

ID40

DATED

2025

**(1) EAST SUFFOLK COUNCIL**

-and-

**(2) IPSWICH BOROUGH COUNCIL**

-and-

**(3) SUFFOLK COUNTY COUNCIL**

-and-

**(4) HOPKINS HOMES LIMITED**

-and-

**(5) BDW TRADING LIMITED**

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**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**

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

JZM/BXB/249655.0001

**THIS AGREEMENT** is made this                      day of                      2025

**BETWEEN**

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

jointly to be referred to as "the Parties"

**RECITALS**

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

4. Certain obligations apply to both the ESC Site and the IBC Site and this Deed sets out a protocol whereby ESC and IBC will co-operate in respect of the discharge and enforcement of such obligations.
5. The First Owner and the Second Owner are the registered proprietors of the freehold of the Site which is registered at the Land Registry with title number SK424276.
6. The Applications were made to ESC and IBC by the First Owner and the Second Owner.
7. The First Owner and the Second Owner have appealed against the refusal of the Applications.
8. The Parties have agreed to enter into this Deed to regulate the Development in the event that the Appeal is allowed

**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 1.11, 3.8 or 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 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;
“Affordable 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 the Affordable Housing Scheme (unless otherwise agreed in writing with the Council)
“Affordable Housing Contribution”	unless otherwise agreed in writing with ESC means a sum calculated in accordance with the formula below and approved by ESC as part of the Affordable Housing Scheme for an ESC Phase or Cross Boundary Phase to be paid to ESC as a proportionate contribution in lieu of any deficiency of Affordable Housing Policy Requirement being provided as part of the ESC Development to be used towards the provision of Affordable Housing through the acquisition of land or the construction or development of new properties or the purchase or

refurbishment of existing market properties in East Suffolk:

$$A = B \times C$$

Where

A is the Affordable Housing Contribution payable;

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

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

"Affordable Housing Mix Table"

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

"Affordable Housing Policy Requirement"

means (unless otherwise agreed with the Relevant Council):

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

**Commented [JM1]:** ESC Comment: Rounding down not agreed. =

**Appellant Response:** 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

**"Affordable Housing Scheme"**

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

- full details of the Affordable Housing mix on that Phase (such proposal to reflect the relevant Affordable Housing Mix Table unless otherwise agreed with the Relevant Council)) PROVIDED THAT in the case of a Cross Boundary Phase the Affordable Housing mix shall be determined by reference to ESC's 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 Dwellings are appropriately located within the Phase));
- the name and registration number of the Registered Provider (if known at the time the Affordable Housing Scheme is agreed);
- a plan and schedule indicating the number, location, tenure, plot numbers, type and size (including number of occupants each dwelling can house) of Affordable Dwellings allocated to the Affordable Housing Scheme for that Phase;
- in the event that an Affordable Housing Contribution is payable to ESC, the amount of that contribution;

**Commented [JM2]: Appellant Comment:** Note that "timescale and programme for implementation..." deleted. Timescales for provision of the affordable dwellings catered for in the Second Schedule by reference to occupation thresholds. No need to duplicate or risk inconsistency.

	<ul style="list-style-type: none"> <li>- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme for that Phase</li> </ul>
“Affordable Housing”	means housing that will be available to eligible households and as defined in Annex 2 of the NPPF or any amending or subsequent whose needs are not met by the market and eligibility is determined with regard to local incomes and local house prices (unless otherwise agreed in writing with the Relevant Council)
“Allocation Policy”	means the policy and procedure adopted by the Relevant Council to determine the eligibility and priority for allocation of the Affordable Dwellings for Rent
“Appeal”	means the conjoined appeals made to the Secretary of State against the refusal of the Applications and allocated appeal references APP/R3515/W/24/3350674 & APP/X3540/W/24/3350673 by the Planning Inspectorate
“Applications”	means the ESC Application and the IBC Application
“Armed Services Member”	means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service
“Authorities”	means ESC, IBC and the County together
“BCIS Index Linked”	the increase in any sum referred to in this Deed by an amount equivalent to the increase in the BCIS Index calculated in accordance with Clause 11 of this Deed
“BCIS Index”	the All In Tender Price Index published by the Building Cost Information Service or any successor organisation or (if that index shall cease to be published or is



	otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties
“Build Specification”	means the build specification appended at Part 2E
“Bus Service Agreement”	an agreement to be entered into between the Owner and the Bus Service Provider in accordance with Part 6 of the Third Schedule
“Bus Service Provider”	the company or provider engaged by the Owner for the provision of a Bus Service in accordance with the Bus Service Scheme
“Bus Service Scheme”	<p>a scheme securing the provision or extension of a bus service into the development site and an increase in frequency of bus service from 30 to 20 minutes and which shall include:</p> <ul style="list-style-type: none"> <li>- a plan of the bus service routes,</li> <li>- proposed bus stops,</li> <li>- details of the Bus Service Provider, and</li> <li>- such other information as the County may reasonably require to enable approval of the Bus Service Scheme</li> </ul>
“Bus Service”	the provision or extension of a fare paying passenger carrying bus service provided in accordance with the Bus Service Scheme which is to operate for a period of 6 years from the date of implementation of the service or until the service becomes self-funding (whichever is the earlier)
“Chargee”	any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
“CIL Regulations”	Community Infrastructure Levy Regulations 2010 (as amended)

"CIL Tests"	the tests set out in regulation 122(2) of the CIL Regulations
"CIL"	means the Community Infrastructure Levy pursuant to the CIL Regulations
"Commencement"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence" shall be construed accordingly
"Compliance Certificate"	means the certificate issued by the Relevant Council confirming that a Dwelling is being Disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 3.2 of the Second Schedule applies the Eligibility Criteria (Local)
"Councils"	means both IBC and ESC and " <b>Council</b> " shall refer to either
"County Transfer Terms"	means the terms set out at paragraph 1 of Part 2C of the Third Schedule
"Cross Boundary Details"	means : <ul style="list-style-type: none"> <li>(a) details submitted pursuant to conditions on the Planning Permissions where such details relate to Cross Boundary Development;</li> <li>(b) Cross Boundary Obligations; and</li> <li>(c) any other requirement to obtain a consent approval or other confirmation from a Council in relation to a Cross Boundary Phase</li> </ul>

“Cross Boundary Development”	means those parts of the Development on either side of the boundary between the respective areas of ESC and IBC
“Cross Boundary Obligations”	means those obligations set out in this Deed that affect elements of the Development which cross the boundary between the respective administrative areas of ESC and IBC
“Cross Boundary Phase”	means a Phase which crosses the boundary between the respective administrative areas of ESC and IBC
“Custom and Self-build Design Code”	<p>a document that provides written and illustrated rules that establish the design parameters of a development and of each Custom and Self-build Plot, and which shall address:</p> <ul style="list-style-type: none"> <li>a) Layout,</li> <li>b) Plot size and shape,</li> <li>c) Developable footprint,</li> <li>d) Building height or number of storeys,</li> <li>e) Orientation,</li> <li>f) Landscaping,</li> <li>g) Boundary treatment,</li> <li>h) Material palette,</li> <li>i) Number and location of car parking and cycle storage spaces, and</li> <li>j) Refuse storage</li> </ul>
“Custom and Self-build Dwelling”	a Dwelling which meets the definition in section 1 of the Self-build and Custom Housebuilding Act 2015 (as amended).
“Custom and Self-build Plot”	a plot of land upon which a Custom and Self-build Dwelling is to be constructed
“Custom and Self-build Register”	the Council’s register of persons seeking to acquire a Custom and Self-Build Plot pursuant to section 1 of the Self-build and Custom Housebuilding Act 2015

“Custom and Self-build Sale Contract”	a contract or contracts for the sale of a Custom and Self-build Plot which is conditional upon the construction of the Custom and Self-build Dwelling
“Decision Letter”	means the decision letter(s) issued by the Inspector in determining the Appeal or where the Secretary of State recovers the Appeal for determination the decision letter of the Secretary of State;
“Default Interest Rate”	4% per annum above the base lending rate of the Bank of England from time to time unless otherwise provided by this Deed
“Development”	the development of the Site pursuant to the Planning Permission 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%
“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"> <li>(a) a letting or sub-letting of a First Home in accordance with paragraph 3.13 to 3.17 of the Second Schedule</li> <li>(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</li> </ul>

	(c) an Exempt Disposal
	and “Dispose” “Disposed” and “Disposing” shall be construed accordingly
“Dwelling”	any dwelling (including a house flat maisonette or bungalow) to be constructed in accordance with the Planning Permission
“Early Years Contribution”	means the sum of £2,946.89 (two thousand nine hundred and forty six pounds and eighty nine pence) per Dwelling BCIS Index Linked payable to the County to be used towards the provision of new early years facilities serving the Development (unless otherwise agreed in writing with County)
“Early Years Facility Land”	means an area of land of minimum size 0.32ha within the Mixed Use Development Parcel for the development of and use as an Early Years Facility to be agreed pursuant to paragraphs 1.1 of Part 2A or Part 2B of the Third Schedule (as relevant) (unless otherwise agreed in writing with County)
“Early Years Facility Scheme”	<p>means a scheme for the provision of the Early Years Facility to include (unless otherwise agreed in writing with County):</p> <ul style="list-style-type: none"> <li>- the design and specification of the Early Years Facility which shall be substantially in accordance with the Build Specification and to accommodate a minimum 90 place setting;</li> <li>- the timetable for implementation and provision of the Early Years Facility; and</li> <li>- details of the proposed Operator</li> </ul> <p>or any scheme subsequently approved by the County</p>
“Early Years Facility”	means the facility for early years education provision (for children aged between 3 and 5) to be provided on the Early Years Facility Land

**Commented [JM3]:** Appellant Comment: “Early Years Facility Specification” replaced with “Land Specification” for clarity.

