dispose of the plots free from any obligations

1.5.1 Evidence that Custom and Self-build Plots have been Marketed Appropriately ~~shall~~may include:

Commented [BB131]: Re-instate 'shall'

a) Dated details of published marketing material.

b) Dated estate agent instructions.

c) Dated social media posts.

d) Dated correspondence with the Council in respect of marketing to those on the Council's custom and self-build housing register.

e) Dated records of sales enquiries and outcomes of those, and

f) Dated changes in sales price

Custom and Self Build Design Code

- 1.6 The Owner covenants to submit the Custom and Self-build Design Code to the Relevant Council for approval prior to, or in conjunction with, the submission of the first reserved matters application
- 1.7 The Custom and Self-build Dwellings shall be constructed in accordance with the approved Custom and Self-build Design Code.
- 1.8 ~~The Owner covenants to act in good faith in trying to agree both the terms of and the exchange of the Custom and Self build Sale Contract and not to take any unreasonable steps which would otherwise frustrate such exchange.~~

Commented [BB132]: Re-instate original wording

Part 6 – Skylark Mitigation

Commented [BB133]: Proposed to be secured through condition and therefore not required in the S106

The Owners hereby covenant with the Councils as follows (unless otherwise agreed in writing by the Owners and the Relevant Council):

- 1 Not to Commencement Development or allow the Commencement of Development unless and until the Owners have entered into the Skylark Mitigation Obligation.

THIRD SCHEDULE

The Owners' Covenants with the County

Part 1 – Education Contributions

The Owners hereby covenant with the County as follows (unless otherwise agreed in writing by the Owners and the County):

1 Primary Education Contribution

- 1.1 ~~To pay [xx%] of the Primary Education Contribution for a Phase to the County prior to the Occupation of [xx%] Dwellings on a Phase.~~
- 1.2 ~~Not to Occupy or allow Occupation of more than [xx%] Dwellings on a Phase until [xx%] of the Primary Education Contribution for that Phase has been paid to the County.~~
- 1.3 ~~To pay [xx%] of the Primary Education Contribution for a Phase to the County prior to the Occupation of [xx%] Dwellings on a Phase.~~
- 1.4 ~~Not to Occupy or allow Occupation of more than [xx%] Dwellings on a Phase until [xx%] of the Primary Education Contribution for that Phase has been paid to the County.~~

21 Secondary Education Contribution

- 2-1.1 To pay ~~[xx%]~~ 25% of the Secondary Education Contribution for a Phase to the County prior to the Occupation of ~~[xx%] any~~ Dwellings on a Phase.
- 2-2.2 Not to Occupy or allow Occupation of ~~more than [xx%] any~~ Dwellings on a Phase until ~~[25xx%]~~ of the Secondary Education Contribution for that Phase has been paid to the County.
- 2-3.3 To pay ~~xx75%~~ of the Secondary Education Contribution for a Phase to the County prior to the Occupation of ~~[xx%] 50% of the~~ Dwellings on a Phase.

Commented [JM134]: All contribution definitions are currently based on a per dwelling contribution as per SCC Statement of Case, paragraph 6.76. However, should each of these be instead be calculated based on pupil multiplier and based on the size of dwellings, to be confirmed in due course? SCC to advise preferred approach.

Commented [BB135]: We understand these contribution amounts are being discussed directly between the parties and are likely to be subject to amendment.

Triggers for contributions for a Phase proposed as two instalments:
- 25% prior to first occupation on a phase
- 75% prior to occupation of more than 50% Occupation

Commented [BB136R135]: Triggers agreed (save re EY payment) by SCC

2.41.4 Not to Occupy or allow Occupation of ~~more than [xx%]~~ 50% of the Dwellings on a Phase until ~~[xx%]~~ 75% of the Secondary Education Contribution for that Phase has been paid to the County.

32 Sixth Form Contribution

3.42.1 To pay ~~[xx%]~~ 25% of the Sixth Form Contribution for a Phase to the County prior to the Occupation ~~[xx%]~~ of any Dwellings on a Phase.

3.22.2 Not to Occupy or allow Occupation ~~of more than [xx%]~~ any Dwellings on a Phase until ~~[xx%]~~ 25% of the Sixth Form Contribution for that Phase has been paid to the County.

