

Dated

20th December

2022

(1) SOUTH HOLLAND DISTRICT COUNCIL

and

(2) MINSTER PROPERTY GROUP (PINCHBECK) LIMITED

and

(3) ELIZABETH JILL WARRICK

PLANNING OBLIGATION BY DEED

Section 106 of the Town and Country Planning Act 1990

Relating to land east of Surfleet Road, Pinchbeck
Spalding

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

SHDC Reference: LD/H14-0117-22

THIS AGREEMENT IS SIGNED IN COUNTERPARTS

Date

20th December

2022

BETWEEN

- (1) **SOUTH HOLLAND DISTRICT COUNCIL** of Council Offices, Priory Road, Spalding, PE11 2XE ("the Council"); and
- (2) **MINSTER PROPERTY GROUP (PINCHBECK) LTD** (company reg. no. 13512897) whose registered office is situated at 10-12 Barnes High Street, Barnes, London, United Kingdom, SW13 9LW ("the Developer"); and
- (3) **ELIZABETH JILL WARRICK** of Fenleigh Farm, Bertie Fen, Pinchbeck, Spalding, PE11 3SR ("the Owner")

INTRODUCTION

- (A) The Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated.
- (B) The Owner is the freehold owner of the Land free from encumbrances pursuant to the Assent dated 1 February 1994 between (1) The Personal Representatives of Mrs Dorothy Joan Benner and (2) Elizabeth Jill Warrick (the Assent).
- (C) The Developer benefits from a Contract for Sale over the Land dated 12 October 2021 made between the Owner (1) and the Developer (2) and benefits from a caution against first registration at the Land Registry under Title LL409537.
- (D) The Developer has via his agents applied to the Council for planning permission for the Land under reference H14-0117-22 for the Development.
- (E) The Council resolved on 20 October 2022 to grant the Permission for subject to the Owner entering this Deed without which the Permission would be refused.
- (F) The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (G) The parties agree that the planning obligations contained in this Deed are necessary to comply with the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS:**1. DEFINITIONS**

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

"Act"	means the Town and Country Planning Act 1990 as amended
"Affordable Dwellings"	means the 37 dwellings to be constructed on the Land as Affordable Housing pursuant to the Permission and to be provided as 15 Affordable Rent Dwellings consisting of 4 x one-bedroom houses, 5 x two-bedroom houses, 4 x three-bedroom houses and 2 x 4-bedroom houses and 22 Intermediate Dwellings consisting of 10 x two-bedroom houses and 12 x three-bedroom houses in accordance with the Affordable Housing Plan on which the Affordable Rented Units are shaded pink and the Intermediate Dwellings are shaded blue (unless otherwise agreed in writing with the Council)
"Affordable Housing"	means affordable housing as described in Annex 2 of the National Planning Policy Framework dated July 2021, 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 Plan"	means the plan appended at Schedule 1 bearing reference 20050 0105 P02
"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 Rent Dwelling"	means an Affordable Dwelling rented to an Eligible Household by a local authority or an Affordable Housing Provider subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable) and where the rent and service charge must not exceed the local housing allowance for the relevant area which is reviewed annually and "Affordable Rent" shall be construed accordingly
"Application"	means the planning application submitted to the Council for the Development under reference H14-0117-22
"Chargee"	means a mortgagee or chargee (or any receiver) including an administrative receiver) appointed by such mortgagee or

	chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator of the whole or any part of the Affordable Dwellings
"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
"County Council"	means Lincolnshire County Council
"Development"	means the residential development of 37 Affordable Dwellings on the Land pursuant to the Permission
"Education Authority"	means the Local Education Authority for the area within which the land is situated being the County Council

“Education Contribution”	means the sum of one hundred and fifteen thousand and seventy four pounds and fifty pence (£115,074.50) which arises out of the need to provide secondary school place and the contributions shall be used towards the Secondary Education Contribution Purpose
“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 the 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
“Healthcare Contribution”	means a contribution of twenty four thousand, four hundred and twenty pounds (£24,420) for the Healthcare Contribution Purpose serving the Development
“Healthcare Contribution Purpose”	means the use of the Healthcare Contribution towards the expansion in capacity through remodelling/changes to layout or extension to existing facilities within the Market Deeping & Spalding Primary Care Network (PCN) at Munro

	Medical Centre, The Spalding GP Surgery and Beechfield Medical Centre. Alternatively the contribution may be used for the purpose, where appropriate, to support expansion in capacity at an alternative general practice site as required to the meet the local population health need
"Health Care Provider"	means the relevant regional health care provider for Lincolnshire Integrated Care Board
"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 the 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%
"Intermediate Dwellings"	means Shared Ownership Dwellings or other housing referred to in sub-clause (d)

	of the definition of Affordable housing in Annex 2 of the National Planning Policy Framework dated July 2021 or any replacement amendment or supplemental guidance to it
"Land"	means the land as described in Schedule 1 and edged red on the plan appended at Schedule 1 bearing reference 20050 0100 P04 against which this Deed may be enforced excluding any publically maintainable highway in respect of which the obligations of this Deed shall not apply nor be enforceable against
"Nomination Agreement"	means an agreement negotiated between the Council and the Affordable Housing Provider which guarantees the Affordable Rent Dwellings will be let on the Council's Housing Register substantially in the form set out and attached hereto 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.
"Permission"	means the planning permission to be granted by the Council for the Development pursuant to the Application or such other planning permissions for the Development granted pursuant to section 73 or 96A of the Act