“Early Years (Off-Site) Contribution”	means the sum of £2,468.27 (two thousand four hundred and sixty eight pounds and twenty seven pence) per IBC (Contribution) Dwelling BCIS Index Linked payable to the County to be used towards the provision of new off-site early years facilities serving the Development (unless otherwise agreed in writing with County)
“Eligibility Criteria (Local)”	<p>means local criteria met in respect of a purchase of a First Home if:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) the purchaser meets any further local criteria in effect at the date of the relevant Disposal of a First Home</li> </ul> <p>it being acknowledged that at the date of this Deed ESC has only prescribed Eligibility Criteria (Local) in respect of (a)</p>
“Eligibility Criteria (National)”	<p>means criteria which are met in respect of a purchase of a First Home if:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) the purchaser’s annual gross income (or in the case of a joint purchase, the joint purchasers’ joint annual gross income) does not exceed £80,000 or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant Disposal of the First Home</li> </ul>
“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

	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 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”	<p>means the Disposal of a First Home in one of the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner</li> <li>(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</li> <li>(c) a Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order</li> </ul>

**Commented [BB4]:** ESC do not agree to tailpiece

Tailpiece wording cannot be removed as needed to cater for a cross-boundary dwelling

	<p>(d) a Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 1.11 shall apply to such sale)</p> <p>provided that in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraphs 3.13 to 3.17 of the Second Schedule</p>
"First Homes Owner"	<p>means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:</p> <p>(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</p> <p>(b) the freehold a tenant or sub-tenant of a permitted letting under paragraphs 3.13 to 3.17 of the Second Schedule</p>
"First Homes"	<p>means Dwellings which may be Disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed the Price Cap</p>
"First Option Period"	<p>the period commencing the date the Early Years Facility Lane is agreed pursuant to paragraphs 1.1 of Part 2A or Part 2B of the Third Schedule (as relevant) ending on the date the 125th Dwelling is first Occupied</p>
"First Time Buyer"	<p>means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003</p>
"Fully Serviced"	<p>a Custom and Self-build Plot that has access to a public highway and has connections for electricity, water, waste water and telecommunications.</p>
"Healthcare Contribution"	<p>means the sum of £576.06 per IBC (Contribution) Dwelling up to a maximum sum of £380,220 (XX Index)</p>

Commented [JM5]: IBC to confirm please.



	to be paid to IBC and passed to NHS Suffolk and North East Essex Integrated Care Board to increase the capacity of primary healthcare facilities at Two Rivers Medical Centre 30 Woodbridge Rd E, Ipswich IP4 5PB serving the Development
"Homes England"	the non-departmental public body responsible for creating thriving communities and affordable homes in England and which is the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body that may replace it in either function;
"Household Waste Contribution"	means the sum of £138 per IBC (Contribution) Dwelling BCIS Index Linked to be paid to the County to be used to provide new and improved household waste disposal services serving the Development including services forward funded by the County
"IBC (Contribution) Dwelling"	means: <ul style="list-style-type: none"> <li>- the whole of any Dwelling whose floorspace is constructed wholly within the IBC Site; and</li> <li>- in the case of a Dwelling whose floorspace is not wholly within the IBC Site, the proportion of that Dwelling's floorspace which lies within the IBC Site (such that by way of example where 40% of a Dwelling's floorspace lies within the IBC Site, that Dwelling shall constitute 0.4 of an IBC (Contribution) Dwelling)</li> </ul>
"IBC Affordable Dwelling(s)"	means any Affordable Dwellings to be delivered pursuant to the IBC Development
"IBC Affordable Housing Contribution"	[TBC, if required]
"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

**Commented [JM6]: Appellant Comment: IBC to confirm.**  
It seems sensible to include, as we have done for ESC, a formula to calculate an affordable housing contribution in lieu of on-site provision even if to cater for fraction of a dwelling provision.

“IBC Development”	means that part of the Development which will be constructed on the IBC Site
“IBC Dwelling”	means any Dwelling to be constructed on the IBC Site and for the avoidance of doubt will include any Dwelling where more than 50% of that Dwelling’s floorspace lies within the IBC Site
“IBC Marketing Strategy”	means written proposals setting out what measures the 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 Dwellings which will take the form of Shared Ownership Dwellings and/or Shared Equity Dwellings (unless otherwise agreed in writing with the Council)
“Ipswich Strategic Planning Area Contribution”	means the sum of £493,060.90 (four hundred and ninety three thousand and sixty pounds and ninety pence) BCIS Index Linked payable to the County to be used in accordance as set out in the table at Annex B to fund a scheme of walking and cycling improvements including officer time, legal expenses, works and all other ancillary expenses
“Land Specification”	means the land specification appended at Part 2D

"Libraries Contribution"	means the sum of £216 (two hundred and sixteen pounds) per IBC (Contribution) Dwelling (BCIS Index Linked) to be paid to the County to be used for the provision and improvement of library services serving the Development
"Local Connections Cascade"	the local connections criteria to be applied to each and every let or sale of an Affordable Dwelling as set out in the Seventh Schedule
"Location Plan"	means the plan attached to this Deed at the first schedule titled "Site Location Plan" with reference HDL-PRP-XX-XX-DR-A-08200 Rev P01
"Management Company"	means a company or body to be approved in writing by the Relevant Council who will take over responsibility for the future maintenance 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
"Market Dwelling"	that part of the Development which is general market housing for sale on the open market at Market Value and which is not Affordable Housing;
"Market Value"	means the open market value as assessed by a Valuer of a Dwelling and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account any discount in the valuation;
"Marketed Appropriately"	marketing the Custom and Self-build Plots in accordance with the agreed Marketing Strategy for a period of not less than 12 months. This will commence when the Marketing Strategy has been agreed between the applicant and ESC, the Custom and Self-build Plots have

	been Fully Serviced, have defined boundaries, and are available for immediate purchase as agreed through the Marketing Scheme;
"Marketing Period"	a period of not less than 12 months within which the Custom and Self-build Plots shall be Marketed Appropriately as agreed through the Marketing Strategy;
"Marketing Scheme"	means a scheme setting out the details of the marketing exercise to be undertaken in relation to the Early Years Facility Land as approved in writing by the County
"Marketing Strategy"	<p>a document setting out the marketing arrangements for each Custom and Self-build Plot, which shall include (unless otherwise agreed in writing with ESC):</p> <ol style="list-style-type: none"> <li>a) The Marketing Period during which the Custom and Self-build Plots will be Marketed Appropriately and the date on which the Marketing Period is to commence by reference to the Phasing Plan and proposed location of the Custom and Self-build Plots;</li> <li>b) The arrangements on which the Custom and Self-Build Plots will be Marketed Appropriately;</li> </ol> <p>This should address:</p> <ol style="list-style-type: none"> <li>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.</li> <li>ii. Details of marketing and promotional methods. This should include social media; website advertising; database marketing; and information packs as a minimum.</li> <li>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</li> </ol>

**Commented [JM7]: Appellant Comment:** The definition of Marketed Appropriately is by reference to a service plot. The commencement of marketing therefore needs to coincide and be agreed by reference to phasing, build programme, and the phases within which the custom and self-build plots are to be provided.

Custom and Self-build Plots themselves. Information must be displayed at each Custom and Self-build Plot which includes as a minimum the Custom and Self-build Plot number and Plot Passport information. QR codes are encouraged to provide quick access to further information. Custom and Self-build Plots must be clearly demarcated and be in a clear and tidy state.

The Owner should set out methods to enable potential plot purchasers to gain safe access into the site to view the Custom and Self-build Plots

- c) The price that each Custom and Self-build Plot will be advertised for, including valuation methodology, derived from an experienced local RICS registered valuer who should have experience of valuing Custom and Self-build Plots;
- d) The contact details of the marketing agent. The agent should be experienced in selling Custom and Self-build Plots;
- e) Signposting to specialist custom and self-build mortgage brokers;
- f) Information on 'Help to Build' and any similar initiatives to assist custom and self-builders;
- g) The site visit arrangements;
- h) The Plot Passport for each custom and self-build plot;
- i) A commitment that the Owner holds a Record of Sales Enquiries for each Custom and Self-build Plot, which will be provided to the Council upon request;

	<p>j) The arrangements for the delivery of any Custom and Self-build Plots not taken up after the minimum 12 months marketing period; and</p> <p>k) Any alternative or additional marketing in the event that interest in a Custom and Self-Build Plot is low</p>
"Mixed Use Development Parcel"	<p>the mixed-use development parcel allocated within the land use parameters plan for the Development referenced [HDL-PRP-XX-XX-DR-A-08201_P01 Parameter Plan - Land Use] or as otherwise agreed pursuant to the Planning Permission</p>
"Mortgagee"	<p>means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire an Affordable Dwelling including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring an Affordable Dwelling;</p>
"Nomination Agreement"	<p>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</p>
"NPPF"	<p>means the National Planning Policy Framework (December 2024) as amended or any successor document</p>
"Occupation" "Occupy" and "Occupied"	<p>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</p>
"Offer Documentation"	<p>means plans, drawings, specifications and other documentation which the Registered Provider may reasonably require in order to make an offer for the Affordable Dwellings including the following documents</p>

**Commented [JM8]:** As per the parameter plan proposed in draft conditions, Condition 23.

relating to the Affordable Dwellings which shall be provided by the Owner to a Registered Provider:-

- (a) drawings showing the size, layout and design of the Affordable Dwellings;
- (b) site layout showing the position of the Affordable Dwellings in relation to the Market Dwellings and the nature of the Market Dwellings;
- (c) a copy of the Planning Permission and reserved matters consent; and
- (d) a copy of this Deed

“Open Space Specification”

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:

- a) specifications plans and drawings showing the layout and design of the Open Space for that Phase in accordance with the Planning Permission to include any required multi-use games areas, local areas of play, local equipped areas of play and any neighbourhood areas of play;
- b) details of the maintenance arrangements for the Open Space for that Phase; and
- c) any additional details the Relevant Council may require concerning the specification, delivery and/or use of the Open Space.

