

Dated

11th December

2019

(1) South Holland District Council

and

(2) Spalding Lifestyle and Gardening Centre Limited

and

(3) Kaplan Property Ltd

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

**Relating to land on the east of
Spalding Road, Pinchbeck**

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

SHDC Reference: LD/H14-0109-19

Date

11th December

2019

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **SPALDING LIFESTYLE AND GARDENING CENTRE LIMITED** (Co. Regn. No. 4467729) of 210 Pinchbeck Road, Spalding, Lincs, PE11 3DB ("the Owner"); and
- (3) **KAPLAN PROPERTY LTD** (Co. Regn. No. 09951895) of Unit 6 Nursery Court, Kibworth Harcourt, Leicester, England, LE8 0EX ("the Developer"); and

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 LL222216.
- (C) The Developer has via his agents applied to the Council for planning permission for the Land under reference H14-0109-19 for residential development for 72 Dwellings, parking and landscaping and provision of public open space
- (D) The Council resolved on 23 August 2019 to grant Planning Permission for the Development in accordance with the Application subject to the Owner entering 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.

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 25% 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 tenure, mix, size and location of the Affordable Housing to be provided as part of the Development and consisting of 13 Affordable Rent being delivered as 6 one-bedroom apartments and 7 2-bedroom houses and 5 Shared Ownership Dwellings being delivered as 3 two-bedroom houses and 2 three-bedroom houses or such other mix as agreed in writing between the Owner and the Council
"Affordable Rent"	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 Planning Permission for the Development and allocated reference number H14-0109-19
"Chargee"	means any mortgagee or chargee of the Affordable Housing Provider or any Affordable Dwelling(s) or any receiver (including an administrative receiver, any fixed charge receiver and/or any receiver appointed under the Law of Property Act

	1925) 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 (each a "Receiver")
"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 72 Dwellings, parking and landscaping pursuant to the Planning Permission
"Dwelling"	means any unit of residential accommodation constructed pursuant to the Planning Permission
"Education Authority"	means the Local Education Authority for the area within which the land is situated.
"Education Contribution"	means a total contribution of sixty seven thousand six hundred and fifty eight pounds (£67,658) which shall be used towards an extension of Spalding Wygate Park Primary.
"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 Shared Ownership 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
"Health Care Facilities Contribution"	means a contribution of Forty Seven Thousand, Five Hundred and Twenty Pounds (£47,520) which shall be used towards Gosberton Medical Centre, Low

	Gate, Gosberton
"Health Care Provider"	means the relevant regional health care provider for NHS England
"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 12 of this Deed
"Interest"	means interest at the base rate of Lloyds Bank PLC plus 4%
"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
"the Nomination Agreement"	means an agreement negotiated between

	the Council and the Affordable Housing Provider which guarantees the Affordable Rental Dwellings 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.
"Plan"	means the plan attached to this Deed labelled as drawing number Plan 4403-001 being the location plan submitted with the Application
"Planning Permission"	means the planning permission granted by the Council which is subject to this Deed and attached in draft hereto at Schedule 2
"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: a) 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; b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling; c) 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.
"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 up 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
"Working Days"	means any day other than a Saturday Sunday or public or bank holiday in England

2. CONSTRUCTION OF THIS DEED

- a) 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.
- b) Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- c) 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

- d) 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.
- e) 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.
- f) 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

- a) 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.
- b) 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

- a) This Deed and the obligations contained herein is 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 11 (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

The Owner covenants with the Council as set out herein

6. THE COUNCIL'S COVENANTS

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 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 Developer 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 or vice versa such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 8.6 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.7 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.

8.8 This Deed shall not be enforceable against:

8.8.1 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;

8.8.2 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;

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

8.9 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 1.10 of Schedule 3 of this Deed.

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. 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 or grant of any tenancy of a single Dwelling

11. INDEXATION

- 11.1 The sums referred to in the Schedules 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 set out in Schedules Three and Four divided by the Index figure last published prior to 23 August 2019 multiplied by the Index figure last published before the due date for payment and "Indexation" shall be construed accordingly.

12. INTEREST

- 12.1 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.

13. VAT

- 13.1 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.

