Dated 30 JUNE **2020**

(1) South Holland District Council

and

(2) Churchfield Developments Ltd

PLANNING OBLIGATION BY DEED
Section 106 of the Town and Country Planning Act 1990

Relating to land at the former South View Primary School, Albion Street, Crowland

Certified as a true copy
On behalf of South Holland/ Breckland District Council

South Holland District Council
Council Offices
Priory Road
Spalding
PE11 2XE

SHDC Reference: LD/H02-0075-19

Date 30 JUNE 2020

BETWEEN

(1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and

(2) **CHURCHFIELD DEVELOPMENTS LTD** (Company Registration number 06040924) of 15 Station Road, St. Ives, Cambridgeshire, PE27 5BH ("the Owner");

INTRODUCTION

(A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.

(B) The Owner is the freehold owner of the Land registered under title number LL383951.

(C) Woodgate Developments Limited (Company Registration number 09003673) whose registered office is Thomas Quinn, The Station House, 15 Station Road, St. Ives, Cambridgeshire, PE27 5BH have via their agent submitted the Section 73 Application to remove condition 4 of the Original Planning Permission.

(D) The Owner and the Council have agreed to enter into this Deed to secure the onsite provision of affordable housing in lieu of condition 4 on the Original Planning Permission. The parties acknowledge that the obligations in this Deed will satisfy in full the requirements of condition 4 of the Original Planning Permission.

(E) The parties agree that the planning obligations contained in this Deed are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

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

"Act"	means the Town and Country Planning Act 1990 as amended

"Additional Assessment Information"	means such additional information as the Council may reasonably require an Eligible Purchaser to provide to enable the Council to make an assessment of whether that Eligible Purchaser meets the Occupation Criteria where the Assessment Information already provided by that Eligible Purchaser is insufficient for whatever reason **AND FOR THE AVOIDANCE OF DOUBT** the Council may seek Additional Assessment Information more than once and may seek such information either verbally or in writing
"Affordable Dwellings"	means those Dwellings within the Development comprising Affordable Housing being 5 (five) of the total number of Dwellings to be provided as part of the Development
"Affordable Housing"	means affordable housing as described in Annex 2 of the National Planning Policy Framework dated February 2019, or any Planning Policy Statement, Guidance Notes or Circulars which may amend, supplement or supersede
"Affordable Housing Contribution"	means a financial contribution calculated in accordance with the Affordable Housing Contribution formula set out at Annex A Part 1 or Part 2 to this Deed
"Affordable Housing Provider"	means (a) a body whose function or aim is to provide and manage Affordable Housing (including Affordable Housing of the type and amount proposed within the Development) (b) a provider (pursuant to Part 2 of the Housing and Regeneration Act

	2008) registered with Homes England or (c) an alternative affordable housing provider (including but not limited to a housing trust or company, a community land trust or an almshouses society) which has been approved by the Council in writing (such approval not to be unreasonably withheld or delayed)
"Affordable Housing Scheme"	means the scheme submitted to and approved in writing by the Council detailing the Affordable Housing to be provided as part of the Development and consisting of two (2) one-bedroom houses and one (1) two-bedroom house for Rented Housing and one (1) two-bedroom house and one (1) three-bedroom house for Discount Market Sale Dwelling or such other scheme for Intermediate Dwellings as may be agreed in writing by the Council
"Affordable Rent Dwelling"	means an Affordable Dwelling rented to an Eligible Household by a local authority or an Affordable Housing Provider subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable) and where the rent and service charge must not exceed the local housing allowance for the relevant area which is reviewed annually and "Affordable Rent" shall be construed accordingly
"Application"	means the application for Original Planning Permission for the Development or the Section 73 Permission

"Assessment Information"	means such information as the Council may require an Eligible Purchaser to provide in such format as the Council may require to enable the Council to make an assessment of whether the Eligible Purchaser meets the Occupation Criteria
"Chargee"	means any mortgagee or chargee of the Affordable Housing Provider or any Affordable Housing Unit or any receiver (including an administrative receiver, any fixed charge receiver and/or any receiver appointed under the Law of Property Act 1925) or any administrator 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 (including but not limited to a "Housing Administrator" as defined in Section 95 of the Housing and Planning Act 2016) howsoever appointed or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security
"Commencement of Development"	means 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 access, site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing

	ground conditions, remedial work in respect of any contamination or other adverse conditions, the laying or diversion of services, the erection of hoardings or other temporary means of enclosure and the temporary display of site notices or advertisements
"Commencement Notice"	means written notice to the Council of the intended date of Commencement of Development
"Development"	means the residential development of the Land for 22 Dwellings, pursuant to the Planning Permission
"Discounted Market Sale Dwelling"	means an Affordable Dwelling to be sold at a price not exceeding the Discount Market Price in accordance with the provisions of Schedule 3
"Discounted Market Sale Price"	means 80% of the Open Market Value of the relevant Discount Market Sale Dwelling
"Discounted Value"	means 20% of the Open Market Value of the relevant Discount Market Sale Dwelling
"Dwelling"	means any unit of residential accommodation constructed pursuant to the Planning Permission
"Eligible Household"	means a household whose housing needs are not met by the market at a cost low enough for them to afford determined with regard to local incomes and local house prices and who will be proposed as the owners and/or occupiers of an Affordable Dwelling in accordance with a Nomination Agreement **AND FOR THE AVOIDANCE OF DOUBT** no national or local

