

DATED

22ND JANUARY

2019

SOUTH HOLLAND DISTRICT COUNCIL

AND

ASHLEY KING (DEVELOPMENTS) LIMITED

**PLANNING OBLIGATION by Deed of Agreement
under Section 106 of the Town and Country Planning Act 1990**

relating to

Land at Crease Drove, Crowland, Peterborough

SOUTH HOLLAND DISTRICT COUNCIL
Council Offices
Priory Road
Spalding
PE11 2XE

SHDC Reference: H02-0575-18

Dated

22nd January

2019

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("**the Council**"); and
- (2) **ASHLEY KING (DEVELOPMENTS) LIMITED** of 1 Goodison Road, Lincs Gateway Business Park, Spalding, Lincolnshire, PE12 6FY ("**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 has completed a legal transfer dated 18th January 2019 of the land registered under Title Number LL382357 the registration of which is currently pending at the Land Registry and which constitutes the Land for the purposes of this Agreement.
- (C) The Owner applied to the Council for planning permission for the Land under reference H02-0575-18 for residential development for 47 Dwellings with associated garaging, roads and sewers.
- (D) The Council resolved on 14th November 2018 at Planning Committee to grant Planning Permission for the Development in accordance with the Application subject to the prior completion of this Deed without which Planning Permission for this Development would be refused.
- (E) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (E) The parties agree that the planning obligations contained in this Deed are necessary to comply with the requirements of Regulations 122 and 123 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
"Affordable Dwellings"	means those Dwellings within the Development comprising Affordable Housing being a maximum of 4 (four) Dwellings of the total number of Dwellings to be provided on the Land as part of the Development and for the purposes of this Deed means those Dwellings comprising Affordable Housing which shall include only 1 (one) Shared Ownership Dwelling and 3 (three) Rented Housing as shown, for identification purposes only, on the Affordable Housing Plan unless such other alternative mix, percentage(s) and/or Plot(s) is agreed with the Council acting reasonably
"Affordable Housing"	means affordable housing as described in Annex 2 of the National Planning Policy Framework dated July 2018, or any Planning Policy Statement, Guidance Notes or Circulars which may amend, supplement or supersede it
"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 Plan"	means the plan labelled "Affordable Housing Plan" annexed hereto showing for identification purposes only the location of the Affordable Dwellings
"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 the 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 Rented 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 such rent and service charge must not exceed the local housing allowance for the relevant area which is reviewed annually and "Affordable Rented Dwellings" shall be construed accordingly
"Application"	means the application for Planning Permission for the Development and allocated reference number H02-0575-18
"Chargee"	means any mortgagee or chargee of the Affordable Housing Provider or of a Affordable Dwelling or the successors in title to such mortgagee or chargee 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 appointed pursuant to the Law of Property Act 1925
"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 and any other preparatory works which may be agreed with the Council (acting reasonably)
"Commencement Notice"	means written notice to the Council of the intended date of Commencement of Development
"Development"	means the residential development of the Land of 47 Dwellings and associated garaging roads and sewers, pursuant to the Planning Permission
"District"	means the District of South Holland
"Dwelling"	means any unit of residential accommodation constructed pursuant to the Planning Permission and "Dwellings" shall be construed accordingly
"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 and "Eligible Households" shall be construed accordingly
"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
"Indexation"	means indexed as set out in Clause 10 of this Deed
"Interest"	means interest at the base rate of Barclays 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 are to be agreed with the Council and which can include shared equity (shared ownership and equity loans) 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 by a hatched red line on the Plan (for identification purposes only) which is the subject of the Application
"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 and "Market Dwellings" shall be construed accordingly
"NHS Contribution"	means the sum of Twenty Thousand Eight Hundred and Sixty Eight Pounds (£20,868) to be provided towards an extension at Abbeyview Surgery to create a confidential space for patients and payable in accordance with Schedule 2 of this Deed
"Nomination Agreement"	means an agreement negotiated between the Council and the Affordable Housing Provider which guarantees the Affordable Rented Dwellings will be let through the Council's Housing Registers and Shared Ownership Dwelling (as the case may be) substantially in the form set out at Schedule 4
"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