14. DISPUTE RESOLUTION

- 14.1 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.

- 14.2 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.
- 14.3 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.
- 14.4 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.
- 14.5 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.
- 14.6 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.

15. JURISDICTION

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

16. EXECUTION AND DELIVERY

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

17. VOID PROVISIONS

- 17.1 If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner

as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties.

18. SECTION 73 VARIATIONS

- 18.1 In the event that the Council shall at any time hereafter grant a planning permission pursuant to an application made under section 73 of the Act in respect of the conditions relating to the Planning Permission (and for no other purpose whatsoever) references in this Agreement to the Application and the Development (where agreed in writing by the parties) shall be deemed to include any such subsequent planning applications and planning permissions granted as aforesaid and this Agreement shall henceforth take effect and be read and construed accordingly.

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 as land to the east of Spalding Road, Pinchbeck and falling within Title Number LL222216 and shown edged red on the Plan (for identification purposes only).

Location Plan

SCHEDULE 2
PLANNING PERMISSION

Landmark Planning Ltd
10 Salisbury Road
Leicester
LE1 7QR

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

TOWN AND COUNTRY PLANNING ACT 1990

DRAFT APPROVAL

Reference: H14-0109-19 **Date of Decision:**

Applicant: Kaplan Property Group
C/O Landmark Planning Ltd
10 Salisbury Road
Leicester
LE1 7QR

Location: Spalding Lifestyle And Garden Centre 210 Spalding Road Pinchbeck Spalding

Description: Erection of 72 dwellings, parking, landscaping and provision of public open space

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 not later than the expiration of three years beginning with the date of this permission.

Reason: As required by Section 91 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:
4403/KP/17/0001;
4403/KP/17/002 (A3) Rev P8;
4403/KP/17/002 Rev P10;
4403/KP/17/502 Rev P2;
4403/KP/17/100 Rev P2;
4403/KP/17/101 Rev P2;
4403/KP/17/501 Rev P6;

4403/KP/17/004 Rev P6;
4403/KP/17/200 Rev P2;
4403/KP/17/306 Rev P2;
4403/KP/17/401 Rev P6;
4403/KP/17/304 Rev P2;
4403/KP/17/201 Rev P6;
4403/KP/17/404 Rev P4;
4403/KP/17/305 Rev P2;
4403/KP/17/502 Rev P2;
4403/KP/17/302 Rev P5;
4403/KP/17/002 Rev P10;
4403/KP/17/402 Rev P5;
4403/KP/17/601 Rev P5;
4403/KP/17/303 Rev P5;
4403/KP/17/202 Rev P2;
4403/KP/17/201 Rev P5;
4403/KP/17/105 Rev P3;
4403/KP/17/107 Rev P3;
4403/KP/17/103 Rev P3;
4403/KP/17/106 Rev P3;
4403/KP/17/600 Rev P3;
4403/KP/17/102 Rev P3;
4403/KP/17/104 Rev P3;
4403/KP/17/300 Rev P4;
4403/KP/17/400 Rev P1;
4403/KP/17/003;

Topographical Survey (prepared by Mapmatic, dated 26th July 2018);

Preliminary Ecological Appraisal Report (prepared by RammSanderson, dated January 2019);

Flood Risk Assessment (prepared by Farrow Walsh Consulting, dated August 2019);

Noise Assessment (prepared by Acute Acoustics Ltd, dated 30th January 2019);

Transport Assessment (prepared by Farrow Walsh Consulting, dated November 2018);

Interpretive Report on a Ground Investigation (prepared by Nicholls Colton Group, dated November 2018); and

Trial Pit Logs and Borehole Records (prepared by Nicholls Colton Group, dated 16th and 15th October 2018).

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

- 3 The development hereby permitted shall not be commenced until a scheme to deal with any contamination of land or pollution of controlled waters has been submitted to and approved in writing by the Local Planning Authority (LPA) and until the measures approved in that scheme have been implemented. The scheme shall include all of the following measures:

i) a site investigation shall be carried out to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed taking into account the sites

existing status and proposed new use. Two full copies of the site investigation and findings shall be forwarded to the LPA without delay upon completion.

ii) thereafter, a written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site shall be submitted to and approved in writing by the LPA, and all requirements shall be implemented and completed to the satisfaction of the LPA. No deviation shall be made from this scheme. If during redevelopment contamination not previously considered is identified, then the LPA shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspect contamination has been submitted to and agreed in writing by the LPA.

iii) two full copies of a full closure report shall be submitted to and approved in writing by the LPA. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post-remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met.