	prioritisation criteria shall apply in respect of Intermediate Dwellings where those provisions would prevent it from being included on Homes England's National Affordable Housing Programme or any successor programme approved by the Council in writing
"Eligible Purchaser"	means a purchaser of a Discounted Market Sale Dwelling as approved in writing by the Council within 10 working days of a successful application (such approval not to be unreasonably withheld or delayed)
"Homes England"	means the executive non-departmental public body, sponsored by the Ministry of Housing, Communities & Local Government and trading as Homes England or such successor body for the time being having or being entitled to exercise the power to regulate affordable housing providers now conferred on such organisation under the Housing and Regeneration Act 2008 or any legislation replacing or amending the same
"Index"	means All in Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or if such index no longer exists such other index as is agreed between the parties
"Interest"	means interest at the base rate of Lloyds Bank PLC plus 4%
"Intermediate Dwellings"	means homes for sale or rent provided at a cost above social rent but below market

	levels to Eligible Households whose needs are not met by the market details of which to be agreed with the Council. These can include shared equity (shared ownership and equity loans), discounted market sales and Intermediate Rent Dwellings, but not Affordable Rent Dwellings
"Intermediate Rent Dwelling"	means a rent equivalent to 80% of the local market rent exclusive of any service charge and where the rent and service charge must not exceed the local housing allowance for the relevant area which is reviewed annually
"Land"	means the land as described in Schedule 1 against which this Deed may be enforced as shown edged red on the Plan
"Market Dwelling"	means a dwelling forming part of the Development which is general market housing for sale or rent on the open market and which is not Affordable Housing
"Marketing Scheme"	means a scheme requiring the marketing of the Discounted Market Sale Dwellings via two local estate agent to be appointed by the seller at their discretion
"the Nomination Agreement"	means an agreement negotiated between the Council and the Affordable Housing Provider which guarantees the Rented Housing will be let on the Council's Housing Register substantially in the form set out and attached hereto at Schedule 5
"Occupation" and "Occupied"	means 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.
"Occupation Criteria"	means such person or persons whose housing needs are not met by the market at a cost low enough for them to afford determined with regard to local incomes and local house prices
"Open Market Value"	means price at which the relevant interest in the relevant Dwelling as a whole should exchange between a willing seller and a willing buyer in an arm's length transaction after proper marketing and with both parties acting knowledgeably prudently and without compulsion and disregarding the obligations and restrictions contained in this Deed and which (for the purposes of this Deed) shall be one (1) valuation carried out by an independent RICS valuer or the average valuation from three (3) local estate agents
"Original Planning Permission"	means the planning permission issued by the Council and given reference H02-0405-17
"Plan"	means the plan attached to this Deed being the location plan submitted with the Application
"Planning Permission"	means either the Original Planning Permission or the Section 73 Permission
"Practical Completion"	means the completion of a Dwelling to a standard which is wind and watertight and fit for its intended use in terms of heating,

	plumbing, electrics and sanitation and "Practically Complete" shall be construed accordingly and a completion certificate issued pursuant to the then current Building Regulations shall be conclusive evidence that a Dwelling is practically complete.
"Protected Person"	means a person who: 1.1 has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Dwelling; 1.2 has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling; 1.3 has been granted a shared ownership lease by the Affordable Housing Provider (or similar arrangement where a share of the Affordable Dwelling is owned by the tenant and a share is owned by the Affordable Housing Provider or other body or organisation) in respect of a particular Affordable Dwelling and the tenant has subsequently purchased from the Affordable Housing Provider all the remaining shares so that the tenant owns the entire freehold or

	leasehold of the Affordable Dwelling.
"Rented Housing"	means dwellings which are available to rent from an Affordable Housing Provider which will include either Affordable Rent Dwellings or Intermediate Rent Dwellings or Social Rented Housing
"Section 73 Application"	means the application under section 73 of the Act received by the Council on 22 January 2019 for the removal of condition 4 attached to the Planning Permission and allocated the Council's reference number H02-0075-19
"Section 73 Permission"	means the planning permission issued pursuant to the Section 73 Application
"Shared Ownership Dwellings"	means dwellings purchased on a Shared Ownership Lease
"Shared Ownership Lease"	Means a lease in a form approved by Homes England or where there is no such form in a form approved by the Council. Such lease to provide for the following: - not more than 75% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Affordable Housing Provider - power to the purchaser to increase their ownership to 100% if they so wish - an initial rent not exceeding 2.75% of the value of the equity retained by the Affordable Housing Provider

	subject to annual increases not exceeding the Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England
"Social Rented Housing"	means homes owned by either the Council or an Affordable Housing Provider which are let at low rents determined by government guidelines through the national rent regime or its equivalent successor document on a secure basis to those persons who are in housing need.
"Working Days"	means any day other than a Saturday Sunday or public or bank holiday in England

2. CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced

against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 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.

2.6 References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Land or any part thereof and in the case of the Council, successors to its functions.

3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and Section 93 of the Local Government Act 2003 and all other enabling powers with the intent that the covenants and obligations shall run with the Land.

3.2 The covenants, restrictions and obligations under this Deed are planning obligations pursuant to Section 106 of the Act and may be enforced by the Council.

4. CONDITIONALITY

4.1 This Deed and the obligations contained herein is conditional upon

(a) the grant of the Planning Permission; and

(b) the Commencement of Development

SAVE FOR the provisions of Clauses 8.2, 8.4 and 10 (legal costs, local land charge and change of ownership clauses) and any other relevant provisions which shall come into effect immediately upon completion of this Deed.