3.32.3 To pay ~~[xx%]~~ 75% of the Sixth Form Contribution for a Phase to the County prior to the Occupation ~~[xx%]~~ of 50% of the Dwellings on a Phase.

3.42.4 Not to Occupy or allow Occupation of ~~more than [xx%]~~ 50% of the Dwellings on a Phase until ~~[xx%]~~ 75% of the Sixth Form Contribution for that Phase has been paid to the County.

43 SEND Contribution

4.43.1 To pay ~~[xx%]~~ 25% of the SEND Contribution for a Phase to the County prior to the Occupation ~~[xx%]~~ of any Dwellings on a Phase.

4.23.2 Not to Occupy or allow Occupation of ~~more than [xx%]~~ any Dwellings on a Phase until ~~[xx%]~~ 25% of the SEND Contribution for that Phase has been paid to the County.

4.33.3 To pay ~~[xx%]~~ 75% of the SEND Contribution for a Phase to the County prior to the Occupation ~~[xx%]~~ of 50% of the Dwellings on a Phase.

4.43.4 Not to Occupy or allow Occupation of more than ~~[xx%]~~ 50% Dwellings on a Phase until ~~[xx%]~~ 75% of the SEND Contribution for that Phase has been paid to the County.

5 Early Years Contribution

5.1 To pay ~~[xx%]~~ of the Early Years Contribution for a Phase to the County prior to the Occupation of ~~[xx%]~~ Dwellings on a Phase.

Commented [JM137]: Early Years Contribution to be payable in the event of land transfer to the County – see separate Heads of Terms. Full early years provisions are to be added in replacement of Part 2 once the final matters are agreed.

~~5.2 Not to Occupy or allow Occupation of more than [xx%] Dwellings on a Phase until [xx%] Early Years Contribution for that Phase has been paid to the County.~~

~~5.3 To pay [xx%] of the Early Years Contribution for a Phase to the County prior to the Occupation of [xx%] Dwellings on a Phase.~~

~~5.4 Not to Occupy or allow Occupation of more than [xx%] Dwellings on a Phase until [xx%] Early Years Contribution for that Phase has been paid to the County.~~

Part 2 – Early Years School Site

1 Notice of the Early Years School Site Land

- 1.1 The Owners covenant to provide the County with notice in writing of the proposed location of the Early Years School Site Land on the Site prior to submission of any reserved matters for the Planning Permission
- 1.2 The County covenants to provide written confirmation of acceptance or rejection of the location of the Early Years School Site Land on the Site within twenty-eight (28) days of notice being served in accordance with paragraph ~~1.14.4~~ of this Part 2 of the Third Schedule
- 1.3 In the event that written confirmation or rejection in accordance with paragraph 1.2 of this Part 2 of the Third Schedule is not provided by the County to the Owners, it shall be deemed that the location of the Early Years School Site Land is approved and in the event the County rejects the proposed location of the Early Years School Site in accordance with paragraph ~~1.24.2~~ above and the Owners and County cannot reasonably agreed the location of the Early Years School Site the matter will be decided pursuant to clause ~~1343~~.

2 Early Years School Site

- 2.1 The Owners covenant with the County unless otherwise agreed in writing with the County:

Commented [JM138]: Full early years provisions are to be added in replacement of Part 2 once the final matters are agreed.

Commented [BB139]: Definitions subject to agreement of heads of terms.

SCC comments on heads of terms set out below:

It should be noted that this more complex optional route is not what SCC would prefer, but is of course keen to work with the Developer in a cooperative fashion. The wording of the S106 currently is broadly acceptable to SCC subject to any variations made thereto arising out of the HoTs. The only issue spotted is that as noted previously the Site needs to be transferred with a constructed vehicular access in place rather than "or to be constructed".

•Para 2 – SCC just wishes to clarify in the drafting that the location is to be agreed with SCC prior to or concurrently with the first reserved matters for this Development (to avoid any confusion whether this relates to development of the EY Setting).

•2 and 4 – There needs to be further discussion about how the timings of the election and agreement over the site location coincide, both being prior to / on RM submission. It could be unhelpful if the site location is agreed prior to SCC knowing what the developer is going to elect, and vice versa.