“Open Space”

the area of open space provided by the Owner for public use and enjoyment of the residents of the Development in accordance with details in the Open Space Specification and to include any formal and equipped open space provision including any multi-use games areas, local areas of play, local equipped areas of play and any neighbourhood equipped areas of play.

**Commented [JM9]: Appellant Comment:** As with the affordable housing scheme, programme for is already catered for by reference to occupation triggers in the Second Schedule. No need to duplicate or risk inconsistency between the s.106 and scheme. Explicit reference to delivery of equipped areas included.

**Commented [JM10]: Appellant Comment:** It seems sensible to clarify that open space on a phase would include these areas. We may include definitions if required.

“Operator Transfer Terms”	means the terms set out at paragraph 2 of Part 2C of the Third Schedule
“Operator”	means an approved provider of early years provision registered with Ofsted for the provision of early years care such that they meet the Statutory Framework for the Early Years Foundation Stage
“Owners”	means the First Owner and the Second Owner together
“Passenger Transport Contribution”	means the sum of £1,113,770.80 (one million one hundred and thirteen thousand seven hundred and seventy pounds and eighty pence) [xxx] Index Linked payable to the County to be used towards the extension of Ipswich Buses service into the development site for a total of 6 years and increase the frequency to 20 minutes from 30 minute
“Phase”	means any phase of the Development as identified on the phasing plan to be agreed pursuant to the Planning Permission (including any phase with sub-phase(s) containing Self-build Plots)
“Planning Permission”	means the IBC Permission and the ESC Permission together
“Plot Passport”	A document that provides information for potential plot purchasers regarding the delivery of a Custom and Self-build Dwelling on the Custom and Self-build Plot, and shall include: the plot location, plot size and shape, any design and development parameters established in a design code (if relevant), likely ground conditions, location of servicing connection, Community Infrastructure Levy exemption (if relevant), and plot price;
“Practical Completion”	means the stage reached when the construction of a Dwelling is sufficiently complete that, where necessary, a certificate of practical completion can be issued and it can be Occupied and “Practically Complete” shall be construed accordingly;
“Price Cap”	means the amount for which the First Home is sold after the application of the Discount Market Price which on its



	first Disposal shall not exceed Two Hundred and Fifty Thousand Pounds (£250,000) or such other amount as may be set locally or published from time to time by the Secretary of State;
“Protected Person”	<p>means any person who:</p> <ul style="list-style-type: none"> <li>a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling</li> <li>b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling</li> <li>c) a 100% Staircaser;</li> <li>d) any successor in title to a chargee or mortgagee of the persons named in a) – c) above;</li> <li>e) any mortgagee of a Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions within that Shared Ownership Lease.</li> </ul>
“PRoW Contribution”	means the sum of £110,149 (one hundred and ten thousand one hundred and forty nine pounds) BCIS Index Linked payable to the County to be used towards the provision of signage and resurfacing of footpaths 45 and 48 and bridleway 1
“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 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 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

**Commented [JM11]:** ESC Comment: Tailpiece wording not agreed.

**Appellant Response:** This is essential as we need a mechanism to determine which contribution is payable for those dwellings that straddle the boundary between Zone A or B. Happy to discuss any alternative, but we need to make clear the circumstances that each contribution is payable.

**Commented [JM12]:** As above.

	in the context of the Development; and in the case of ESC and IBC, of a competent local planning authority acting reasonably in the context of its statutory functions; and in the case of the County, of a competent local planning highway or education authority acting reasonably in the context of its statutory functions
"Record of Sales Enquiries"	<p>A record of enquiries made by individuals in relation to each plot which shall include:</p> <ul style="list-style-type: none"> <li>a) Date of enquiry;</li> <li>b) Nature of enquiry;</li> <li>c) Whether the enquirer visited the site; and</li> <li>d) Reason/s why the enquirer did not purchase the plot or find it suitable.</li> </ul>
"Registered Provider" or "RP"	<p>for the purposes of this Deed means either: -</p> <ul style="list-style-type: none"> <li>a) a body registered as a social landlord pursuant to the provisions of the Housing Act 1996 or a housing association within the meaning of the Housing Associations Act 1985 or;</li> <li>b) any person or body or entity which is registered as a provider or social housing in accordance with Section 80(2) and Chapter 3 of the Housing and Regeneration Act 2008 or;</li> <li>c) any body, organisation or company which is registered charity with the Charity Commissioners for England and Wales and approved by Homes England or any other body organisation or company approved by the 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</li> </ul>
"Relevant Authority"	means either ESC, IBC or the County depending on the context in which the term is used in this Deed

"Relevant Council"	means either ESC or IBC depending on the context in which the term is used in this Deed and for the avoidance of doubt the Relevant Council will be ESC in relation to an ESC Dwelling and IBC in relation to an IBC Dwelling PROVIDED FURTHER that where an obligation relates to a Cross Boundary Phase, except as otherwise provided 'Relevant Council' shall be construed as referring to both ESC and IBC and clause 18 will apply
"Reserved Matters Application"	means any application submitted for approval of reserved matters pursuant to the Planning Permission
"Residential Travel Plan"	the travel plan relating to the residents of the Dwellings 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
"Second Option Period"	a period from the date of the end of the marketing period until the date 150 Dwellings are Occupied pursuant to paragraph 2.2.2 of Part 2B of the Third Schedule
"Secondary Education Contribution"	means the sum set out in the following table per IBC (Contribution) Dwelling BCIS Index Linked payable to the County to be used towards the provision of additional capacity through the expansion, improvement and enhancement including forward funding of existing secondary schools serving the Development

<b>1 bed flat</b>	£498.98
<b>2+ bed flat</b>	£1,408.89
<b>1 bed house</b>	£1,761.12
<b>2+ bed house</b>	£4,490.85

“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 the sum set out in either:

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

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

“Service Charge Terms” means the terms to be included in the legal transfer or lease of each Dwelling whereby the transferee or lessee (and its successors in title) covenant to pay a proportionate share of the total costs incurred by the Management Company in the management and maintenance of the 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 Dwellings to be purchased at no more than seventy-five percent (75%) Market Value on a freehold basis with a second charge (“the Second Charge”) for the remaining twenty-five (25%) in favour of the RP by persons for which the household income does not exceed eighty

thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in Homes England's capital funding guide. The Second Charge shall have no interest payable in relation to it and shall not involve any consideration being due on initial sale. The Second Charge shall not be redeemed or removed by the purchaser otherwise than on or after the second anniversary of the first Occupation of the Shared Equity Dwelling and only for consideration the equivalent of twenty-five percent (25%) of the Market Value at that time, or, if at any point during the term the Shared Equity Dwelling is sold, then the proceeds of sale shall be divided on the basis of seventy-five percent (75%) of the proceeds to the vendor and twenty-five percent (25%) to the Registered Provider or Relevant Council and the Second Charge shall thereafter be redeemed and removed from the title on completion of the sale

"Shared Equity Sales Procedure"

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

"Shared Ownership Dwellings"

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)

**Commented [JM13]:** IBC Comment: IBC is requesting shared equity leases – freehold to RP.

**Appellant Response:** This is not catered for in current drafting. IBC to provide what is required here, or confirm that the current provisions are sufficient.

shall be initially sold to the purchaser by the Registered Provider;

- ii. power to the purchaser to increase their ownership up to one hundred percent (100%);
- iii. an initial rent not exceeding two point seven five percent (2.75%) of the value of the equity retained by the Registered Provider subject to annual increases not exceeding Consumer Prices Index (CPI) published by the Office for National Statistics (or if such index ceases to be published such other index the Relevant Council shall reasonably determine) plus 1% or such other rent as complies with the requirements from time to time of Homes England

“Site Mortgagee”

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

“Site”

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

“Sixth Form Contribution”

means the sum set out in either:

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

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

“SUDS”	means the sustainable urban drainage system(s) (including all sustainable urban drainage systems features) to be approved pursuant to the Planning Permission and located within the Open Space
“Traffic Regulation Order Contribution”	means the sum of £15,000 (fifteen thousand pounds) RPI Index Linked payable to the County to be used towards the costs of implementing a traffic regulation order to extent the 30mph speed limit on Tuddenham Road north of the junction with Church Lane including officer time, legal costs, administrative costs, the costs of resolving any challenge made to the order and any other ancillary costs incurred
“Travel Plan Evaluation and Support Contribution”	one thousand and two hundred pounds (£1,200.00) per annum RPI Index Linked to provide the County suitable resource to engage with the travel plan coordinator appointed by the applicant for the Residential Travel Plan
“Valuer”	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer acting in an independent capacity
“Working Day(s)”	Mondays to Fridays (excluding days that in England and Wales are public holidays or on which the Council offices are closed and the period between Boxing Day and New Year’s Day) inclusive

## 2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the any gender include any other genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.



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

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owners under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by ESC and/or IBC and/or the County as appropriate in the case of covenants made with it as local planning authority against the Owners and their successors in title.

### **4 CONDITIONALITY**

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

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

and the remainder of the provisions set out in this Deed shall take effect immediately upon completion of this Deed.

### **5 THE OWNERS COVENANT**

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

5.3 The Owners covenant with the County as set out in the Third Schedule.

## 6 THE COUNCILS' AND COUNTY'S COVENANTS

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

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

## 7 LEGAL AND MONITORING FEES

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

7.2 Within 10 Working Days of the Appeal being allowed, the Owners shall pay ESC the total sum of **£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 [JM14]:** ESC to confirm fixed amount as triggers should now be 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.