5. THE OWNER'S COVENANTS

5.1 The Owner covenants with the Council as set out herein

6. THE COUNCIL'S COVENANTS

6.1 The Council covenants to comply with its obligations as set out herein.

7. NOTICES AND RECORD KEEPING

7.1 Any notices required to be served pursuant to this Deed shall be deemed to have been properly served if delivered by hand or sent by recorded or special delivery to the principal address or registered office (as appropriate) of the relevant party or other such other address as may be notified by one party to other from time to time.

7.2 The Owner shall serve the Commencement Notice upon the Council at least twenty (20) Working Days prior to the Commencement of the Development.

8. MISCELLANEOUS

8.1 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, powers and duties of the Council under all statutes by-laws statutory instruments orders and regulations in the exercise of the functions as a local authority.

8.2 On completion of this Deed, the Owner shall pay to the Council their reasonable legal costs that have been incurred in the negotiation and completion of this Deed

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

8.4 This Deed shall be registerable as a local land charge by the Council.

8.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.

8.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

8.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) modified by any statutory procedure or expires prior to the Commencement of Development.

8.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after they shall have irrevocably parted with their

entire interest in the Land or part of the Land but without prejudice to liability for any subsisting breach arising in relation to that part prior to parting with such interest.

8.9 This Deed shall not be enforceable against:

8.9.1 owners occupiers or tenants of Dwellings (other than Affordable Dwellings in respect of the obligations contained in paragraph 1 of Schedule 3) nor against those deriving title from them;

8.9.2 any party solely as a result of such party possessing an interest in the Land relating to subsoil of land which has been adopted by the Council or any other relevant public body as maintainable at public expense;

8.9.3 statutory undertakers acquiring an interest in the Land for the purposes of their undertaking;

8.10 The provisions of paragraph 1 of Schedule 3 of this Deed (Affordable Housing) shall not be binding on a Chargee or any persons or bodies deriving title through such Chargee **PROVIDED THAT** the Chargee has complied with the requirements of paragraph 1.18 of Schedule 3 of this Deed.

8.11 Representatives of the Council may enter upon the Land at any reasonable time upon reasonable prior written notice to ascertain whether the terms of this Deed are being or have been complied with.

8.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

9. WAIVER

9.1 No waiver (whether expressed or implied) by the Council or the 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 the Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10. CHANGE OF OWNERSHIP

10.1 The Owner agrees with the Council to give the Council immediate written notice of any change in the ownership of any of its interest in the Land occurring before all the obligations under this Deed have been discharged

such notice to give details of the transferees name and address together with details of the part of the Land disposed of **PROVIDED THAT** this shall not apply in relation to the sale or lease of a single Dwelling

11. INTEREST

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

12. VAT

12.1 Any consideration given under this Deed shall be done in such a way that the VAT liability is borne by the Owner and not the Council.

13. DISPUTE RESOLUTION

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 by agreement between the parties or in the absence of agreement as to the identity of the person 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.

13.2 In the absence of agreement as to the appropriateness of the professional body then such question may be referred by any party to the president for the time being of the Royal Institution of Chartered Surveyors for him to determine the appropriate professional body.

13.3 Any person appointed pursuant to this clause shall act as an expert and his decision shall be final and binding on the parties in the absence of manifest error or fraud.

13.4 The expert's costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

13.5 Any expert shall be appointed subject to the express requirement that a decision is 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 forty (40) Working Days after appointment.

13.6 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten (10) Working Days written submissions and supporting material and each party will be entitled to make a counter written submission on the other party's original submission within a further ten Working Days.

14. JURISDICTION

14.1 This Deed is governed by and interpreted in accordance with the law of England.

15. EXECUTION AND DELIVERY

This Deed is executed as a deed by the parties and is delivered on the date first hereinbefore written

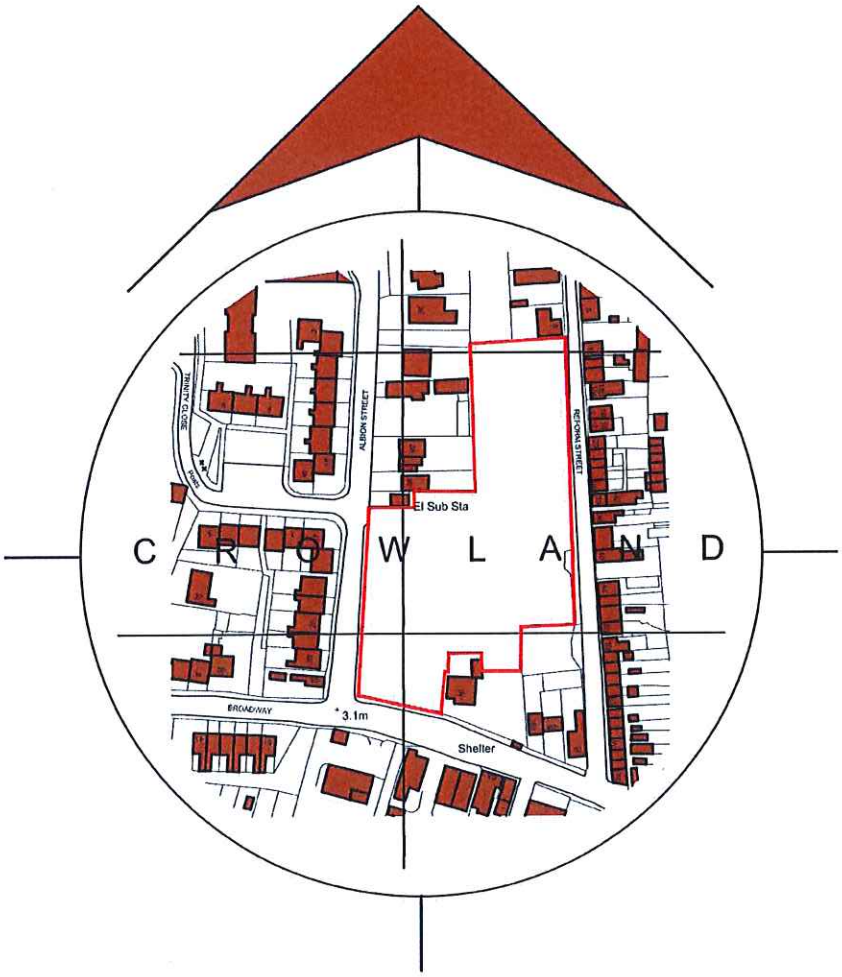
IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