•6.1 – SCC seeks an option period of 5 years. If the Developer wishes to elect to market first, this should not be affected by a longer option period. Alternatively, should SCC be offered the Site first then SCC will still need sufficient time to ascertain the need, and would retain the option to refuse at an earlier point. It should be noted the option in the HoTs would run from prior to occupation here, different to what is agreed in the S106 currently as being from final occupation – a significant difference.

•6.5 – SCC would ordinarily seek all of any EY contribution for construction alongside / prior to transfer of any land to it – SCC needs to not be put in a position where it may have to forward fund due to insufficient upfront payments in timely fashion.

•7.2 – SCC will require at least 2 months to approve the Marketing Scheme. It also needs to be addressed what "response" means in para 7.2 to ensure enough time to work through any negotiation and that this is not a "final response" being required within 2 months. Suggest both sides endeavour to agree without unreasonable delay.

•7.3.2.2 – SCC does have some concern regarding a privately operated site and its design. SCC will need to be mindful that it may end up inheriting the site in accordance with other mechanisms in the HoTs, but also appreciates that a privately operated site may not have all the same concerns. Any conflict here will need to be managed appropriately.

•8 – Agreed that sufficient safeguards will be needed in both the S106 and the transfer – and that the word "may" in the HoTs should be tightened up to "will".

•SCC accepts the safeguards of being offered the facility to run should the operator cease to do so, but this comes with the need to ensure that the land has been transferred on terms acceptable to SCC and the facility constructed in a form acceptable to SCC. This may mean adding on the EY Land Spec to the Standard Operator Terms as well (so in effect they become the same as the County).

•10 – SCC cannot agree to repayment of the EY Contribution in full should the facility not ultimately be delivered, it must be the remnant, subject of course to any expenditure incurred having been reasonable in the circumstances.

2.1.1 To reserve the Early Years School Site Land from completion of this Agreement until the end of the Early Years School Site Land Option Period

2.1.2 To transfer to the County the Early Years School Site Land without unreasonable delay following receipt during the Early Years School Site Land Option Period of written notice from the County that the County requires the Early Years School Site Land and such transfer shall be subject to the following requirements or such alternative terms as the Owners and County may reasonably agree (both acting reasonably and in reasonable consideration of the intended use of the Early Years School Site Land):

- (a) The transfer shall be for a consideration not exceeding in total the sum of one pound (£1.00) sterling;
- (b) The Owners shall transfer the fee simple estate to the County free from encumbrances which would prevent the transfer and use of the Early Years School Site Land for a pre-school facility for the education and care of pre-school children and such ancillary uses as the Council may reasonably require including but not limited to use classes F1(a) F2(b) and F2(c);
- (c) The transfer shall include all easements and rights necessary in relation to pedestrian cyclist and vehicular access via a road which is constructed or to be constructed and thereafter maintained by the Owners (or a person so authorised by them) to highway adoption standards at the cost of the Owners for the benefit of the Early Years School Site Land until such time as such road may be adopted by the County as a highway maintainable at the public expense;

(d) The Early Years School Site Land shall be flat, free of contamination and fully serviced (meaning the installation of reasonable utility services (as set out below) to the boundary of the Early Years School Site Land) within a reasonably agreed timescale (dependent on the proposed date of transfer of the Early Years School Site Land and the extent to which the remainder of the Development has progressed and of no less than six (6) months from the date of transfer) with full and free rights to the land boundary as reasonably practicable for the purposes of installing,

providing and maintaining and using utility services including connection rights into the site wide surface water drainage system, foul sewer, water, electricity, gas, telephone, and superfast broadband for a pre-school of a stated capacity (provided that such superfast broadband is available within the locality at the time of installation of the services or such other broadband as is available in the event that it is not) and for the avoidance of doubt the Owners will bear the full costs of the installation of the above services;

~~(d)~~(e) [The Early Years School Site Land to be otherwise in accordance with the Early Years School Site Specification;](#)

~~(e)~~(f) The transfer shall include the right to grant a lease of or dispose of the Early Years School Site Land in whole or in part to a [third party nominated by the Council](#) ("County ~~N~~ominee").

2.1.3 From the date of this Deed until the end of the Early Years School Site Land Option Period and for the duration thereof not [to](#) use or allow or permit any works or activities to be carried out on the Early Years School Site Land that may render the Early Years School Site Land unsuitable for use as a pre-school facility for the education and care of pre-school children in any way.