**Commented [JM15]:** IBC to confirm fixed amount as triggers should now be agreed.

7.4 Within 10 Working Days of the Appeal being allowed, the Owners shall pay the County the total sum of **£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 [JM16]:** County to confirm fixed amount as triggers should now be agreed.

## 8 INTEREST ON LATE PAYMENT

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

## 9 MISCELLANEOUS

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

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

- 9.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 9.3 This Deed shall be registered as a local land charge by the Council.
- 9.4 Where the agreement, approval, consent or expression of satisfaction is required by the First Owner or the Second Owner from ESC, IBC or the County under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 9.5 Any notice or written communication to be served or given by one party to any other party under the terms of this Deed shall be deemed to have been properly served or given if delivered by hand or sent by first class post or registered or recorded delivery to the following addresses:
- 9.5.1 First Owner: at the address as set out at the beginning of this Deed; and
- 9.5.2 Second Owner: at the address as set out at the beginning of this Deed; and
- 9.5.3 ESC: shall be addressed to the Section 106 Officer at the address as set out at the beginning of this Deed; and
- 9.5.4 IBC: marked for the attention of Operations Manager (Planning and Development) and Principal Planning Officer - Special Projects, at the address as set out at the beginning of this Deed; and
- 9.5.5 County Council: shall be addressed to the Executive Director of Growth Highways and Infrastructure at the address as set out at the beginning of this Deed; or
- 9.5.6 such other address as may be notified in writing from time to time.
- 9.6 Following the performance and satisfaction of all the obligations contained in this Deed the Relevant Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

- 9.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 9.8 Subject to clause 9.7 and clause 17 of this Deed, this Deed shall cease to have effect (insofar only as it has not already been complied with):
- 9.8.1 if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development;
- 9.8.2 in respect of the ESC Development only, if the ESC Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development; or
- 9.8.3 in respect of the IBC Development only, if the IBC Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owners) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 9.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or part of the Site to which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or part of the Site) shall constitute an interest for the purposes of this Clause
- 9.10 Any obligation (or part thereof as relevant) contained in this Deed:
- 9.10.1 shall not apply and not have any force nor effect if the Inspector appointed to determine the Appeal finds in the Decision Letter that a particular obligation or part thereof in this Deed is not compliant with the CIL Tests or is not a material consideration or otherwise unnecessary to enable the grant of Planning Permission and in such circumstances the Owners shall not be obliged to comply with such obligation;

**Commented [JM17]: Appellant Comment:** These blue pencil provisions have been bolstered now that we are clear on the areas of dispute and the particular s.106 obligations the Inspector shall need to consider, i.e. those contributions which should either not be sought or amended, or the general power to strike out or amend provisions to enable permission to be granted.

- 9.10.2 shall be amended and construed accordingly if the Inspector appointed to determine the Appeal confirms in the Decision Letter that a particular obligation in this Deed should be amended in order to meet the CIL Tests or otherwise enable the grant of Planning Permission whether this is in respect of the level or amount of any contribution or trigger or deadline for compliance; and/or
- 9.10.3 shall be amended and construed accordingly if the Inspector appointed to determine the Appeal confirms in the Decision Letter that particular paragraphs parts or schedules or any other provisions of this Deed should be deleted or amended so as to comply with the CIL Tests or otherwise enable the grant of Planning Permission
- 9.11 Save for the obligations contained in Part 1 of the Second Schedule which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Dwellings subject to the provisions contained therein, the covenants, restrictions and requirements contained in this Deed shall not be enforceable against:
- 9.11.1 owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them;
- 9.11.2 a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owners to that statutory undertaker;
- 9.11.3 any mortgagee or chargee of the whole or any part of the Owners' interest in the Site unless such mortgagee or chargee takes possession of the Site or part thereof in which case it will be bound by the obligations as a person deriving title from the Owners.
- 9.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 9.13 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Councils or the County under all statutes by-laws

statutory instruments orders and regulations in the exercise of their functions as a local authority.

9.14 The Owners covenant from the date that this Deed takes effect to allow the Authorities and their duly authorised officers or agents at all reasonable times on reasonable notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed and in doing so the Authorities shall have regard to all health and safety requirements when visiting the Site.

9.15 The Owners hereby agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.

## **10 WAIVER**

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

## **11 INDEXATION**

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

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

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

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

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

C/D is equal to or greater than 1.

## **12 VAT**

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

## **13 DISPUTE PROVISIONS**

- 13.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.
- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society for him to appoint a solicitor (or suitable person holding appropriate professional qualifications) to determine the dispute such solicitor or other person acting as an expert and his decision shall be final and binding on all parties to the dispute in the absence of manifest error and his costs shall be payable by the

parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.

13.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received any file or written representation.

13.4 The expert shall be required to give notice to each of the said parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten (10) Working Days.

#### 14 CHANGES IN OWNERSHIP OF THE SITE

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

#### 15 NOTICES

The Owners 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.

#### 16 JURISDICTION

**Commented [JM18]:** IBC, ESC and SCC to all confirm final notice requirements based on the triggers and obligations now agreed.



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

## **17 FUTURE PERMISSIONS**

17.1 Nothing in this agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

17.2 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act:

17.2.1 the obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act; and

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

## **18 APPROVAL OF CROSS BOUNDARY OBLIGATIONS**

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

(a) notify the other Council that it has received the Cross Boundary Details;

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

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

18.2.1 the submitted Cross Boundary Details being reasonably considered appropriate and sufficient to allow a Council issue a decision;

18.2.2 it being acknowledged and agreed by the Parties that a Council shall be entitled to request any additional or revised Cross Boundary Details it considers reasonably necessary to allow a decision to be issued and where additional details are requested, the timeframe to issue a decision as detailed in clause 18.1(d) shall recommence from the date the additional detail requested is received by a Council or within such other timescale as may be agreed between the Council and the Owners in writing; and

18.2.3 it being acknowledged and agreed that nothing in this clause 18 shall fetter the discretion of the Council to determine the submission of any Cross Boundary Details.

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

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

18.5 In the event that 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.

19.4 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.

20.2 The Authorities covenant that in the event any payment is made under this Deed in respect of any Dwelling for a purpose for which CIL is payable or has been paid such payment under this Deed 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 so as to ensure FOR THE AVOIDANCE OF DOUBT that there is

no duplication between CIL and the payments made under in this Deed in respect of the same infrastructure in respect of any Dwelling or part thereof.

## **21 MORTGAGEE CONSENT**

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

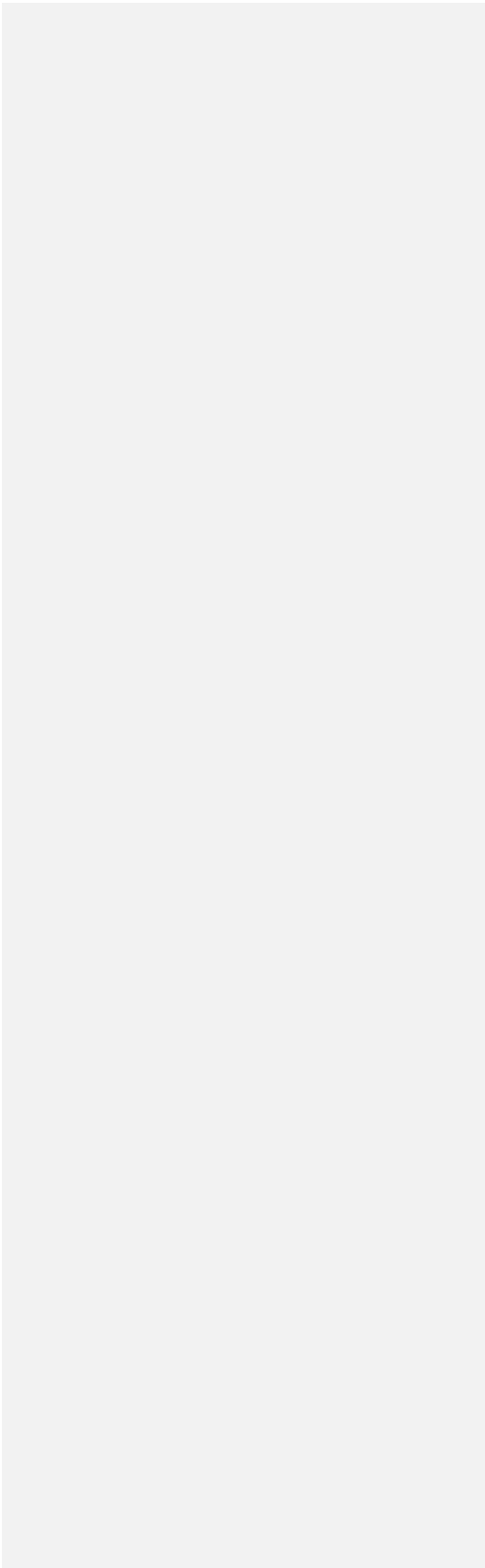
## **22 DELIVERY**

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

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

**FIRST SCHEDULE**

**Location Plan**



## **SECOND SCHEDULE**

### **The Owners' Covenants with the Councils**

#### **Part 1 – Affordable Housing**

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

#### **1 Affordable Housing Provision**

- 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.
- 1.2 In relation to an IBC Phase or Cross Boundary Phase only, prior to Commencement of Development to submit the IBC Marketing Strategy to IBC and upon approval of the IBC Marketing Strategy for such Phase to provide Offer Documentation in relation to the IBC Affordable Dwellings within such IBC Phase or Cross Boundary Phase to the Registered Provider(s) and at the same time to supply a copy of the Offer Documentation to IBC.
- 1.3 In relation to an ESC Phase or Cross Boundary Phase only, 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).
- 1.4 Unless otherwise agreed in writing by Relevant 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.
- 1.5 Unless otherwise agreed in writing by the Relevant Council the Owners covenant not to Occupy or allow Occupation of more than 60% of the Market Dwellings on a Phase

**Commented [JM19]:** Appellant Comment: IBC - is this really necessary as per previous comments? IBC has complete comfort through the other provisions in terms of delivery of the affordable housing.