SCHEDULE 1

DETAILS OF THE OWNER'S TITLE, AND DESCRIPTION OF THE LAND

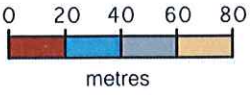
The Land is known South View Primary School, Albion Street, Crowland, Peterborough, PE6 0AN and falling within Title Number LL383951 as shown edged red on the Plan.

SWANN EDWARDS
ARCHITECTURE
Swann Edwards Architecture Limited, Swann Edwards Architecture,
Black Barn, Fen Road, Guyhirn, Wisbech, Cambs. PE13 4AA
t 01945 450694 e info@swannedwards.co.uk w www.swannedwards.co.uk



Location Plan

Scale: 1:2500



Swann Edwards Architecture Limited ©

SCHEDULE 2
SECTION 73 PERMISSION

Council Offices
Priory Road
Spalding
Lincolnshire
PE11 2XE
Admin 01775 764723
DC Officers 01775 761161
Facsimile 01775 762937
planningadvice@sholland.gov.uk
www.sholland.gov.uk

Swann Edwards Architecture Ltd
Black Barn, Fen Road
Guyhirn
Wisbech
Cambs
PE13 4AA

TOWN AND COUNTRY PLANNING ACT 1990

DRAFT APPROVAL

Reference: H02-0075-19 **Date of Decision:**

Applicant: Woodgate Developments Ltd
C/O Swann Edwards Architecture Ltd
Black Barn, Fen Road
Guyhirn
Wisbech Cambs
PE13 4AA

Location: Former South View Primary School Albion Street Crowland Peterborough

Description: Residential development - erection of up to 22 dwellings - approved under H02-0405-17. Removal of Condition 4 relating to affordable housing

South Holland District Council hereby give notice that permission has been GRANTED (or equivalent) subject to the following condition(s):

1 The development must be begun before 22 August 2020.

Reason: As required by Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

3 The development shall be carried out in accordance with the details submitted and approved as part of reserved matters application ref. H02-0448-18 and subsequent

reserved matters application ref. H02-1020-19.

Reason: For the avoidance of doubt.
This Condition is imposed in accordance with Policies 2, 3, 4 and 30 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

4 Before each dwelling is occupied the roads and/or footways providing access to that dwelling, for the whole of its frontage from an existing public highway, shall be constructed to a specification to enable them to be adopted as Public Highway, less the carriageway and footway surface courses. The carriageway and footway surface courses shall be completed within three months from the date upon which the erection is commenced of the penultimate dwelling.

Reason: To ensure that a safe and suitable standard of vehicular and pedestrian access is provided for residents throughout the construction period of the development and that the roads and footways are completed within a reasonable period following completion of the dwellings.
This Condition is imposed in accordance with Policy 2 of the South East Lincolnshire Local Plan, 2019.

5 No dwellings shall be commenced before the first 60 metres of estate road from its junction with the public highway, including visibility splays has been completed.

Reason: To ensure construction and delivery vehicles, and the vehicles of site personnel may be parked and/or unloaded off the existing highway, in the interests of highway safety and the amenity of neighbouring residents.
This Condition is imposed in accordance with Policy 2 of the South East Lincolnshire Local Plan, 2019.

6 Before any dwelling is occupied, all of that part of the estate road and associated footways that forms the junction with the main road and which will be constructed within the limits of the existing highway, shall be laid out and constructed to finished surface levels in accordance with details to be submitted and approved by the local planning authority.

Reason: In the interests of safety, to avoid the creation of pedestrian trip hazards within the public highway from surfacing materials, manholes and gullies that may otherwise remain for an extended period at dissimilar, interim construction levels.
This Condition is imposed in accordance with Policy 2 of the South East Lincolnshire Local Plan, 2019.

7 The development shall take place in accordance with the surface water drainage scheme approved as part of condition compliance application ref. H02-1182-18.

Reason: To ensure that the site is adequately drained, to avoid pollution, and to prevent increased risk of flooding.
This Condition is imposed in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

8 The development hereby permitted shall be carried out in accordance with the Remediation Method Statement approved as part of condition compliance application ref. H02-1182-18.