Note

The applicant is advised that the phased risk assessment required by the Contaminated Land Scheme Condition should be carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part 11A.

The applicant's attention is also drawn to the document entitled "Developing Land Within Lincolnshire - A guide to submitting planning applications to develop land that may be contaminated", which can be obtained through the Local Environmental Health Department.

Reason: To assess whether the site is polluted and to address any pollution to ensure a satisfactory development. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policy 30 of the South East Lincolnshire Local Plan, 2019.

- 4 No development shall take place until a written scheme of archaeological investigation has been submitted to and approved in writing by the Local Planning Authority. This scheme should include the following and should be in accordance with the archaeological brief supplied by the Lincolnshire County Council Historic Environment advisor on behalf of the Local Planning Authority:

1. An assessment of significance and proposed mitigation strategy (i.e. preservation by record, preservation in situ or a mix of these elements).
 2. A methodology and timetable of site investigation and recording
 3. Provision for site analysis
 4. Provision for publication and dissemination of analysis and records
 5. Provision for archive deposition
 6. Nomination of a competent person/organisation to undertake the work
 7. The scheme to be in accordance with the Lincolnshire Archaeological Handbook.
- The archaeological site work shall only be undertaken in accordance with the approved written scheme.

Reason: To ensure the preparation and implementation of an appropriate scheme of

archaeological mitigation in accordance with national guidance contained in Section 16 of the National Planning Policy Framework, 2018. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

- 5 The applicant shall notify the Lincolnshire County Council Historic Environment Department in writing of the intention to commence at least fourteen days before the start of archaeological work required in connection with Condition 4 above in order to facilitate adequate monitoring arrangements.

Reason: To ensure satisfactory archaeological investigation and retrieval of archaeological finds in accordance with national guidance contained in Section 16 of the National Planning Policy Framework, 2018.

- 6 A copy of the final report required in connection with Condition 4 above shall be submitted within three months of the work being carried out to the Local Planning Authority and the Lincolnshire Historic Environment Record. The material and paper archive required as part of the written scheme of investigation shall be deposited with an appropriate archive in accordance with guidelines published in The Lincolnshire Archaeological Handbook.

Reason: To ensure satisfactory arrangements are made for the recording of possible archaeological remains in accordance with national guidance contained in Section 16 of the National Planning Policy Framework, 2018.

- 7 A detailed scheme of construction management to minimise disturbance during the construction process through noise, dust, vibration and smoke shall be submitted to and approved in writing by the Local Planning Authority before the development commences and the construction process shall be carried out in accordance with the scheme so approved. It shall also include a method statement, detailing how construction traffic, site personnel vehicles, materials deliveries and site accommodation will be managed to safeguard highway safety, free passage along Spalding Road and the Johnson Community Hospital access road to the south and residential amenity.

Reason: In the interests of the amenity of local residents. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 8 Details of the precautions to be taken to prevent the deposit of mud on public highways by vehicles travelling from the site during construction of the development shall be submitted to and approved in writing by the Local Planning Authority before the development commences. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning Authority. These precautions shall be made available before commencement of the construction of the development and be kept available and in full working order until such time as the Local Planning Authority agrees in writing to their withdrawal or the completion of the development.

Reason: In the interests of highway safety during the construction process. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policy 3 of the South East Lincolnshire Local Plan, 2019.

- 9 Before the commencement of the development hereby permitted, full details of the existing and proposed site levels and proposed floor levels of the buildings and hard surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the details so approved.

Reason: To reduce the risk of flooding of the development. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policy 4 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 14 of the National Planning Policy Framework, 2019.

- 10 No dwelling shall be commenced before the first 50 metres of estate road from its junction with the public highway, including visibility splays, as illustrated on drawing number 4403/KP/17/002 Rev P10 dated June 2019, have been completed to binder course level.