"Parish Council"	means the Crowland Parish Council
"Plan"	means the plan annexed to this Deed at Schedule 1 labelled as drawing number 1229-LP being the location plan submitted with the Application
"Planning Permission"	means the full planning permission pursuant to the Application to be granted by the Council on completion of this Deed
"Plot"	means an area of land within the Development upon which a Dwelling will be constructed pursuant to the Planning 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; and/or 1.3 has been granted a shared Ownership lease by the Affordable

	Housing Provider (or similar equity purchase 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.
"Recreation Contribution"	means the sum of One Hundred and Thirty Seven Thousand Three Hundred and Sixty Seven Pounds (£137,367) to be provided towards the costs of provision within Crowland of an outdoor keep fit equipment and a health circuit as well as renovation and remodelling of the sports hall to create an indoor gym and for no other purpose whatsoever and payable in accordance with Schedule 2 of this Deed.
"Shared Ownership Dwelling"	means any Affordable Dwelling to be provided on the Land for shared ownership that meets the criteria of Annex 2 of the National Planning Policy Framework 2018 or its equivalent successor document and is made available on low cost ownership terms and "Shared Ownership Dwellings" shall be construed accordingly
"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.

"Space Standards"	means the following minimum internal space standards to which the Affordable Dwellings should be built unless otherwise agreed in writing with the Council: 1 beds 2 person 45sqm 2 beds 4 person 67sqm 3 beds 5 person 82sqm 4 beds 6 person 95sqm
"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
"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 Local Government Act 2003 and all other enabling powers with the intent that the covenants and obligations shall run with the Land. 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 are conditional upon:

- (a) the grant of Planning Permission; and
- (b) the Commencement of Development

SAVE FOR the provisions of Clauses 8.2, 8.4 and 14 (legal costs, local land charge and change of ownership clauses) which shall come into effect immediately upon completion of this Deed.

5. **THE OWNER COVENANTS**

- 5.1 The Owner covenants with the Council as set out herein.

6. **THE COUNCIL'S COVENANTS**

- 6.1 The Council covenants with the Owner 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 20 Working Days prior to the Commencement of the Development.

8. MISCELLANEOUS

- 8.1 Nothing contained or implied in this Deed shall prejudice or effect 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 and/or part of the Land (as the case may be) but without prejudice to liability for any subsisting breach arising in relation to that part prior to parting with such interest.
- 8.9 No person or party shall be bound by the terms of this Deed or liable for a breach of the restrictions and obligations contained in this Deed:
 - 8.9.1 occurring after that person or party (including the Owner for the avoidance of doubt) has parted with all of his interest in the Site or the part in respect of which the breach occurs (but without prejudice to any liability for any breach committed prior to such parting); and/or
 - 8.9.2 if it is an Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; and/or

- 8.9.3 save in respect of Schedule Two, an Affordable Housing Provider and/or its Chargee and/or any tenant(s), occupier(s) and/or purchaser(s) of any Affordable Dwelling(s) and or their Chargee and any successor(s) in title to the same; and/or
- 8.9.4 any mortgagee and/or chargee of the Site (or part of the Site as the case may be) unless such mortgagee and/or chargee has taken possession of the Site (or any part of the Site as the case may be) when it will then be bound by the obligations of the Owner as if it were a person deriving title from the Owner; and/or
- 8.9.5 individual purchasers, lessees, tenants or occupiers of the Market Dwellings including their mortgagees, chargees or any administrator, receiver, administrative receiver, fixed charge receiver including any receiver appointed under the Law of Property Act 1925 or any person appointed under any security documentation by such mortgagee or chargee (or any person deriving title through such persons) and any successors in title to such persons.
- 8.10 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.
- 8.11 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. INDEXATION

- 10.1 The NHS Contribution and the Recreation Contribution shall be linked to the Index to the intent that the actual amounts to be paid shall be the amounts of the relevant payments as defined herein divided by the Index figure last published prior to 14 November 2018 multiplied by the Index figure last published before the due date for payment and "Indexation" shall be construed accordingly.