Reason: To ensure that contaminated land is satisfactorily remediated.
This Condition is imposed in accordance with Policy 30 of the South East Lincolnshire Local Plan, 2019.

Notes:

The Local Planning Authority has acted positively and proactively in determining this application by assessing it against all material considerations, including national guidance, planning policies and representations that have been received during the public consultation exercise, and by identifying matters of concern within the application and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal.

This decision notice, the relevant accompanying report and the determined plans can be viewed online at http://planning.sholland.gov.uk/OcellaWeb/planningSearch

The developers is advised to note the contents of the letter from Lincolnshire Police dated 2 May 2017.

This planning permission is subject to an Agreement under Section 106 of the Town & Country Planning Act 1990 dated ***** and can only be implemented as a consequence of meeting the provisions of that Agreement

Phil Norman
Planning and Building Control Manager
South Holland District Council

8th November 2019

BUILDING REGULATIONS:
This decision refers only to planning permission as granted under the Town and Country Planning Act 1990. The works that you are proposing may also require Building Regulations and this planning permission does not give authority under Building Regulations to commence work. Please contact the Building Control section for further information on 01775 764557 or bcadmin@sholland.gov.uk

SCHEDULE 3
(THE OWNER'S COVENANTS)

The Owner covenants with the Council as follows:

1. AFFORDABLE HOUSING

1.1 Not to Occupy or permit the Occupation of more than 40% of the Market Dwellings until the construction of all Affordable Dwellings has been commenced in accordance with the Affordable Housing Scheme and written notification of that commencement has been received by the Council

1.2 Not to Occupy or permit the Occupation of more than 60% of the Market Dwellings until the construction of the Rented Housing has been certified Practically Complete and has been transferred to the Affordable Housing Provider and the Discounted Market Sales Dwellings are ready for Occupation.

1.3 To use all reasonable endeavours to transfer the Affordable Dwellings (except those Affordable Dwellings which are to be delivered as Discounted Market Sale Dwellings which are subject to the provisions of paragraph 1.8 to 1.15 below) which the Owner is obliged to provide under the Affordable Housing Scheme to the Affordable Housing Provider and/or the Council in accordance with paragraph 1.4 below and should the Affordable Housing Provider be a provider (pursuant to Part 2 of the Housing and Regeneration Act 2008) registered with Homes England on terms that accord with relevant funding requirements of Homes England current at the date of construction of the Affordable Housing.

1.4 The transfer shall contain inter alia the following:

1.4.1 a grant in favour of the Affordable Housing Provider of all rights of access passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Dwellings;

1.4.2 reservation of all rights of access and passage of services and rights of entry and all usual covenants reasonably necessary or appropriate for the beneficial enjoyment of the retained parts of the Land;

1.4.3 a covenant by the Affordable Housing Provider not to use the

transferred Affordable Housing other than for the purposes of providing Affordable Housing in perpetuity but subject to the exemption clauses at paragraph 1.9 below.

1.5 For the purposes of this Deed "all reasonable endeavours" shall include (but not necessarily limited to) the following:

1.5.1 the Owner diligently undertaking negotiations with all willing Affordable Housing Providers and/or the Council unless and until paragraph 1.7 below applies;

1.5.2 the Owner keeping the Council informed of its progress in negotiating a sale when requested by the Council but in any event on a quarterly basis beginning with the Commencement of Development and proactively taking into account comments made by the Council on that progress

1.6 Where contracts are exchanged with an Affordable Housing Provider pursuant to paragraph 1.3 above to supply a certified copy of such contract to the Council within five (5) Working Days of such contract being completed.

1.7 Where the Affordable Housing Provider is unwilling to take a transfer of an Affordable Dwelling and the Owner has supplied to the Council evidence of the use of all reasonable endeavours to secure a transfer of such Affordable Dwelling to an Affordable Housing Provider (including copies of any offers to and responses from any Affordable Housing Provider) and the Council having taken into account paragraph 1.5 above is satisfied (acting reasonably) that having used all reasonable endeavours the Owner is unable to identify an Affordable Housing Provider willing to purchase the Affordable Dwelling then the Owner shall at the Council's discretion either:

1.7.1 provide instead an alternative tenure of Affordable Housing for that Affordable Dwelling such tenure to be approved in writing by the Council acting reasonably **AND** where any such Affordable Dwelling is a tenure referred to in this Deed then that Dwelling shall be subject to the relevant provisions of this Deed **SUBJECT TO** the Owner paying an Affordable Housing Contribution calculated in line with the Affordable Housing Contribution Formula set out in Annex A Part 1 for the difference in values of the tenure of the Affordable Housing such sum to be used for the provision of off-site Affordable

Housing; or

1.7.2 pay to the Council an Affordable Housing Contribution calculated in line with the Affordable Housing Contribution Formula set out in Annex A Part 2 and upon the Council providing written confirmation that such Affordable Housing Contribution has been received that Affordable Dwelling shall be discharged from the terms of this Deed and the Owner shall be free to sell that Dwelling on the open market to an individual purchaser and the Council shall remove reference to this Deed in the local land charges register in relation to that Dwelling

1.8 The Owner shall be entitled to sell each Discounted Market Sale Dwelling for a price (as agreed in writing with the Council and which agreement the Council shall not unreasonably withhold to a price which does not exceed the Discounted Market Sale Price as ascertained in accordance with the provisions of this Deed) which shall not exceed the Discounted Market Sale Price thereof at the date of exchange