2.1.4 To allow the County and / or the County ~~N~~ominee or agents access to the Early Years School Site Land with or without vehicles plant and machinery for the purposes of investigation or verification that the Early Years School Site Land is suitable for use as a pre-school facility for the education and care of pre-school children and to verify that the Owners have complied with its obligations to fully service the Early Years School Site Land

PROVIDED THAT in the event that the County have not served written notice in accordance with paragraph ~~2.1.22-1.2~~ of this Part 2 of the Third Schedule [by the end of the Early Years School Site Land Option Period](#) or the County serve written notice on the Owners at any time that they no longer require the Early Years School Site Land the obligations in this Part 2 of the Third Schedule shall cease to have any effect and the Owners shall be free to use or dispose of the Early Years School Site Land free of any restriction.

Part 3 – Libraries ~~Contribution~~ and Household Waste Contribution

The Owners covenant with the County (unless otherwise agreed in writing with the County):

1 To pay 25% of the Libraries Contribution for a Phase to the County prior to the Occupation of ~~more than [xx%]~~ the first Dwellings within that Phase and FOR THE AVOIDANCE OF DOUBT no Libraries Contribution is payable in relation to an ESC Phase

2

To pay the remaining 75% of the Libraries Contribution for a Phase to the County prior to the Occupation of more than 50% Dwellings within that Phase and FOR THE AVOIDANCE OF DOUBT no Libraries Contribution is payable in relation to an ESC Phase

3 To pay the Household Waste Contribution for a Phase to the County prior to the Occupation of the first Dwelling ~~more than [xx%] Dwellings~~ within that Phase and FOR THE AVOIDANCE OF DOUBT no Household Waste Contribution is payable in relation to an ESC Phase

44 To pay the remaining 75% of the Household Waste Contribution for a Phase to the County prior to the Occupation of more than 50% Dwellings within that Phase and FOR THE AVOIDANCE OF DOUBT no Household Waste Contribution is payable in relation to an ESC Phase

Part 4 – Travel Plan Evaluation and Support Contribution

The Owners hereby covenant with the County as follows (unless otherwise agreed in writing by the Owners and the County):

1 To pay the Travel Plan Evaluation and Support Contribution in respect of the Residential Travel Plan to the County prior to first Occupation of the first (1st) Dwelling and thereafter to pay a further Travel Plan Evaluation and Support Contribution on each anniversary of the date of the first (1st) Dwelling Occupation for a minimum period of five (5) years or until one (1) year after the first Occupation of the final Dwelling whichever is the longer period

- 2 Not to Occupy or permit the first (1st) Dwelling Occupation until the first Travel Plan Evaluation and Support Contribution in respect of Residential Travel Plan has been paid to the County
- 3 Not to Occupy or permit further Occupations of the Dwellings beyond the anniversary each year of the date of the first (1st) Dwelling Occupation until the relevant payment has been made each year in accordance with paragraph 14 of this Part 5-4 of this Schedule

Part 5 – Highways and Transport Contributions

The Owners hereby covenant with the County as follows (unless otherwise agreed in writing by the Owners and the County):

- 1 To pay the Traffic Regulation Order Contribution prior to ~~the~~ Occupation of any Dwelling.
- 2 Not to ~~the~~ Occupy or allow the Occupation of any Dwelling until the Traffic Regulation Order Contribution has been paid to the County
- 3 To pay the Passenger Transport Contribution for a Phase to the County prior to the Occupation of more than [xx%] Dwellings within that Phase
- 4 Not to occupy more than [xx%] Dwellings on a Phase until the Passenger Transport Contribution for that Phase has been paid to the County
- 5 To pay the PRow Contribution ~~for a Phase~~ to the County prior to the Occupation of more than [xx%] any Dwelling Dwellings within that Phase.
- 6 Not to ~~occupy more than [xx%]~~ Occupy or allow the Occupation of any Dwellings ~~on a Phase~~ until the PRow Contribution ~~for that Phase~~ has been paid to the County
- 7 To pay the Ipswich Strategic Planning Area Contribution for a Phase to the County prior to the Occupation of more than [xx%] Dwellings within that Phase

Commented [BB140]: Negative covenants required

Commented [BB141R140]: Added

Commented [BB142]: Triggers to be confirmed by County

Commented [BB143]: Prior to first occupation

Commented [BB144]: Passenger Transport Contribution needs to be payable as one lump sum prior to the 50th Occupation across the Site. Due to the nature of what it provides to secure certainty for the provision, it cannot be broken down by Phase

Commented [JM145]: Does County agree that either a) the Passenger Transport Contribution is payable; or b) the Appellant may instead procure its own service via agreement? If so, which is considered reasonable, provisions shall be included.