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. JURISDICTION

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

14. CHANGE OF OWNERSHIP

- 14.1 Subject to Clause 8.9.5, the Owner agree with the Council to give the Council immediate written notice of any change in the of any of the Owner 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 SAVE THAT this obligation shall not apply to the disposal of individual Dwellings

15. DISPUTE RESOLUTION

- 15.1 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.
- 15.2 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.

- 15.3 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.
- 15.4 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.
- 15.5 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 Working Days after appointment.
- 15.6 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten 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.

16. 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 shown for identification purposes only showed by the hatched red line on the Plan and known as land at Crease Drove, Crowland, Peterborough falling within Title Number LL382357

SCHEDULE 2

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 and written notification of that commencement has been received by the Council and FOR THE AVOIDANCE OF DOUBT those Affordable Dwellings shall consist of only 1 (one) Shared Ownership Dwelling and 3 (three) Rented Housing as shown, for identification purposes only, on the Affordable Housing Plan unless such other alternative mix, percentage(s) and/or Plot(s) is agreed with the Council acting reasonably
- 1.2 Not to Occupy or permit the Occupation of more than 60% of the Market Dwellings until the construction of all Affordable Dwellings has been certified Practically Complete and has been transferred to the Affordable Housing Provider (if applicable).
- 1.3 To use reasonable endeavours to transfer the Affordable Dwellings which the Owner is obliged to provide under the terms of this Deed 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 then the transfer shall be on terms that accord with relevant funding requirements of Homes England current at the date of transfer 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; and
 - 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 "reasonable endeavours" shall include (but not necessarily limited to) the following:
 - 1.5.1 the Owner diligently undertaking negotiations with willing Affordable Housing Providers and/or the Council unless and until paragraph 1.7 below applies;
 - 1.5.2 the Owner shall avoid negotiating a sale to any Affordable Housing Provider of only the Intermediate Dwellings where this would result in the Owner being unable to secure the transfer of the Rented Housing to an Affordable Housing Provider;
 - 1.5.3 the Owner keeping the Council informed of its progress in negotiating a sale when requested by the Council acting reasonably 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 5 (five) Working Days of such contract being completed **SAVE THAT** any commercially sensitive information may be appropriately redacted.
- 1.7 Where an 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 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 1.3 above is satisfied (acting reasonably) that having used all reasonable endeavours the Owner is unable to identify a 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 All the Affordable Dwellings must be constructed to meet the minimum requirements of the Building Regulations in force at the time of Commencement of the Development and the Space Standards as defined herein
- 1.9 From the date of Practical Completion of the Affordable Dwellings they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
 - 1.9.1 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;
 - 1.9.2 any Chargee provided that the Chargee shall have first complied with the Chargee's Duty contained in paragraph 1.10 below; and
 - 1.9.3 any purchaser from a mortgagee of an individual Affordable Dwelling pursuant to any default by the individual mortgagee.
- 1.10 The Chargee shall prior to seeking to dispose of the Affordable Dwelling(s) 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:
 - 1.10.1 in the event that the Council responds within one month from receipt of the notice indicating that arrangements for the transfer of the Affordable Dwelling(s) (on the basis the

Chargee can recover or have the Affordable Housing Provider (if applicable) take responsibility for all accrued principal monies, interest and costs and expenses) 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 reasonable endeavours to secure such transfer (if applicable)

1.10.2 if the Council does not serve its response to the notice served under sub-paragraph 1.10.1 of this Schedule within the one month then the Chargee shall be entitled to dispose of the Affordable Dwelling(s) free of the restrictions set out in this Schedule

1.10.3 if the Council or any other person cannot within two months of the date of service of its response under sub-paragraph 1.10.1 of this schedule secure such transfer then provided that the Chargee shall have complied with its obligations under sub-paragraph 1.10.1 of this schedule the Chargee shall be entitled to dispose of the Affordable Dwelling(s) free of the restrictions set out in this schedule **PROVIDED ALWAYS** that the Chargee shall not be required to act contrary to its duties under the charge or mortgage or in a way which means that the principal monies, interest and costs and expenses outstanding and protected by the mortgage or charge shall not be repaid in full .