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.

- 1.6 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
- 1.7 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 or that demand for any Affordable Dwellings to be sold directly by the Owner subject to the Shared Equity Sales Procedure or First Homes is not forthcoming despite the Owner's reasonable endeavours to do so the Owner will be required to:
  - 1.7.1 provide evidence to the Relevant Council's satisfaction (the Relevant Council at all times acting reasonably) that demand from Registered Providers or purchasers (as relevant) has not been forthcoming for Reasonable Consideration; and
  - 1.7.2 provide the Relevant Council with a written proposal to convert such Affordable Dwellings to an alternative affordable tenure or to dispose of such Affordable Dwellings on the open market subject to payment of the Affordable Housing Contribution in lieu of such provision (the "**Proposal**")
- 1.8 The Relevant Council covenants to provide written confirmation of acceptance or rejection of the Proposal pursuant to paragraph 1.7.2 of this Part 1 of the Second Schedule within thirty (30) days of receipt of the Proposed from the Owners
  - 1.8.1 In the event that written confirmation or rejection of the Proposal confirmed by the Relevant Council to the Owners in accordance with paragraph 1.8 of this Part 1 of the Second Schedule is not it shall be deemed that the Proposal is approved

1.8.2 In the event that the Relevant Council rejects the Proposal pursuant to paragraph 1.7.2 of this Part 1 of the Second Schedule the Relevant Council and the Owners shall use reasonable endeavours to seek an agreed way forward PROVIDED THAT this provision shall not prevent either party seeking determination of the Proposal and resolving the matter through the provisions of Clause 13

1.9 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 Clause**

1.10 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:

1.10.1 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 (3) 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

1.10.2 if such disposal of the Affordable Dwellings for Rent or Shared Ownership Dwellings or a Shared Equity Dwellings has not completed within the three (3) 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

**Commented [JM20]: Appellant Comment:** The 12 month period for disposal for a chargee or receiver is unacceptable and no justification has been provided. The usual 3 months period has been included, which I believe to be industry practice and required by most, if not all, RPs.



1.10.3 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

1.10.4 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 1.11.5

1.10.5 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.

1.10.6 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 3.5 and
- ii. 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 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.

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 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 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 (28) 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 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 3.1b 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 fifty percent (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 twenty-eight (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 twenty-eight (28) Working Days of such receipt, provide a completed application to enable the removal of the restriction on the title set out in paragraph 3.5 where such restriction has previously been registered against the relevant title
- 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 seventy-five (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 Registered Provider clauses 4.4 to 4.6 of this Schedule shall not apply:

- 4.3 In respect of the Shared Equity Dwellings the Owners covenant to agree the Shared Equity Sales Procedure with the Relevant Council no less than eight (8) weeks prior to marketing an 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 ten (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 one hundred percent (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 five (5) years for the provision of Affordable Housing within the same administrative district the Ipswich Borough District) and

**Commented [KH21]:** ESC don't have SE - remove reference to ESC Shared Equity Dwelling

**Commented [EO22R21]:** IBC comment: Shared Equity does form part of IBC's policy requirement and if SE dwellings are provided on site, IBC will require those to be transferred to a Registered Provider and not sold direct to the public by the Developer.



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**

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

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

## **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 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.
- 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 75% of the Dwellings on that Phase or prior to first Occupation of any of the Dwellings immediately adjacent to the Open Space on that Phase, wherever is sooner, in accordance with the Open Space Specification as approved by the Relevant Council.
- 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 the Owners covenant that they shall:
  - 4.1 Not dispose of any of the Dwellings:
    - 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.

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

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

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

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

7.3 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.

8 Any transfer of any Open Space pursuant to paragraph 2 above shall be in accordance with the following terms (unless otherwise agreed in writing between the Owners and the Relevant Council):

8.1 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;

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

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

8.4 with vacant possession;

and the Owners shall furnish a copy of the transfer referred to in paragraph 3 above to the Relevant Council

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

9.1 Create or engage a Management Company; and

9.2 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).

10 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 Phase until the RAMS Mitigation Contribution for that Phase has been paid to the Relevant Council.

### **Part 4 – Healthcare Contribution**

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

- 1 Not to Occupy any Dwellings on a Phase until 50% of the Healthcare Contribution for that Phase has been paid to IBC.
- 2 Not to Occupy more than 50% of the Dwellings on a Phase until the balance of the Healthcare Contribution for that Phase has been paid to IBC.

**Commented [JM23]:** IBC to confirm triggers please. Appellant has suggested 50% prior to first occupation with balance prior to 50% occupations which seems reasonable.

### **Part 5 – Custom and Self-build**

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

- 1 Custom and Self-build Marketing Strategy:
  - 1.1 Unless otherwise agreed in writing, the Owner will provide at least 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;
  - 1.2 The Owners covenant 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;

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

1.4 The Owners 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

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 reasonable satisfaction the Custom and Self-build Plots have been Marketed Appropriately the Owner shall be free to convert the Custom and Self-build Plots to Market Dwellings and/or Affordable Housing (at the election of the Owners).

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

- 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 Owners covenant 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.

**Commented [JM24]: Appellant Comment:** "The Owner covenants that no more than 50% of the Market Dwellings shall be Occupied until the Marketing Period has commenced" deleted. As above, the commencement of the marketing period needs to be agreed via the scheme. A 50% occupation deadline to commence marketing seems arbitrary, particularly as the plots need servicing so may not - as may be agreed via the scheme - be planned to come forward until later phases. This is something to be agreed through the phasing plan and also the marketing scheme.

**Commented [JM25]: ESC Comment:** This election wording to be removed.

**Appellant Response:** This should remain. Ultimately if there is no demand for self-build, then the Owners should decide whether these are affordable or market. It is unreasonable for the Council to insist on affordable, which in turn would lead to an overprovision of affordable housing. I am not aware of any policy basis for this.



- 1.8 The Owners covenant 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.

### **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 Secondary Education Contribution**

- 1.1 To pay 25% of the Secondary Education Contribution for a Phase to the County prior to the Occupation of any Dwellings on a Phase.
- 1.2 Not to Occupy or allow Occupation of any Dwellings on a Phase until 25% of the Secondary Education Contribution for that Phase has been paid to the County.
- 1.3 To pay a further 75% of the Secondary Education Contribution for a Phase to the County prior to the Occupation of 50% of the Dwellings on a Phase (rounded down to the nearest whole Dwelling).
- 1.4 Not to Occupy or allow Occupation of 50% of the Dwellings on a Phase (rounded down to the nearest whole Dwelling) until a further 75% of the Secondary Education Contribution for that Phase has been paid to the County.

#### **2 Sixth Form Contribution**

- 2.1 To pay 25% of the Sixth Form Contribution for a Phase to the County prior to the Occupation of any Dwellings on a Phase.
- 2.2 Not to Occupy or allow Occupation any Dwellings on a Phase until 25% of the Sixth Form Contribution for that Phase has been paid to the County.
- 2.3 To pay a further 75% of the Sixth Form Contribution for a Phase to the County prior to the Occupation of 50% of the Dwellings on a Phase (rounded down to the nearest whole Dwelling).

- 2.4 Not to Occupy or allow Occupation of 50% of the Dwellings on a Phase (rounded down to the nearest whole Dwelling) until a further 75% of the Sixth Form Contribution for that Phase has been paid to the County.

### **3 SEND Contribution**

- 3.1 To pay 25% of the SEND Contribution for a Phase to the County prior to the Occupation of any Dwellings on a Phase.
- 3.2 Not to Occupy or allow Occupation of any Dwellings on a Phase until 25% of the SEND Contribution for that Phase has been paid to the County.
- 3.3 To pay a further 75% of the SEND Contribution for a Phase to the County prior to the Occupation of 50% of the Dwellings on a Phase (rounded down to the nearest whole Dwelling).
- 3.4 Not to Occupy or allow Occupation of more than 50% Dwellings on a Phase (rounded down to the nearest whole Dwelling) until a further 75% of the SEND Contribution for that Phase has been paid to the County.

### **Part 2A – Early Years Facility**

The provisions of this Part 2A of this Third Schedule shall only apply in the event that the Inspector appointed to determine the Appeal finds in his/her Decision Letter that Part 2A of this Third Schedule shall apply, and in the event the Inspector does not so find, the provisions of this Part 2A shall have no effect.

### **1 Notice of the Early Years Facility Land**

- 1.1 The Owners covenant to provide the County with notice in writing of the proposed location of the Early Years Facility Land on the Site at least twenty-five (25) working days prior to the submission of any Reserved Matters Application.
- 1.2 The County covenants to provide written confirmation of acceptance or rejection of the location of the Early Years Facility Land on the Site within twenty-five (25) days of notice being served in accordance with paragraph 1.1 of this Part 2A of the Third Schedule

- 1.3 In the event that written confirmation or rejection in accordance with paragraph 1.2 of this Part 2A of the Third Schedule is not provided by the County to the Owners, it shall be deemed that the location of the Early Years Facility Land is approved
- 1.4 In the event that a Relevant Authority determines a location for the Early Years Facility Land otherwise than as agreed by the County all parties shall use all reasonable endeavours to agree the same with the Relevant Authority.