Commented [BB146]: •The PRow Contribution needs to be payable in full prior to first Occupation to enable sufficient time to deliver. Again, by virtue of what it is delivering, this cannot be broken down by Phase and delivered piecemeal

Commented [BB147]: The ISPA Contribution likewise cannot be Phased by virtue of what it is delivering, however SCC would agree a similar 25% / 75% split at 1st / 50th Occupation as used for the Education contributions, albeit for the entire Site.

8 Not to occupy more than [xx%] Dwellings on a Phase until the Ipswich Strategic Planning Area Contribution for that Phase has been paid to the County

FOURTH SCHEDULE

Part 1: ESC's Covenants

ESC hereby covenants with the Owners as follows:

- 1 ESC shall provide written confirmation of the discharge of the obligations contained in this Deed on written request to the Owners when satisfied that such obligations have been performed and shall cancel all entries made in the Register of Local Land Charges on written request in respect of this Deed when all the obligations have been performed.
- 2 ESC covenants with the Owners that it shall apply all financial contributions paid to ESC solely towards the purposes specified in this Deed.
- 3 ~~ESC shall~~ ESC shall use the RAMS Mitigation Contribution for the purposes set out in the Deed within ten (10) years from final receipt PROVIDED THAT nothing shall prevent the Council from paying any part of the RAMS Mitigation Contribution to a person, body or company that may be responsible for the carrying out of the work as set out in this Deed.
- 4 The Council shall if requested to do so in writing after the expiry of TEN (10) years of the date that the final RAMS Mitigation Contribution was paid within ONE (1) year pay to any such person such amount of the RAMS Mitigation Contribution paid by that person in accordance with the provisions of this Deed which have not been committed or expended by the Council, such payment to be made within TWENTY EIGHT (28) Working Days of such a request
- 5 The Council shall use the Affordable Housing Contribution (if received) for the purposes set out in the Deed within ten (10) years from receipt PROVIDED THAT nothing shall prevent the Council from paying any part of the Affordable Housing Contribution to a person, body or company that may be responsible for the carrying out of the work as set out in this Deed.
- 6 The Council shall if requested to do so in writing after the expiry of TEN (10) years of the date that the Affordable Housing Contribution was paid within ONE (1) year pay to any such person such amount of the Affordable Housing Contribution paid by that

person in accordance with the provisions of this Deed which have not been committed or expended by the Council, such payment to be made within TWENTY EIGHT (28) Working Days of such a request

~~3 — ensure that any monies paid to them under this Deed are paid into an interest bearing account or accounts and at the end of ten (10) (ten) years from the date of receiving the final payment of a contribution ESC shall return or procure the return to the person who made the payment all money in that account which has not been spent or committed to be spent on the intended purposes as specified in this Deed.~~

47 From time to time if reasonably requested by the Owners in writing (but not more than once in each year) ESC shall provide to the Owners returns showing:-

4.47.1 the total amounts that it has received from the Owners under this Deed up to the reporting date; and

4.27.2 the amounts of expenditure it has incurred to which those payments relate and the purposes for which it has so incurred the expenditure.