1.9 The Discounted Market Sale Dwelling shall be advertised through the Marketing Scheme

1.10 The Discounted Market Sale Dwelling shall be sold to an Eligible Purchaser

1.11 The Eligible Purchaser must provide the Assessment Information and if requested the Additional Assessment Information to the Council

1.12 The Eligible Purchaser of a Discounted Market Sale Dwelling shall occupy the Discounted Market Sale Dwelling as their sole or main residence and there shall be no letting of the Discounted Market Sale Dwelling

1.13 Upon the initial and subsequent sale of the Discounted Market Sale Dwelling the following restriction shall be placed upon the Title to the Discounted Market Sale Dwelling:

"No transfer or lease of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of paragraphs 1.8 to 1.14 of Schedule 3 of the section 106 Agreement made between South Holland District Council (1) and Churchfield DevelopmentLtd (2) dated ..... 2019 have been complied with."

1.14 The Discount Market Sale Price at the time of the sale of each Discounted Market Sale Dwelling shall be determined in compliance with the terms and conditions of this Deed.

1.15 Where after a period of 12-months of the Discounted Market Sale Dwelling being advertised through the Marketing Scheme the owner of the Discounted Market Sale Dwelling has been unable to sell the Discounted Market Sale Dwelling to an Eligible Purchaser and the owner has supplied to the Council such evidence as may reasonably be requested of them and the Council is satisfied (acting reasonably) that the owner is unable to sell to an Eligible Purchaser then the owner shall at the Council's discretion pay to the Council the Discounted Value and upon the Council providing written confirmation that such Discounted Value has been received that Discounted Market Sale Dwelling shall be discharged from the terms of this Deed and the owner shall be free to sell that Discounted Market Sale Dwelling on the open market to an individual purchaser and the Council shall remove reference to this Deed in the local land charges register in relation to that Dwelling

1.16 All Affordable Housing must be in accordance with such guidance as shall be issued by Homes England or its successor and approved in writing by the Council however in the absence of such guidance or standards shall be constructed to a standard agreed in writing with the Council.

1.17 From the date of Practical Completion of the Affordable Dwellings in each Phase they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:

1.17.1 any Protected Person or any mortgagee of a Protected Person or any person deriving title from a Protected Person or any successor in title thereto and their respective mortgagees and chargees; or

1.17.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty contained in paragraph 1.18 below; and

1.17.3 any purchaser from a mortgagee of an individual Affordable Dwelling pursuant to any default by the individual mortgagor

1.18 The Chargee shall prior to seeking to dispose of the Affordable Dwellings pursuant to any default under the terms of its mortgage or charge give not less than three months prior notice to the Council of its intention to dispose and:

1.18.1 in the event that the Council responds within one month from receipt of the notice indicating that arrangements for the transfer of the Affordable Dwellings (on the basis the Chargee can recover or have the Affordable Housing Provider take responsibility for any outstanding debt) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangement and use its best endeavours to secure such transfer

1.18.2 if the Council does not serve its response to the notice served under sub-paragraph 1.18.1 of this schedule within the one month then the Chargee shall be entitled to dispose of the Affordable Dwellings free of the restrictions set out in this schedule

1.18.3 if the Council or any other person cannot within two months of the date of service of its response under sub-paragraph 1.18.1 of this schedule complete such transfer then provided that the Chargee shall have complied with its obligations under sub-paragraph 1.18.1 of this schedule the Chargee shall be entitled to dispose of the Affordable Dwellings free of the restrictions set out in this schedule **PROVIDED ALWAYS** that the Chargee shall not be required to act contrary to the charge or in a way which means that the debt protected by the mortgage or charge shall not be repaid in full **PROVIDED ALWAYS** that the Chargee shall not be entitled to protect a debt greater than the market value of the property valued as an Affordable Dwelling.

1.19 All Affordable Dwellings shall be evenly integrated and indistinguishable from the Market Dwellings.

SCHEDULE 4
COUNCIL'S COVENANTS

The Council covenants with the Owner as follows:

1. **AFFORDABLE HOUSING**

The Council shall co-operate with any Affordable Housing Provider and enter into any Nominations Agreement between the Affordable Housing Provider and the Council.

2. GENERAL

2.1 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall as soon as practically possible upon written request from the Owner effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

2.2 At the written request of the Owner the Council shall provide written confirmation of the full or partial discharge of the obligations given for the benefit of the Council contained in this Deed when satisfied that such obligations have been performed.

SCHEDULE 5

NOMINATION AGREEMENT

Dated ***20....***

(1) South Holland District Council

and

(2) [REGISTERED PROVIDER]

NOMINATION AGREEMENT

Relating to land at
[LOCATION]

South Holland District Council
Council Offices
Priory Road
Spalding
PE11 2XE

SHDC Reference: LD/

THIS DEED *is made the day of Two thousand and ……..*

BETWEEN

(1) ***SOUTH HOLLAND DISTRICT COUNCIL*** *of Council Offices Priory Road Spalding PE11 2XE ("the Council"); and*

(2) ***[REGISTERED PROVIDER]*** *whose registered office is situated at [registered office] ("the Association")*

RECITALS

(A) *The Council resolved on [insert date] to grant planning permission for the Development subject to the provision of …… (…) dwellings to be delivered as affordable housing. The Council has agreed that […… (…) Rented Units and […… (…) Intermediate Dwellings] shall be provided to meet the obligation to provide affordable housing.*