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.

- 11 Before each dwelling is occupied, the roads and 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.

- 12 The permitted development shall be undertaken in accordance with a surface water drainage scheme which shall first have been approved in writing by the Local Planning Authority.

The scheme shall:

- be based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development;
- provide details of how run-off will be safely conveyed and attenuated during storms up to and including the 1 in 100 year critical storm event, with an allowance for climate change, from all hard surfaced areas within the development into the existing local drainage

infrastructure and watercourse system without exceeding the run-off rate for the undeveloped site;

- provide attenuation details and discharge rates which shall be restricted to 1.4 litres per second;
- provide details of the timetable for and any phasing of implementation for the drainage scheme; and
- provide details of how the scheme shall be maintained and managed over the lifetime of the development, including any arrangements for adoption by any public body or Statutory Undertaker and any other arrangements required to secure the operation of the drainage system throughout its lifetime.

No dwelling shall be occupied until the approved scheme has been completed or provided on the site in accordance with the approved phasing. The approved scheme shall be retained and maintained in full, in accordance with the approved details.

Reason: To ensure that the permitted development is adequately drained without creating or increasing flood risk to land or property adjacent to, or downstream of, the permitted development.

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

- 13 Prior to construction above damp proof course, a scheme for on-site foul water drainage works, including connection point and discharge rate, shall be submitted to, and approved in writing by, the Local Planning Authority. Prior to the occupation of any phase, the foul water drainage works relating to that phase must have been carried out in complete accordance with the approved scheme.

Reason: To prevent environmental and amenity problems arising from flooding.

This Condition is imposed in accordance with Policy 30 of the South East Lincolnshire Local Plan, 2019.

- 14 Before the commencement of the development hereby permitted beyond oversite, a schedule of external materials of construction of buildings and hard surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the materials so approved.

Reason: To ensure that the Local Planning Authority retains control over the external materials of construction of the development in the interests of the character and appearance of the development and the visual amenity of the area in which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 15 Details of the design and positions of all external boxes for gas and electricity supplies and of any gas flues and soil vent pipes shall be submitted to and approved in writing by the Local Planning Authority prior to their installation and there shall be no variation from the details so approved.

Reason: To ensure that the Local Planning Authority retains control over these details of the development in the interests of the character and appearance of the development and

the visual amenity of the area in which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 16 Before the commencement of the development hereby permitted beyond oversight, the approval of the Local Planning Authority is required to a scheme of landscaping and tree planting for the site indicating, inter alia, the number, species, heights on planting and positions of all the trees, together with details of post-planting maintenance. Such scheme as is approved by the Local Planning Authority shall be carried out and completed in its entirety during the first planting season following practical completion of the development. All trees, shrubs and bushes shall be maintained by the owner or owners of the land on which they are situated for the period of five years beginning with the date of completion of the scheme and during that period all losses shall be made good as and when necessary.

Note: The applicant is recommended to employ a qualified and experienced landscape designer to produce a landscaping scheme for the development.

Reason: To ensure that the development is adequately landscaped, in the interests of its visual amenity and that of the area in which it is set.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 17 Prior to its installation, details of the proposed boundary treatment, including a schedule of materials, and details of the size and species of any hedging, shall be submitted to and approved in writing by the Local Planning Authority, and the details so approved shall be implemented in full before the development is first brought into use.

1.8m high close boarded acoustic quality timber fencing or brick walling shall be erected along the northern boundary.

Reason: In the interests of the character and appearance of the development, the visual amenity of the area in which it is set and residential amenity.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 18 Details of the landscape management and maintenance schedule for the areas of publicly accessible open space, incidental open space, refuse/recycling collection points and parking courts/private drives shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development hereby permitted beyond oversight. The management of these areas shall be carried out in accordance with the details so approved.

Reason: To ensure that adequate open space provision is made available for the occupiers of the development hereby permitted and that provision is made for the management and maintenance of the open space.

This Condition is imposed in accordance with Policy 32 of the South East Lincolnshire Local Plan, 2019.

- 19 Before the commencement of the development hereby permitted beyond oversight, details

of a scheme for the provision of bird, bat and hedgehog boxes to be installed within the site shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented prior to the completion of the development hereby approved, and shall thereafter be retained.