1.11 The Affordable Housing Provider is insofar as is reasonably practicable to re-invest any net capital receipts from the disposal (except by way of a charge or mortgage) of any Affordable Housing Unit in the District in liaison with the Council **PROVIDED THAT** the use of any monies for the repurchase of any staircased unit of Intermediate Dwellings including Shared Ownership Dwellings or an Affordable Rented Dwelling or Intermediate Rent Dwelling sold under a statutory duty will comply with this provision

1.11.1 compliance with the above shall not apply where to do so would require the Affordable Housing Provider of the Affordable Dwellings to act in a manner contrary their charitable objectives or contrary to the requirements of Homes England (or any successor body) or any binding national guidance or direction that determines how any capital receipts from the disposal (except by way of a charge or mortgage) of any Affordable Dwelling should be re-

invested or recycled.

1.12 All Affordable Dwellings shall be indistinguishable from the Market Dwellings.

2. NHS CONTRIBUTION

2.1 The Owner covenants to pay to the Council the NHS Contribution in the following two instalments:

2.1.1 50% of the NHS Contribution prior to Occupation of 50% of the Dwellings; and

2.1.2 the remaining 50% of the NHS Contribution prior to Occupation of 90% of the Dwellings

3. RECREATION CONTRIBUTION

3.1 The Owner covenants to pay to the Council the Recreation Contribution in the following two instalments:

3.1.1 50% of the Recreation Contribution prior to Occupation of 75% of the Dwellings; and

3.1.2 The remaining 50% of the Recreation Contribution prior to Occupation of 85% of the Dwellings.

SCHEDULE 3
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 Nomination Agreement between the Affordable Housing Provider and the Council (as the case may be).

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 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.

3. NHS CONTRIBUTION

- 3.1 To pay the NHS Contribution into an appropriate interest-bearing section of the Council's combined accounts as soon as reasonably practicable after receipt from the Owner and to credit all interest so earned on the NHS Contribution to that account.
- 3.2 To pay such proportion of the NHS Contribution held to the NHS upon receipt of a signed undertaking from the NHS confirming how they will:
- a) apply the NHS Contribution solely for the purposes of an extension at Abbeyview Surgery to create a confidential space for patients; and
 - b) provide full details of the expenditure of the NHS Contribution on demand to the Owner.
- 3.3 In the event that all or any part of the NHS Contribution has not been paid to the NHS for the purposes of paragraph 3.2a) above, within 5 years from the date of the final payment to the Council of the NHS Contribution then such payment shall be returned to the party who made the payment together with any interest thereon the amount being the actual interest earned not interest as defined under clause 1.1 in the Definitions and Interpretation above.

4. RECREATION CONTRIBUTION

- 4.1 To pay the Recreation Contribution into an appropriate interest-bearing section of the Council's combined accounts as soon as reasonably practicable after receipt from the Owner and to credit all interest so earned on the Recreation Contribution to that account.
- 4.2 To pay such proportion of the Recreation Contribution held to the Parish Council upon receipt of a signed undertaking from the Parish Council confirming how they will:
- a) apply the Recreation Contribution solely for the purposes of towards the costs of provision in Crowland of outdoor keep fit equipment and a health circuit as well as renovation and remodelling of the sports hall to create an indoor gym; and
 - b) provide full details of the expenditure of the Recreation Contribution on demand to the Owner.
- 4.3 In the event that all or any part of the Recreation Contribution has not been paid to the Parish for the purposes of paragraph 4.2a) above, within 5 years from the date of the final payment to the Council of the Recreation Contribution then such payment shall be returned to the party who made the payment together with any interest thereon the amount being the actual interest earned not interest as defined under clause 1.1 in the Definitions and Interpretation above.

SCHEDULE 4

NOMINATION AGREEMENT

Dated

20...