## **2 Early Years Facility**

- 2.1 The Owners covenant with the County (unless otherwise agreed in writing with the County):
- 2.1.1 To reserve the Early Years Facility Land during the First Option Period.
- 2.1.2 To transfer to the County the Early Years Facility Land following receipt during the First Option Period of written notice from the County that the County requires the Early Years Facility Land and such transfer shall be subject to the County Transfer Terms 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 Facility Land).
- 2.1.3 The Owner shall pay the Early Years Contribution to the County prior to the first Occupation of the 150<sup>th</sup> Dwelling.
- 2.1.4 During the First Option Period and until any transfer to the County Council following receipt of written notice pursuant to paragraph 2.1.2 of this Part 2A of the Third Schedule not to use or allow or permit any works or activities to be carried out on the Early Years Facility Land that may render the Early Years Facility Land unsuitable for use as an Early Years Facility.
- 2.1.5 To allow the County and / or the County Nominee or agents access to the Early Years Facility Land with or without vehicles plant and machinery for the purposes of investigation or verification that the Early Years Facility Land is suitable for use as an Early Years Facility and to verify that the Owners have complied with its obligations to fully service the Early Years Facility Land

PROVIDED THAT in the event that the County have not served written notice in accordance with paragraph 2.1.2 of this Part 2A of the Third Schedule during the First Option Period or the County serve written notice on the Owners at any time that they no longer require the Early Years Facility Land the Owners shall pay the Early Years (Off-Site) Contribution to the County within ten (10) Working Days of the end of the First Option Period and on the date of such payment all obligations in this Part 2A of the Third Schedule shall cease to have any effect and the Owners shall be free to use or dispose of the Early Years Facility Land free of any restriction under this Part 2A.

#### **Part 2B – Early Years Facility**

The provisions of this Part 2B of this Third Schedule shall apply unless the Inspector appointed to determine the Appeal finds in his/her Decision Letter that Part 2A of this Third Schedule shall apply in the alternative, and in the event the Inspector does so find, the provisions of this Part 2B shall have no effect.

#### **1 Notice of the Early Years Facility Land and Election**

- 1.1 The Owners covenant to provide the County with notice in writing at least twenty-five (25) working days prior to the submission of any Reserved Matters Application of the proposed location of the Early Years Facility Land on the Site
- 1.2 The Owners covenant prior to the Commencement of Development to provide the County with notice in writing of whether the Owner elects to offer the Early Years Facility Land first to the County or an Operator and for the avoidance of doubt such election will not require the approval of the County
- 1.3 The County covenants to provide written confirmation of acceptance or rejection of the location of the Early Years Facility Land on the Site within twenty-five (25) days of notice being served in accordance with paragraph 1.1 of this Part 2B of the Third Schedule
- 1.4 In the event that written confirmation or rejection in accordance with paragraph 1.2 of this Part 2A of the Third Schedule is not provided by the County to the Owners, it shall be deemed that the location of the Early Years Facility Land is approved

- 1.5 In the event that the local planning authority determines a location for the Early Years Facility Land should be otherwise than agreed by the County all parties shall use all reasonable endeavours to agree subject always to the provisions of clause 13

## **2 Early Years Facility – County Transfer**

- 2.1 In the event that the Owners elect to transfer to County pursuant to paragraph 1.1.2 of Part 2B of the Third Schedule the following provisions shall apply (unless otherwise agreed in writing with the County):

2.1.1 The Owners covenant with the County as follows:

- 2.1.1.1 To reserve the Early Years Facility Land for the duration of the First 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 Facility Land that may render the Early Years Facility Land unsuitable for use as an Early Years Facility
- 2.1.1.2 To transfer to the County the Early Years Facility Land prior to the Occupation of 150 Dwellings following receipt during the First Option Period of written notice from the County that the County requires the Early Years Facility Land and such transfer shall be subject to the County Transfer Terms 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 Facility Land)
- 2.1.1.3 On the date that the Early Years Facility Land is transferred to the County in accordance with paragraph 2.1.1.2 of this Part 2B the Owner shall pay the Early Years Contribution.

2.1.1.4 To allow the County and / or the County Nominee or agents access to the Early Years Facility Land for the duration of the First Option Period with or without vehicles plant and machinery for the purposes of investigation or verification that the Early Years Facility Land is suitable for use or development of an Early Years Facility and to verify that the Owners have complied with its obligations to fully service the Early Years Facility Land

2.1.2 In the event that the County have not served written notice in accordance with paragraph 2.1.2 of this Part 2B of the Third Schedule during the First Option Period or the County serve written notice on the Owners at any time that they no longer require the Early Years Facility Land then the Owners shall pay the Early Years (Off-Site) Contribution to the County within ten (10) Working Days of the end of the First Option Period or the date of the notice from County that they no longer require the Early Years Facility Land (as relevant) and on the date of such payment the obligations in this Part 2B of the Third Schedule shall cease to have any effect and the Owners shall be free to use or dispose of the Early Years Facility Land free of any restriction.

2.2 In the event that the Owners elect to transfer or lease to an Operator pursuant to paragraph 1.1.2 of Part 2B of the Third Schedule, the Owners covenant with the County (unless otherwise agreed in writing with the County):

2.2.1 The Owners will submit the Marketing Scheme to the County for approval prior to first Occupation of any Dwelling

2.2.2 The Owners will undertake marketing in accordance with the approved Marketing Scheme for a period of three (3) months and:

2.2.2.1 In the event that no interest has been forthcoming from potential Operators:

2.2.2.1.1 where the Owners have elected to offer the Early Years Facility Land first to an Operator in accordance with paragraph 1.1.2 of Part 2B of the Third Schedule, then paragraph 2.1.1 shall apply as if references to 'First Option Period' were to 'Second Option Period'; or

2.2.2.1.2 where the County have been offered the Early Years Facility Land in accordance with paragraph 2.1 and refused not accepted the offer or have served written notice on the Owners at any time that they no longer require the Early Years Facility Land then the obligations in this Part 2B of the Third Schedule shall cease to have any effect and the Owners shall be free to use or dispose of the Early Years Facility Land free of any restriction under this Part 2B of the Third Schedule;

2.2.2.2 In the event that interest from a potential Operator is forthcoming pursuant to the marketing undertaken in accordance with paragraph 2.2.4 of this Part 2B of the Third Schedule, the Owners:

2.2.2.2.1 shall notify the County of the identity of the Operator:

2.2.2.2.2 shall submit the Early Years Facility Scheme to the County for approval prior to the Occupation of no more than 60 Dwellings;

2.2.2.2.3 shall submit a Reserved Matters Application (or application for planning permission) for the Early Years Facility prior to the Occupation of no more than 90 Dwellings;

2.2.2.2.4 shall Commence development of the Early Years Facility in accordance with the approved Early Years Facility Scheme prior to the Occupation of no more than 150 Dwellings;

2.2.2.2.5 shall not Occupy or allow Occupation of no more than 250 Dwellings unless and until the Early Years Facility is operational;

2.2.2.2.6 shall only transfer the Early Years Facility in accordance with the Operator Transfer Terms; and



2.2.2.2.7 covenants that in the event an Operator closes or ceases to operate the Early Years Facility for more than a 3 month period after completion of the Early Years Facility (other than in circumstances it would be unlawful for the Early Years Facility to be operated by the Operator), the Owner of the Early Years Facility Land must notify the County and offer to transfer the Early Years Facility Land to County or their nominee on the County Transfer Terms PROVIDED THAT if such offer is not accepted by the County within one (1) year, the obligations in this Part 2B of the Third Schedule shall cease to have any effect and the Owner of the Early Years Site shall be free to use or dispose of the Early Years Facility Land free of any restriction under this Part 2B of the Third Schedule.

- 2.3 The Owners may at any time prior to the Occupation of 125 Dwellings serve written notice on the County offering a transfer of the Early Years Facility Land and if the County accepts such transfer within six (6) months the Owners shall transfer the Early Years Facility Land to the County on the County Transfer Terms 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 Facility Land)
- 2.4 In the event that the Early Years Facility Land is transferred to the County in accordance with paragraph 2.3 of this Part 2A, the Owner shall pay the Early Years Contribution on the date of the transfer of the Early Years Facility Land or prior to the first Occupation of the 150<sup>th</sup> Dwelling whichever is the earlier PROVIDED THAT the Early Years Contribution shall only be payable in the event that no Early Years Facility has been constructed provided or its provision or construction committed to by way of contract by such time
- 2.5 The County covenants to provide written confirmation of acceptance or rejection of the Marketing Scheme within two (2) months of notice being served in accordance with paragraph 2.2.1 of this Part 2B of the Third Schedule
- 2.6 In the event that written confirmation or rejection in accordance with paragraph 2.5 of this Part 2B of the Third Schedule is not provided by the County to the Owners, it shall be deemed that the Marketing Scheme is approved

- 2.7 The County covenants to provide written confirmation of acceptance or rejection of the Early Years Facility Scheme within two (2) months of submission to the County in accordance with this Part 2B
- 2.8 In the event that written confirmation or rejection in accordance with paragraph 2.7 of this Part 2B of the Third Schedule is not provided by the County to the Owners, it shall be deemed that the Marketing Scheme is approved

### **Part 2C – Early Years Facility**

#### **1 County Transfer Terms**

- (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 Facility Land for use and/or development of an Early Years Facility 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 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 Facility 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 Facility 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 Facility Land) within a reasonably agreed timescale (dependent on the proposed date of transfer of the Early Years Facility 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 no less than 90 places (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;

- (e) The Early Years Facility Land to be otherwise in accordance with the Land Specification;
- (f) The transfer shall include the right to grant a lease of or dispose of the Early Years Facility Land in whole or in part to a third party nominated by the Council ("County Nominee").