Bat boxes should be integral boxes incorporated in to dwellings.

Reason: To enhance the potential for the site to be used by species such as roosting bats and nesting birds.

This Condition is imposed in accordance with Section 15 of the National Planning Policy Framework, 2019.

- 20 The development hereby permitted shall be carried out in accordance with the recommendations set out in the Preliminary Ecological Appraisal Report (prepared by RammSanderson, dated January 2019). Prior to commencement of the development, further surveys shall be carried out for great crested newts, bats and reptiles in accordance with the recommendations (with particular regard to the timings of surveys) set out in sections 5.3.1, 5.3.2 and 5.3.7 respectively and results shall be submitted to an approved in writing by the Local Planning Authority.

Reason: In the interest of nature conservation and because bats are a protected species.

This Condition is imposed in accordance with national guidance contained in Section 15 of the National Planning Policy Framework, 2019.

- 21 Prior to the commencement of the first use of the development hereby permitted details of provision for the storage/parking of at least 2 bicycles for all approved dwellings shall be approved in writing by the Local Planning Authority.

Reason: To ensure that adequate secure facilities are provided for cyclists using the site. This Condition is imposed in accordance with Policy 36 of the South East Lincolnshire Local Plan, 2019.

- 22 The development hereby permitted shall be carried out in accordance with the recommendations set out in Section 8.1 of the submitted Noise Assessment (prepared by Acute Acoustics Ltd, dated 30th January 2019).

Reason: In the interests of residential amenity.

This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

- 23 The water consumption of each dwelling hereby permitted should not exceed the requirement of 110 litres per person per day (as set out as the optional requirement in Part G of the Building Regulations 2010 and the South East Lincolnshire Local Plan, 2019). The person carrying out the work must inform the Building Control Body that this duty applies. A notice confirming the requirement for the water consumption has been met shall be submitted to the Building Control Body and Local Planning Authority, no later than five days after the completion of each individual dwelling.

Reason: To protect the quality and quantity of water resources available to the district.

This Condition is imposed in accordance with Policy 31 of the South East Lincolnshire

Local Plan, 2019.

- 24 The development hereby permitted shall be carried out in accordance with the measures set out in the Flood Risk Assessment (prepared by Farrow Walsh Consulting, dated August 2019) forming part of this planning application, unless otherwise agreed in writing by the Local Planning Authority, in particular the following measures shall be fully implemented before the property is first occupied:

- Finished floor levels shall be set between 300-500mm above existing ground level

Reason: To ensure that the development does not increase the risk of flooding or be at risk of flooding.

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

- 25 No dwelling shall be occupied until a scheme for the provision of infrastructure to ensure the availability of water supplies to the Fire Service in the event of an emergency, have been submitted to and approved in writing by the Local Planning Authority. The details as approved, including timings, shall be fully implemented before any dwelling is occupied and shall be retained thereafter.

Reason: In the interests of fire safety. This issue is integral to the development and therefore full details need to be finalised prior to the commencement of works.

This Condition is imposed in accordance with Policy 5 of the South East Lincolnshire Local Plan, 2019.

Notes:

All roads within the development hereby permitted must be constructed to an engineering standard equivalent to that of adoptable highways. Those roads that are to be put forward for adoption as public highways must be constructed in accordance with the Lincolnshire County Council Development Road Specification that is current at the time of construction and the developer will be required to enter into a legal agreement with the Highway Authority under Section 38 of the Highways Act 1980. Those roads that are not to be voluntarily put forward for adoption as public highways, may be subject to action by the Highway Authority under Section 219 (the Advance Payments code) of the Highways Act 1980. In all cases, the developer is advised to undertake early discussions with statutory undertakers to co-ordinate the laying of utility services under the highway.