(1) South Holland District Council

and

(2) [REGISTERED PROVIDER]

NOMINATION AGREEMENT

***Relating to land at
Crease Drove, Crowland, Peterborough***

***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 14 November 2018 to grant planning permission for the Development subject to the provision of 4 (four) dwellings to be delivered as affordable housing. The Council has agreed that 3 (three) Rented Units and 1 (one) Shared Ownership Unit 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 Shared Ownership Unit and by this Deed the Association agrees with the Council that the Shared Ownership Unit 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 47 dwellings on land at Crease Drove, Crowland with planning application reference H02-0575-18
"District"	means the District of South Holland
"Local Housing Need"	means local housing need as determined by the Council in accordance with the Council's Housing Allocations Policy

<i>"Nomination Notice"</i>	<i>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</i>
<i>"Protected Tenant"</i>	<i>means (i) any tenant who has:</i> <i>(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</i> <i>(b) exercised any statutory right to buy (or any equivalent contractual right) in respect of a Rented Unit; and</i> <i>(ii) any lessee of a Shared Ownership Unit</i>
<i>"Rented Units"</i>	<i>means the 3 (three) Rented Units (being plots numbers x, x and x on the Development to be known as numbers xx, xx and xx [insert postal address]) to be provided as affordable rented units as defined in Annex 2 of the National Planning Policy Framework 2018 or any replacement amendment or supplemental guidance to it on the land to which the nomination rights contained in Clause 4 shall relate</i>
<i>"Shared Ownership Unit"</i>	<i>means the 1 (one) Shared Ownership Unit (being plot number xx on the Development and to be known as number xx [insert postal address]) to be provide as a shared ownership unit as defined in Annex 2 of the National Planning Policy Framework 2018 or any amendment or supplemental guidance to which the allocation procedure in Clause 5 shall relate</i>
<i>"Vacancy Notice"</i>	<i>means a notice served by the Association giving the Council notice that a Rented Unit is</i>

	<i>available for occupation or re-let as appropriate</i>
<i>"Working Day"</i>	<i>means any day other than a Saturday Sunday or public or bank holiday in England</i>

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 Unit 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: SHARED OWNERSHIP UNIT*

- 5.1 *The Association shall not permit the Shared Ownership Unit to be occupied except by a person who satisfies the HomeBuy Agent (or any successor) qualifying criteria*

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**

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

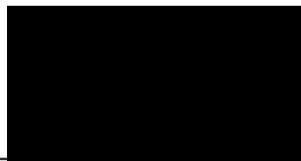


11104



Authorised Signatory

Executed as a deed but not delivered
until the first date specified on the first
page of this Deed by **ASHLEY KING**
(DEVELOPMENTS) LIMITED acting by
a director



Signature of Director

ASHLEY JOHN KING

Full Name of Director (Please Print)

In the presence of a witness:

Witness (Signature)

Witness Full Name

Witness Address

ANNEX A

AFFORDABLE HOUSING CONTRIBUTION FORMULA

Part 1

Owner contribution is $A = (B \text{ less } C) \text{ plus } D$

- A = the affordable dwelling payment
- B = the intermediate transfer value as determined now by the original valuer and agreed by all parties
- C = the original affordable housing scheme transfer values as determined now by the original valuer and agreed by all parties
- D = the affordable dwelling payment will be index linked to the percentage difference between house price inflation (UK House Price Index) and build cost inflation (BCIS All in Tender Price Index) if not paid within 12-months of the date of this Deed

The affordable dwelling payment 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

Part 2

The Owner contribution is $A = B \text{ less } C$

- A = the affordable dwelling payment
- B = the affordable dwelling open market value as determined by an independent expert and agreed by all parties
- C = the affordable housing transfer values as determined by an independent expert and agreed by all parties

The off-site contribution will be calculated by the independent expert 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.



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PROJECT CREASE DROVE, CROWLAND
(Fincham)

TITLE LOCATION PLAN

CLIENT
ASHWOOD HOMES
1 GOODISON ROAD, LINGS GATEWAY BUSINESS PARK
SPALDING, LINCOLNSHIRE
PE12 6 FY 01406 490590

SCALE 1:2500 @ A4	DATE MAY 2018	DRAWN NKW
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DRAWING NUMBER 1229-LP	REVISION
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