(B) *The Association intends to take a transfer of the Rented Units and by this Deed the Association agrees with the Council that the said Rented Units shall be let to occupiers in accordance with the nominations procedure detailed in Clause 4 below allowing the Council to nominate 100% of the initial tenants of each Rented Unit and thereafter at least 75% of the tenants of each Rented Unit.*

(C) *The Association intends to take a transfer of the Intermediate Dwellings and by this Deed the Association agrees with the Council that the Intermediate Dwellings (other Intermediate Rented Dwellings) shall be disposed of by the Association in accordance with Clause 5 below*

NOW THIS DEED WITNESSES AS FOLLOWS

1. DEFINITIONS

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

"the Development"	*means the erection of …. dwellings on land [insert location] with planning application reference ……..*

"District"	*means the District of South Holland*
"Intermediate Dwelling"	*means the ..... (...) Intermediate Dwellings (being plot numbers x, x, x and x on the Development) as defined in Annex 2 of the National Planning Policy Framework dated February 2019 or any replacement amendment or supplemental guidance to it on the land to which the allocation procedure in Clause 5 shall relate*
"Local Housing Need"	*means local housing need as determined by the Council in accordance with the Council's Housing Allocations Policy*
"Nomination Notice"	*means a notice served by the Council on the Association providing details of nominated prospective tenants for a Rented Unit in accordance with Clause 4.3.3 of this Deed*
"Protected Tenant"	*means (i) any tenant who has:* *(a) exercised the right to acquire pursuant to the Housing Act 1996 or 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 Rented Unit; or* *(b) exercised any statutory right to buy (or any equivalent contractual right) in respect of a Rented Unit; and* *(ii) any lessee of a Shared Ownership Unit*
"Rented Units"	*means the ..... (...) Rented Units (being plot numbers x, x, x and x on the Development) to be provided as affordable rented units [and (being plot numbers x, x, x and x on the*

	Development) to be provided as intermediate rented units] [and (being plot numbers x, x, x, and x on the Development) to be provided as social rented housing] as defined in Annex 2 of the National Planning Policy Framework dated February 2019 or any replacement amendment or supplemental guidance to it on the land to which the nomination rights contained in Clause 4 shall relate
"Vacancy Notice"	*means a notice served by the Association giving the Council notice that a Rented Unit is available for occupation or re-let as appropriate*
"Working Day"	*means any day other than a Saturday Sunday or public or bank holiday in England*

2. CONSTRUCTION OF THIS DEED

2.1 Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.

2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably

2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.

2.5 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.

2.6 *References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council, successors to its functions.*

3. NOTICES

3.1 *Any notice or document which is required to be given under the terms of this Deed shall be sent by email and shall be deemed to be sufficiently served if signed by or on behalf of the party issuing the notice.*

3.2 *The Council's email for service is allocations@sholland.gov.uk (or such other email address as the Council may from time to time notify the Association).*

3.3 *The Association's email address for service is [RP Email Address] (or such other email address as the Association may from time to time notify the Council).*

3.4 *Service shall be deemed to be made on the day of transmission if transmitted before 4:00 pm on a Working Day but otherwise on the next following Working Day*

4. NOMINATIONS PROCEDURE: RENTED UNITS

4.1 *Subject to the provisions of this Deed the initial occupiers of each of the Rented Units shall be nominated by the Council*

4.2 *After the initial nominations and subject to the provisions of this Deed the Council shall have the right to nominate the occupiers of at least 75% of all Rented Units which become vacant*

4.3 *Where the Council's rights of nomination apply the following provisions shall apply:*

4.3.1 *the Association shall serve on the Council a Vacancy Notice giving to the Council*

(a) *4 weeks' notice that a Rented Unit is ready for occupation in respect of an initial let; and*

(b) *5 Working Days' notice of impending vacancy of a Rented Until in respect of a re-let*

4.3.2 *the Vacancy Notice shall include the following details:*

(a) *address of the Rented Unit;*

(b) *weekly rental and any service charges;*

(c) *number of bedrooms and maximum occupancy;*

(d) *age designation; and*

(e) *any other relevant information such as adaptations to the Rented Unit*

4.3.3 *The Council shall within fifteen (15) Working Days (in respect of an initial let) and five (5) Working Days (in respect of a re-let) of receipt of the Vacancy Notice serve on the Association a Nomination Notice containing in priority order details of as many names and addresses of persons known to the Council as being in Local Housing Need as the Council considers appropriate*

4.3.4 *If the initial Nomination is exhausted without the tenancy having been accepted the Association will notify the Council and the Council will have a further period of five (5) Working Days within which to provide a further Nomination Notice in accordance with the above provisions*

4.3.5 *A Rented Unit shall be offered to occupiers in accordance with the following provisions:*

(a) *the tenancy of a Rented Unit shall first be offered to the person whose name appears first on the Nomination Notice;*

(b) *if that person shall refuse or fail to accept the offer of a tenancy the Rented Unit shall be offered to the person whose name next appears on the Nomination Notice and if that person shall also refuse or fail to accept the offer of a tenancy then this process shall be repeated as often as may be necessary until* ***EITHER*** *the offer of a tenancy has been accepted* ***OR*** *the initial Nomination*

Notice and any further Nomination Notices have been exhausted without the tenancy having been accepted;