## **2 Operator Transfer Terms**

- (a) The Owners shall transfer the fee simple estate to the Operator which shall substantially be in accordance with the Land Specification and otherwise be free from encumbrances which would prevent the transfer and use of the Early Years Facility Land for use and/or development of an Early Years Facility and such ancillary uses as the Council may reasonably require including but not limited to use classes F1(a) F2(b) and F2(c);
- (b) The transfer shall include all easements and rights necessary in relation to pedestrian cyclist and vehicular access via a road which is 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 Facility Land until such time as such road may be adopted by the County as a highway maintainable at the public expense;
- (c) The Early Years Facility 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 Facility Land) within a reasonably agreed timescale (dependent on the proposed date of transfer of the Early Years Facility 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 no less than 90 places (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) The Early Years Facility Land to be otherwise in accordance with the Land Specification;
- (e) The transfer shall include an obligation on the transferee to notify the County of any closure or cessation of use of the Early Years Facility for a period of (1) month or more.
- (f) The transfer shall include an obligation on the transferee that in the event an Operator closes or ceases to operate the Early Years Facility for more than a 3 month period after completion of the Early Years Facility (other than in circumstances it would be unlawful for the Early Years Facility to be operated by the Operator), the Owner of the Early Years Site must notify the County and offer to transfer the Early Years Site to County or their nominee on the County Transfer Terms PROVIDED THAT if such offer is not accepted by the County within one (1) year, such obligation shall cease to have effect

## **Part 2D – Land Specification**

The Early Years Facility Land shall be:

- suitable for the construction of high quality education buildings and outside spaces
- contamination free and covered with at least 30cm of clean free draining topsoil
- accessible from suitable public Highways
- served by safe direct walking & cycling routes
- protected from flooding and incorporated into a suitable SUDS system serving the Site
- outside the cordon sanitaire of any sewage plant
- suitably fenced including gates at all proposed access points

The Early Years Facility Land shall be free of/from:

- encumbrances
- items or structures of archaeological interest subject however to the findings of an archaeological investigation carried out by the Owners prior to the transfer of the Early Years Facility Land
- protected species or habitats of special interest
- soil and water table contamination
- radiation or potential sources thereof
- invasive plants such as Japanese Knotweed
- buildings and other surface structures
- pipes, conduits, chambers and or cables (including any high pressure pipes or high voltage cables within ten meters of the Early Years Facility Land) subject to those services that are required to serve the Early Years Facility Land.
- ponds, ditches or water courses
- foundations, fuel tanks and other buried structures
- spoil and fly tipping
- void spaces including wells, sumps and pits
- any material that could negatively impact on the buildings and or their occupants

The Early Years Facility Land shall not be crossed or affected by:

- public rights of way or access wayleaves
- power-lines
- gas mains
- water or sewage pipes
- ground gasses and or vapours

- an unreasonable level of light pollution such that the Early Years Facility Land is unsuitable for the provision of the Early Years Facility

## **Part 2E – Build Specification**

### Internal area

Ratio of play space required per child

- 3.5 sq m 0-2 yrs
- 2.5 sq m 2-3yrs
- 2.3 sq m 3-5yrs

based on the net useable area and must not include storage areas, thoroughfares, dedicated staff areas, cloakrooms etc.

Acoustics in main room must always be considered in design.

There should be adequate space to give scope for free movement and well-spread activities. The area should be suitable for sand and water play, painting and other creative activities. Floor covering should therefore be suitable and easy to clean.

- One adult and one child height sink with worktops and cupboards should be situated in this area for messy play.
- Children can flow freely inside and outside. Children should therefore be able to manage doors safely and independently to ensure that heat is retained on cold days.
- Access directly off the main play space to outside play space with canopy for free-flow play if budget allows.
- The cloakroom area and toilets should be accessible from the main play area so that children can get to them easily.
- Wall space for displays - Display facilities are important, and where appropriate the walls should be covered with pinboard at eye level for an under-5s, with the exception of the pinboards in the foyer which should be at adult height for staff/parents.
- There should be sufficient windows, giving adequate natural lighting, ensuring daylight is the main source of light. Windows however should be sighted in areas which do not interrupt wall play space which could be used to create areas or displays. Skylights and light from outside doors are preferred.
- Vinyl floor covering throughout. Possible carpet in the office.
- Barrier matting at external doors.

- The main play space is to have an area for children who wish to relax, play quietly or sleep. This area can be appropriately zoned with the support of the Early Years and Childcare team and does not need to be considered at the design stage
- Small lobby/cloakroom for children's coats and belongings. (Coat pegs should be supplied at child height).
- Resource Storage; 1 storage cupboard with shelving off the main play space.
- Domestic storage; One lockable cupboard large enough to house the mop, Hoover cleaning materials etc.
- Guidance required from Vertas – a lockable cleaners/chemical store will be needed, and an area for de-boxing supplies before entering the main kitchen area.
- Toilets: 1 toilet and hand basin per 10 children. Staff/Accessible WC. (Two sinks to meet DDA.) The store and toilets should lead directly off from the playroom so that staff can supervise and children can access easily when playing outside, and lead directly from wet/messy activities area. Safety flooring is required. The design of the partitions should allow some privacy for children and space for adults to give assistance, yet permit adequate supervision. Space for a free standing nappy changing table should be allowed for in the toilet area.
- Office space large enough to provide 2 desks for administrative tasks. The office space needs to be located so that it looks into the front foyer. Door from office leads into front foyer. Desks need to be arranged to provide sufficient space for a lockable filing cabinet underneath and full wall space available for shelving for files.
- Staff room to include break-out area: Power sockets for a kettle etc. Space for table and 2 chairs. There needs to be space and power supply for a fridge and provision for small appliance. There must be room for staff lockers. One sink. Kitchen to include drawer for cutlery and tea towels etc.
- **Kitchen space**
  - Space and power supply for:
    - 2 x domestic under counter fridges,
    - 1 x double domestic oven (electric) 900w , (could be gas however keep to electric if gas causes implications with extraction)
    - Extraction canopy
    - 1 x entry level commercial undercounter dishwasher
    - 1 x domestic chest freezer – with stainless steel top (to double up as a prep area)
    - 1 x wall mounted fly killer.
  - The work room/kitchen area should be fitted with a range of domestic kitchen units with a hot and cold water supply. Units should be at adult height and include:

- Two sinks, one for food prep and one for washing up (consider a s/steel commercial type unit)
  - Plus a handwash sink.
  - Worktop, cupboards under and wall mounted. Drawers should be included in the under-worktop units, in particular deep drawers for cooking utensils.
  - Bin space
  - Work bench with chef drawer
  - Wall cupboard
  - Services for washing machine in cleaners cupboard (if there is a requirement for washing babies nappies, this can't be done in the kitchen due to conflict with food prep).
  - Door security required between playroom and kitchen – i.e. keypad or dual handle – (within restrictions from B.Reggs/Fire/DDA..
  - No need for a radiator within the kitchen area. – heat is not required and it takes up valuable wall space.
- Whiteboard. This should be located on a wall where group work is undertaken. E.g area within the room where the children will sit to listen to stories.
  - Dado trunking should conceal cables. The trunking must be positioned with consideration given to height. Child safety considered, and positioning of furniture will impact on the height of trunking.
  - Duct provided between early years building and main site to allow for any cables to run between the two buildings.

#### Security

- CCTV external to and within lobby area - no requirement for other areas inside building.
- External lobby door to be secure with intercom to office.

#### External Areas:

- Allow between 5 and 9 sqm per child.
- Good drainage for outdoor area
- Secure fencing around the children's play area.
- Front entrance area should be designed on an individual basis, depending on the location and site.
- Outside play area – storage for outdoor resources.
- Canopy on the side of the portacabin where children free-flow access the outside from.
- External lighting, especially near doorways and storage areas.
- Lockable outside tap.



- Lockable outside power sockets with waterproof cover.
- Car Parking, in accordance with planning but ideally there should be six parking spaces for sole use by the pre-school to include accessible spaces.
- Electronic vehicle control to vehicular gate – two separate systems required, one for pre-school staff/visitors, one for school staff/visitors. Staff to gain entry via ID card/badge. Visitors to press relevant buzzer (one each for pre-school/school) linked to respective offices where admin staff can grant access to barrier).
- If a bike storage is a requirement from planning, a discussion with early years regarding the siting and type to be used.

Where practicable, the play area should also include as many of these features as is possible:

- Hard area – this area needs to be free from obstacles so that children can move freely when on a wheeled toy with a trailer. The shape should be informal and interesting rather than regular.
- Grassed area – needs varying gradients – low mound to climb and roll down plus a flat area and hollows.
- Bark or other loose material pathways – can add interest and texture and are useful in areas where wheeled toys are to be discouraged.
- Hard paved pathways – enables children to ride wheeled toys along them.
- Places to hide and be quiet – enables children to reflect, read and have quiet time
- Digging patch – for children to use as they choose
- Raised planters – for children to plant and grow flowers/vegetables
- Habitat area – where animals, insects and birds will be found.
- Planting – trees to provide natural shade. Shrubs and plants with different smells, colours and heights to be included. All to be 'child friendly'.

#### General

- All utilities to be independent to the building. If this is not possible all controls must be independent of any other building on the site with separate meters.
- Heating: to ensure the building will be maintained at a temperature which ensures the comfort of the children and staff, including non-mobile children. The heating supply should be cost effective to run and if possible renewable energy.
- Plenty of power sockets and ICT points around the building for flexibility of space.
- Security – Intruder Alarm – Key Pads as appropriate and in discussion with early years on a site by site basis.