Part 2: IBC's Covenants

IBC hereby covenants with the Owners as follows:

- 1 IBC shall provide written confirmation of the discharge of the obligations contained in this Deed on written request to the Owners when satisfied that such obligations have been performed and shall cancel all entries made in the Register of Local Land Charges on written request in respect of this Deed when all the obligations have been performed.
- 2 IBC covenants with the Owners that it shall apply all financial contributions paid to IBC solely towards the purposes specified in this Deed.
- 3 IBC covenants that it shall pass any part of the Healthcare Contribution paid to NHS Suffolk and North East Essex Integrated Care Board ("NHS") within twenty-eight (28) days of receipt and a month before the expiry of ten (10) years from the date of the final payment to the NHS of the said sum IBC shall request from the NHS the return of any of the sum not expended used or allocated towards the purposes for which it was paid AND in the event that the NHS returns any amount of the said sum, IBC shall repay to the person that paid the sum to IBC so much of the monies as shall have been returned
- 4 IBC shall ensure that any monies paid to them under this Deed (other than the Healthcare Contribution) are paid into an interest bearing account or accounts and at the end of ten (10) ~~(ten)~~ years from the date of receiving the final payment of a contribution IBC shall return or procure the return to the person who made the payment all money in that account which has not been spent or committed to be spent on the intended purposes as specified in this Deed.
- 5 From time to time if reasonably requested by the Owners in writing (but not more than once in each year) IBC shall provide to the Owners returns showing:-
 - 5.1 the total amounts that it has received from the Owners under this Deed up to the reporting date; and
 - 5.2 the amounts of expenditure it has incurred to which those payments relate and the purposes for which it has so incurred the expenditure.

FIFTH SCHEDULE

The County's Covenants

The County hereby covenants with the Owners as follows:

- 1 The County shall provide written confirmation of the discharge of the obligations contained in this Deed on written request to the Owners when satisfied that such obligations have been performed.
- 2 The County covenants with the Owners that it shall apply all financial contributions paid to the County solely towards the purposes specified in this Deed.
- 3 If requested to do so in writing after the expiry of ten (10) years of the date the final Dwelling is first Occupied within a further period of one (1) year to pay within one (1) month of such request to the Owners such amount of any financial contribution paid by that person to the County which has not been committed or expended by the County in accordance with the provisions of this Deed together with any interest accrued at the Bank of England Base Rate, compounding annually at financial year end.

SIXTH SCHEDULE

Nominations Agreement

Commented [JM148]: IBC and ESC to provide nominations agreement.

SEVENTH SCHEDULE

Local Connection Cascade

Commented [JM149]: IBC and ESC to confirm.

Commented [JW150R149]: Awaiting instructions from IBC

ESC Dwellings

Affordable Dwellings for Rent

Initial Let Only

- 1.1 The Affordable Dwellings for Rent are to be allocated to a person nominated by ESC in line with its Allocation Policy who is considered by them or it to be in need of such accommodation and unable to compete in the normal open market for property. Before nominating an applicant ESC will be satisfied that the applicant
- a. Has continuously lived in Rushmere St Andrew for the preceding 5 years, OR
 - b. Has continuously had a principal place of work in Rushmere St Andrew for the preceding 5 years OR
 - c. Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived in Rushmere St Andrew for the preceding 5 years, OR
- 1.2 If there are no persons who qualify under paragraph 1.1 above the Affordable Dwelling shall be allocated to person nominated by ESC who
- a. Has continuously lived within the neighbouring parishes of Foxhall, Kesgrave, Playford, Purdis Farm or Tuddenham St Martin for the preceding 5 years, OR
 - b. Has continuously had a place of work within the neighbouring parishes of Foxhall, Kesgrave, Playford, Purdis Farm or Tuddenham St Martin ~~Rushmere~~ for the preceding 5 years OR
 - c. Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within the neighbouring parishes of Foxhall, Kesgrave, Playford, Purdis Farm or Tuddenham St Martin for the preceding 5 years
- 1.3 ~~(iii)~~ If there are no persons who qualify under paragraph 1.1 and 1.2 above the Affordable Dwelling shall be re-advertised to the district of East Suffolk and where after re-advertising there are no persons who qualify under the paragraphs above the Affordable Dwelling shall be allocated to a person nominated by ESC who is considered by it to be in need of such accommodation and who is unable to compete in the normal open market for property in East Suffolk

Subsequent Lets

- 1.4 The Affordable Dwellings for Rent are to be allocated to a person nominated by ESC in line with its Allocation Policy who is considered by them or it to be in need of such accommodation and unable to compete in the normal open market for property. Before nominating an applicant ESC will be satisfied that the applicant
- a. Has continuously lived in Rushmere St Andrew for the preceding 5 years, OR

b. Has continuously had a principal place of work in Rushmere St Andrew for the preceding 5 years OR

c. Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived in Rushmere St Andrew for the preceding 5 years, OR