(c) *where **EITHER** the initial Nomination Notice and any further Nomination Notices are exhausted without the tenancy having been accepted **OR** the Council fails to provide a Nomination Notice **OR** the Council advises that it is not aware of any persons whom it considers to be in Local Housing Need then the Association shall have the right to select the occupier of the Rented Unit from its own applications provided such person or persons are in Local Housing Need **BUT FOR THE AVOIDANCE OF DOUBT** it is hereby agreed that if the Association exercises such a right the tenancy shall not be considered a Council nomination for the purpose of determining the sequence of nominations provided for in this Deed.*

4.3.6 *the Association will notify the Council:*

(a) *within three (3) Working Days of the end of the acceptance period where the prospective tenant fails to accept a tenancy;*

(b) *within three (3) Working Days where a prospective tenant provisionally accepts a tenancy;*

(c) *within three (3) Working Days where a prospective tenant refuses the tenancy including any reasons for refusal given;*

(d) *within three (3) Working Days of any decision by the Association that the prospective tenant does not meet the Association's criteria including the reasons why the prospective tenant does not meet such criteria; and*

(e) *within three (3) Working Days of the start date of the tenancy*

4.3.7 *the Association will liaise with the Council where the Owner wishes to use for a management transfer any vacancy for which the Council has nomination rights.*

4.4 *the Association shall provide to the Council details of all lettings completed in respect of all Rented Units such returns to be made quarterly to the Council.*

5. ALLOCATION PROCEDURE: INTERMEDIATE DWELLING

5.1 The Association shall not permit any Intermediate Dwelling other than Intermediate Rented Dwelling to be occupied except by a person who satisfies the HomeBuy Agent (or any successor) or the Council's qualifying criteria

5.2 Intermediate Rented Dwelling shall be allocated in accordance with the procedure in Clause 4 above (Rented Units).

6. DISPUTES AND MEDIATION PROCEDURE

6.1 Any disputed cases arising from this Deed will be discussed and dealt with by the Council's Housing Options Manager (or successor post) (or such other officer as the Council may from time to time notify the Association) and the Association's [insert post] (or successor post)

6.2 If they cannot decide then the Council's Head of Housing (or successor post) and the Association's [insert post] (or successor post) will discuss the case and make a final decision.

7. AGREEMENTS AND DECLARATIONS

7.1 This Deed is personal to the Association and the Council and for the avoidance of doubt ***IT IS HEREBY DECLARED*** *that this Deed shall not bind*

7.1.1 any Protected Tenant;

7.1.2 any mortgagee or charge of a Protected Tenant;

7.1.3 any mortgagee or charge of the Association or any receiver (including administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or charge to realise its security or any administrator (howsoever appointed) or the whole or any part of the Rented Units and/or Shared Ownership Units or any persons or bodies deriving title through such mortgagee or charge or Receiver

7.2 *The parties hereto agree and declare that the parties hereto shall have the right to vary this Deed in writing if they jointly so wish*

Signed on behalf of ***SOUTH***

HOLLAND DISTRICT COUNCIL

Signed on behalf of

[ASSOCIATION]

The **COMMON SEAL** of **SOUTH HOLLAND DISTRICT COUNCIL** was hereunto affixed in the presence of:-



Authorised Signatory

EXECUTED as a **DEED** by

CHURCHFIELD DEVELOPMENTS LIMTED acting by a Director and its Secretary or two Directors

Signature of Director

Signature of Secretary/Director

ANNEX A

AFFORDABLE HOUSING CONTRIBUTION FORMULA

Part 1

The Affordable Housing Contribution is calculated as follows: *A = (B less C) multiplied by D*

Where:

A = the Affordable Housing Contribution

B = the value of the relevant dwelling if subject to the alternative tenure referred to in paragraph 1.7.1 of Schedule 3 as determined by an independent expert and agreed by all parties

C = the value of the relevant dwelling if subject to the tenure specified in the Affordable Housing Scheme in this Deed as determined by an independent expert or agreed by all parties

D = the Affordable Housing Contribution if not paid within 12-months of the date of this Deed will be index linked to the percentage difference between house price inflation (UK House Price Index) and the Index calculated with reference to the figures last published prior to the date 12-months after the date of this Deed and the figure last published prior to the date of payment.

The Affordable Housing Contribution will be paid in full to the Council when no more than 85% of the Market Dwellings have completed. The costs for re-determining the values of B and C will be fully recharged to the Owner. The independent expert will be appointed and act under Clause 13

Part 2

The Affordable Housing Contribution is calculated as follows: A = *(B less C) multiplied by D*

Where:

A = the Affordable Housing Contribution

B = the open market value of the relevant dwelling if it were not subject to the terms of this Deed as determined by an independent expert and agreed by all parties

C = the value of the relevant dwelling subject to the terms of this Deed as determined by an independent expert and agreed by all parties

D = the Affordable Housing Contribution if not paid within 12-months of the date of this Deed will be index linked to the percentage difference between house price inflation (UK House Price Index) and the Index calculated with reference to the figures last published prior to the date 12-months after the date of this Deed and the figure last published prior to the date of payment.

The Affordable Housing Contribution will be calculated by the independent expert appointed and acting under Clause 13 when no more than 60% of the Market Dwellings have been completed and will be paid in full to the Council when no more than 85% of the Market Dwellings have completed. The Owner will reimburse the Council for the full cost of the independent valuation in all but exceptional circumstances.