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

9th September 2019

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 50 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 61 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.
- 1.3. To use all reasonable endeavours to transfer the Affordable Dwellings 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 necessary rights of access passage of services and other rights necessary for the beneficial enjoyment of the Affordable Dwellings;
 - 1.4.2 reservation of all necessary rights of access and passage of services and rights of entry and all usual covenants 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 and 1.10 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 shall avoid negotiating a sale to any Affordable Housing Provider of only the Shared Ownership Dwelling where this would result in the Owner being unable to secure the transfer of the Affordable Rent 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 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 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 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.
- 1.9 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; or
- 1.9.2 any Chargee or any persons or bodies deriving title through such 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 mortgagor.
- 1.10 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 prior written notice to the Council of its intention to dispose and the Chargee shall use reasonable endeavours over a period of three months from the date of the written notice to complete a disposal

of the Affordable Housing to another Affordable Housing Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interests and costs and expenses. If such a disposal has not been completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Dwellings free from the obligations contained in this Schedule 3 and such obligations shall determine absolutely.

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

2. EDUCATION CONTRIBUTION

- 2.1 Not to Occupy or permit the Occupation of more than 58 of the Dwellings unless and until the Education Contribution has been paid to the Council in full.

3. HEALTHCARE FACILITIES CONTRIBUTION

- 3.1 Not to Occupy or permit the Occupation of more than 50% of the Dwellings unless and until the Healthcare Facilities Contribution has been paid to the Council in full.

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. EDUCATION CONTRIBUTION

2.1 To notify the Education Authority within 10 working days of receipt of the Education Contribution that the Council is in receipt of the Education Contribution.

2.2 To pay the Education Contribution to the Education Authority upon receipt of a document from the Education Authority confirming that they will:

2.2.1 apply the Education Contribution towards an extension of Spalding Wygate Park Primary., the need of which arises from the Development and for no other purposes whatsoever.

2.2.2 return any unspent part of the Education Contribution to the Council after the expiry of 5 years from the date of receipt of the Education Contribution.

2.3 to pay to the Owner any unspent monies received by them pursuant to paragraph 2.2.2 within 28 days of receipt from the Education Authority or if such sum is not then paid to the Education Authority then to repay to the Owner within 5 years of receipt by the Council of the Education Contribution.

3. HEALTH CARE FACILITIES CONTRIBUTION

3.1 To notify the Health Care Provider within 10 working days of receipt of the Health Care Facilities Contribution that the Council is in receipt of the Health Care Facilities Contribution.

3.2 To pay the Health Care Facilities Contribution to the Health Care Provider upon receipt of a document from the Health Care Provider that they will:

- 3.2.1 apply the Health Care Facilities Contribution for the purposes of Gosberton Medical Centre, Low Gate, Gosberton the need of which arises from the Development and for no other purposes whatsoever; and
- 3.2.2 return any unspent part of the Health Care Facilities Contribution to the Council after the expiry of 5 years from the date of receipt of the Health Care Facilities Contribution.
- 3.3 To pay to the Owner any unspent monies received by them pursuant to 3.2.2 within 28 days of receipt from the Health Care Provider.

4. GENERAL

- 4.1 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.
- 4.2 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
-------------------	--

<i>"District"</i>	<i>means the District of South Holland</i>
<i>"Intermediate Dwelling"</i>	<i>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</i>
<i>"Local Housing Need"</i>	<i>means local housing need as determined by the Council in accordance with the Council's Housing Allocations Policy</i>
<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 (...) Rented Units (being plot numbers x, x, x and x on the Development) to be provided as affordable</i>

	<i>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</i>
<i>"Vacancy Notice"</i>	<i>means a notice served by the Association giving the Council notice that a Rented Unit is 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: 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:-



SR Wolstenholme-Sy

Authorised Signatory

**EXECUTED as a DEED by
SPALDING LIFESTYLE AND GARDENING CENTRE LIMITED**

acting by a director

[Signature]

in the presence of:

Name of Witness *MRS SUSAN WILKS*

Signature of witness *Mrs S.B. Wilks*

Address *LARK HOWE, CECIL SQUARE, SPALDING*

Occupation *RETIRED. LINDA PE9 2LR*

**EXECUTED as a DEED by
KAPLAN PROPERTY LIMITED**

acting by a director

[Signature]

in the presence of:

Name of Witness

Signature of witness

Address

Occupation *P.A.*

V. Tully
V. TULLY

HOWES PERCIVAL SOLICITORS
3 The Osiers Business Centre
Leicester
LE19 1DX

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.