1.5 If there are no persons who qualify under paragraph 1.44 above the Affordable Dwelling shall be allocated to person nominated by ESC who

d. Has continuously lived within the neighbouring town/parishes of Foxhall, Ipswich, Kesgrave, Playford, Purdis Farm or Tuddenham St Martin for the preceding 5 years, OR

e. Has continuously had a place of work within the neighbouring town/parishes of Foxhall, Ipswich, Kesgrave, Playford, Purdis Farm or Tuddenham St Martin for the preceding 5 years OR

f. Has parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within the neighbouring town/parishes of Foxhall, Ipswich, Kesgrave, Playford, Purdis Farm or Tuddenham St Martin for the preceding 5 years

1.6 (ii) If there are no persons who qualify under paragraph 1.4 and 1.5 above the Affordable Dwelling shall be re-advertised to the district of East Suffolk and where after re-advertising there are no persons who qualify under the paragraphs above the Affordable Dwelling shall be allocated to a person nominated by ESC who is considered by it to be in need of such accommodation and who is unable to compete in the normal open market for property in East Suffolk

1.7 Where there is a mutual exchange the Registered Provider may let the Affordable Dwelling to any incoming tenant who satisfies the local connection criteria at paragraphs 1.4 to 1.5 above

2 Affordable Dwellings for sale

2.1 On advertising the first Disposal of a Shared Ownership Dwelling or First Home the Dwelling shall be marketed for sale for the first 3 months to persons who:

a. Have continuously lived within Rushmere St Andrew for the preceding 5 years, OR

b. Have continuously had a principal place of work within Rushmere St Andrew the preceding 5 years OR

c. Have parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within Rushmere St Andrew the preceding 5 years, OR

PROVIDING THAT if after 2 months of marketing no offer has been received from persons who comply with 2.1 a-d the dwelling may be sold to persons who comply with 2.2 a-c.

Commented [KH151]: Removed reference to Shared Equity as the table shows only AR/SO and FH for ESC in accordance with the SPD

- 2.2 On subsequent Disposals of a Shared Ownership Dwelling or First Home, it shall be marketed for sale for the first 3 months to persons who:
- a. Have continuously lived within the District of East Suffolk for the preceding 5 years.
OR
 - b. Have continuously had a principal place of work within the District of East Suffolk for the preceding 5 years OR
 - c. Have parents or close family (i.e. mother, father, son or daughter) who are over 18 and who have lived within the District of East Suffolk for the preceding 5 years
- 2.3 If there are no purchasers who qualify under paragraph 2.1 or 2.2 above within 3 months of marketing the Affordable Dwelling it may be sold free of Local connections restrictions.

EIGHTH SCHEDULE

Registered Providers

The following Registered Providers are approved by the Relevant Council:

1. Clarion Housing Group.
2. Flagship Housing Group.
3. Heylo Housing.
4. Orbit East.
5. Orwell Housing Association.
6. Suffolk Housing (Iceni Homes)
7. or an alternative affordable housing provider

Commented [BB152]: Not in ESC SPD. If IBC want it to be included reference should be made that this Schedule 8 only applies to IBC Dwellings?

Commented [JW153]: (tbc by IBC)

Commented [BB154]: This makes no sense in the context of pre-approval; the definition allows other bodies to be agreed.

THE COMMON SEAL of)
EAST SUFFOLK COUNCIL)
was hereunto affixed to this)
Deed in the presence of:)

Authorised Officer

THE COMMON SEAL of)
IPSWICH BOROUGH COUNCIL)
was hereunto affixed to this)
Deed in the presence of:)

Authorised Signatory

Authorised Signatory

THE COMMON SEAL of)
SUFFOLK COUNTY COUNCIL)
was hereunto affixed to this)
Deed in the presence of:)

Authorised Officer

Executed as a deed by)
HOPKINS HOMES LIMITED)
acting by a director)
Director

in the presence of:

Signature of Witness.....

Name (in BLOCK CAPITALS):

Address

Executed as a deed by)
BDW TRADING LIMITED)
acting by a director)
Director

in the presence of:

Signature of Witness.....

Name (in BLOCK CAPITALS):

Address