Security/intruder alarm – throughout whole building not just entrance areas and main circulation

- Fire Alarm – required for the building. Smoke alarms for all rooms etc. Consideration of where the fire extinguishers and fire blankets would be stored.
- Co2 detector.
- Letterbox.
- Bin Store – which must not be accessible to children.
- Door Bell.

Please consider the following:

Design considers ways to minimise indoor and outdoor hazards.

- Clearly defined emergency exits.
- Facilities, equipment and access to the premises are suitable for children and adults with disabilities.
- Free flow play will be supported by the design.

### **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 the Libraries Contribution for a Phase to the County prior to the Occupation of the first Dwelling within that Phase and FOR THE AVOIDANCE OF DOUBT no Libraries Contribution is payable in relation to an ESC Phase
- 2 Not to Occupy or allow Occupation of any Dwellings on a Phase until the Libraries Contribution for that Phase has been paid to the County 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 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 (1<sup>st</sup>) Dwelling and thereafter to pay a further Travel Plan Evaluation and Support Contribution on each anniversary of the date of the first (1<sup>st</sup>) 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 (1<sup>st</sup>) 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 (1<sup>st</sup>) Dwelling Occupation until the relevant payment has been made each year in accordance with paragraph 1 of this Part 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 Occupation of any Dwelling.
- 2 Not to Occupy or allow the Occupation of any Dwelling until the Traffic Regulation Order Contribution has been paid to the County
- 3 To pay the PRow Contribution to the County prior to the Occupation of any Dwelling.
- 4 Not to Occupy or allow the Occupation of any Dwellings until the PRow Contribution has been paid to the County
- 5 To pay the Ipswich Strategic Planning Area Contribution to the County prior to the Occupation of any Dwelling
- 6 Not to occupy or allow the Occupation of any Dwellings until the Ipswich Strategic Planning Area Contribution has been paid to the County

#### **Part 6 – Passenger Transport**

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

- 1 The Owners covenant to provide the County with notice in writing no later than first Occupation of the Development as to whether the Owners elect to:
  - 1.1 Pay the Passenger Transport Contribution to the County in accordance with paragraph 2 of this Part 6 of the Third Schedule; OR
  - 1.2 Procure the Bus Service in accordance with paragraph 3 of this Part 6 of the Third Schedule
- 2 In the event the Owners serve notice in accordance with paragraph 1.1 of this Part 6 of the Third Schedule:

- 2.1 To pay one sixth (1/6) of the Passenger Transport Contribution to the County prior to the first Occupation of any Dwelling and thereafter to pay a further one sixth (1/6) of the Passenger Transport Contribution prior to each anniversary of the date of the first (1st) Dwelling Occupation for a period of five (5) years.
- 2.2 Not to Occupy or permit the first (1st) Dwelling Occupation until the first one sixth (1/6) of the Passenger Transport Contribution has been paid to the County
- 2.3 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 2.1 of this Part 6A of this Schedule

and for the avoidance of doubt, the provisions of paragraph 3 of this Part 6 of the Third Schedule shall not apply

- 3 In the event the Owners serve notice in accordance with paragraph 1.2 of this Part 6 of the Third Schedule:

- 3.1 Not to Occupy more than 100 Dwellings on the Development until:
  - 3.1.1 the Bus Service Scheme has been submitted to and approved by the County in writing; and
  - 3.1.2 a Bus Service Agreement has been entered into and a copy provided to the County PROVIDED THAT the Owner shall not be required to disclose any confidential or commercially sensitive information contained within the Bus Service Agreement save to the extent that information relates to the Bus Service Scheme approved in accordance with paragraph 3.1 of this Part 6 of the Third Schedule; and
  - 3.1.3 the Bus Service is operational in accordance with the Bus Service Scheme.

and for the avoidance of doubt, the provisions of paragraph 2 of this Part 6 of the Third Schedule shall not apply

## **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 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

7 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:-

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

7.2 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) 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 three (3) 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 the Ipswich Strategic Planning Area 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.
- 4 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 (other than the Ipswich Strategic Planning Area 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.
- 5 In the event that the Early Years Land has been transferred to the County in accordance with Part 2A or Part 2B of the Third Schedule and within three (3) years of the date of such transfer no Early Years Facility has been committed to be delivered (by way of contract), the County shall:
  - 5.1 offer to transfer the Early Years Land to the Owner free from encumbrances  
PROVIDED THAT the County will not be required to remove or decommission

any existing buildings and related works and the Owner is under no obligation to accept the offer; and

- 5.2 repay to the person who made the payment of the Early Years Contribution the difference between the Early Years Contribution and the Early Years (Off-Site) Contribution as at the date of payment together with any interest accrued at the Bank of England Base Rate, compounding annually at financial year end

**SIXTH SCHEDULE**

**Nominations Agreement**

Commented [JM26]: IBC and ESC to provide please.

## **SEVENTH SCHEDULE**

### **Local Connection Cascade**

#### **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 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 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 1.4 above the Affordable Dwelling shall be allocated to person nominated by ESC who
  - a. 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
  - b. 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
  - c. 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 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.
- 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.

**[IBC Dwellings]**

Commented [JM27]: IBC to provide please.

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

\_\_\_\_\_  
Authorised Officer  
\_\_\_\_\_

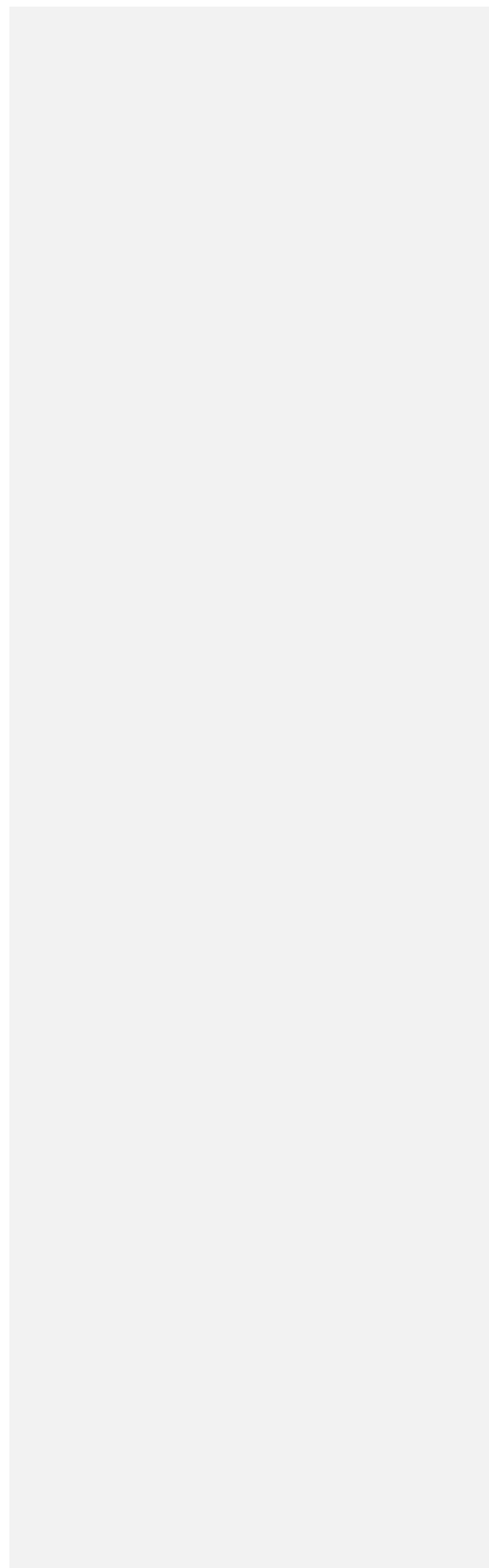
**THE COMMON SEAL** of                    )  
**IPSWICH BOROUGH COUNCIL**                    )  
was hereunto affixed to this                    )  
Deed in the presence of:                    )

\_\_\_\_\_  
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

**Annex A**

Dwelling size	Plot Value (£)
4 bed house	160,000
3 bed house	135,000
2 bed house	115,000
2 bed flat	70,000
1 bed flat	50,000

**Annex B**

Location	Scheme	Unit	Quantity	Cost	
Tuddenham Avenue	Continuous footway	m <sup>2</sup>	39	£	17,861.97
Gainsborough Road	Continuous footway	m <sup>2</sup>	28	£	12,823.98
Vermont Crescent	Continuous footway	m <sup>2</sup>	33	£	15,113.97
Vermont Road	Continuous footway	m <sup>2</sup>	31	£	14,197.98
Constable Road	Continuous footway	m <sup>2</sup>	31	£	14,197.98
Hervey Street	Continuous footway	m <sup>2</sup>	27	£	12,365.98
Christchurch Street	Continuous footway	m <sup>2</sup>	45	£	20,609.97
Constable Road (Service Road)	Continuous footway	m <sup>2</sup>	30	£	13,739.98
Tuddenham Road (near Belvedere Road)	Zebra crossing	-	1	£	132,130.80
Westerfield Road (near CCP)	Zebra crossing and footway improvements	-	1	£	186,882.90
Cemetery Lane improvements	Cycle lane widening	m <sup>2</sup>	15	£	8,505.00
Cemetery Lane improvements	Speed limit	-	-	£	12,344.50
Tuddenham Road	Traffic calming			£	32,285.90
TOTAL				£	493,060.90

**Annex C****Table A**

	Sixth Form Contribution	SEND Contribution
1 bed flat	£420.63	£173.41
2+ bed flat	£476.71	£720.08
1 bed house	£673.01	£637.78
2+ bed house	£1,542.31	£1,548.90

**Table B**

	Sixth Form Contribution	SEND Contribution
1 bed flat	£226.22	£151.21
2+ bed flat	£256.38	£688.70
1 bed house	£361.94	£597.99
2+ bed house	£829.46	£1,453.68