"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 relevant Building Regulations shall be conclusive evidence that a Dwelling is practically complete.
"Protected Person"	means a person who: • 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; • has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Dwelling; • 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
"Retained Land"	means so much of the Land as is retained by the Owner
"Secondary Education Contribution Purpose"	means towards secondary education provision in the Spalding secondary planning area

"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 10% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Affordable Housing Provider • power to the purchaser to increase their ownership to 100% if they so wish • an initial rent not exceeding 2.75% of the value of the equity retained by the Affordable Housing Provider subject to annual increases not exceeding the Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of Homes England
"TRO Contribution"	means the sum of two thousand eight hundred pounds (£2,800) to be used for the TRO Contribution Purpose
"TRO Contribution Purpose"	means the use of the TRO Contribution to fund the undertaking of a Traffic Regulation Order to extend the 30mph speed limit Northeast of the proposed access site on Surfleet Road
"Working Days"	means any day other than a Saturday Sunday or public or bank holiday in England

2. CONSTRUCTION OF THIS DEED

- 2.1. Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably
- 2.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.
- 2.6. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party to the Land or any part thereof and in the case of the Council, successors to its functions.

3. LEGAL BASIS

- 3.1. This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and Section 93 of the Local Government Act 2003 and all other enabling powers with the intent that the covenants and obligations shall run with the Land.
- 3.2. The covenants, restrictions and obligations under this Deed are planning obligations pursuant to Section 106 of the Act and may be enforced by the Council.

4. CONDITIONALITY

- 4.1. This Deed and the rights and obligations contained herein is conditional upon:
- (a) the grant of the Permission; and
 - (b) the Commencement of Development.

SAVE FOR the provisions of Clauses 8.1(a), 9.3, 11 and 15 to 17, 18 and 19 and which shall come into effect immediately upon completion of this Deed.

5. THE OWNER'S COVENANTS

5.1. The Owner covenants with the Council as set out herein provided that the obligations in Schedule 2 shall bind and be enforceable against the Land and its respective owner(s).

6. THE COUNCIL'S COVENANTS

6.1. The Council covenants to comply with its obligations as set out herein and in Schedule 3.

7. NOTICES AND RECORD KEEPING

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

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

8. THE COUNCIL'S COSTS

8.1 The Owner shall pay to the Council:

- (a) the Council's reasonable legal costs together with all disbursements (if any) incurred in connection with the preparation, completion and registration of this Deed on or before the date of this Deed; and
- (b) the sum of £2,500 as a contribution towards the Council's costs in monitoring the implementation of this Deed prior to Commencement of Development.

9. MISCELLANEOUS

9.1. 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.

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

- 9.3. This Deed shall be registerable as a local land charge by the Council.
- 9.4. 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.
- 9.5. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 9.6. This Deed shall cease to have effect (insofar only as it has not already been complied with) in respect of the Permission (as appropriate) if the 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 pursuant to the Permission (as appropriate).
- 9.7. 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 in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising in relation to that part prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer of the Land (or any part or parts of the Land) shall constitute an interest for the purposes of this clause.
- 9.8. This Deed shall not be enforceable against:
- 9.8.1. owners occupiers or tenants of the Affordable Dwellings (other than in respect of the obligations contained in paragraph 1 of Schedule 2) nor against those deriving title from them;
 - 9.8.2. 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;
 - 9.8.3. statutory undertakers acquiring an interest in the Land for the purposes of their undertaking;
- 9.9. The provisions of paragraph 1 of Schedule 2 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 1.7 of Schedule 2 of this Deed.

9.10. 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.

9.11. 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 Permission) granted (whether or not on appeal) after the date of this Deed.

10. WAIVER

10.1. 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.

11. CHANGE OF OWNERSHIP

11.1. The Owner agrees with the Council to give the Council immediate written notice of any change in the ownership of any of its interest in the Land occurring before all the obligations under this Deed have been discharged such notice to give details of the transferees name and address together with details of the part of the Land disposed of PROVIDED THAT this shall not apply in relation to the sale or lease of a single Affordable Dwelling

12. INDEXATION

12.1. 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 2 and 3 divided by the Index figure last published prior to the date of this Deed multiplied by the Index figure last published before the due date for payment and "Indexation" shall be construed accordingly.

13. INTEREST

13.1. 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.

14. VAT

14.1. 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.

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 (40) 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 (10) Working Days written submissions and supporting material and each party will be entitled to make a counter written submission on the other party's original submission within a further ten Working Days.

16. SECTION 73 APPLICATIONS

- 16.1. It is agreed between the parties that where planning permission is issued in relation to the Development pursuant to an application under section 73 of the Act this Deed shall continue to bind that development and shall be in full force and effect subject to and in accordance with the provisions contained herein AND PROVIDED THAT in the event that upon receipt of a relevant application under section 73 of the Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligation.

17. JURISDICTION

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

18. EXECUTION AND DELIVERY

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

19. COUNTERPARTS

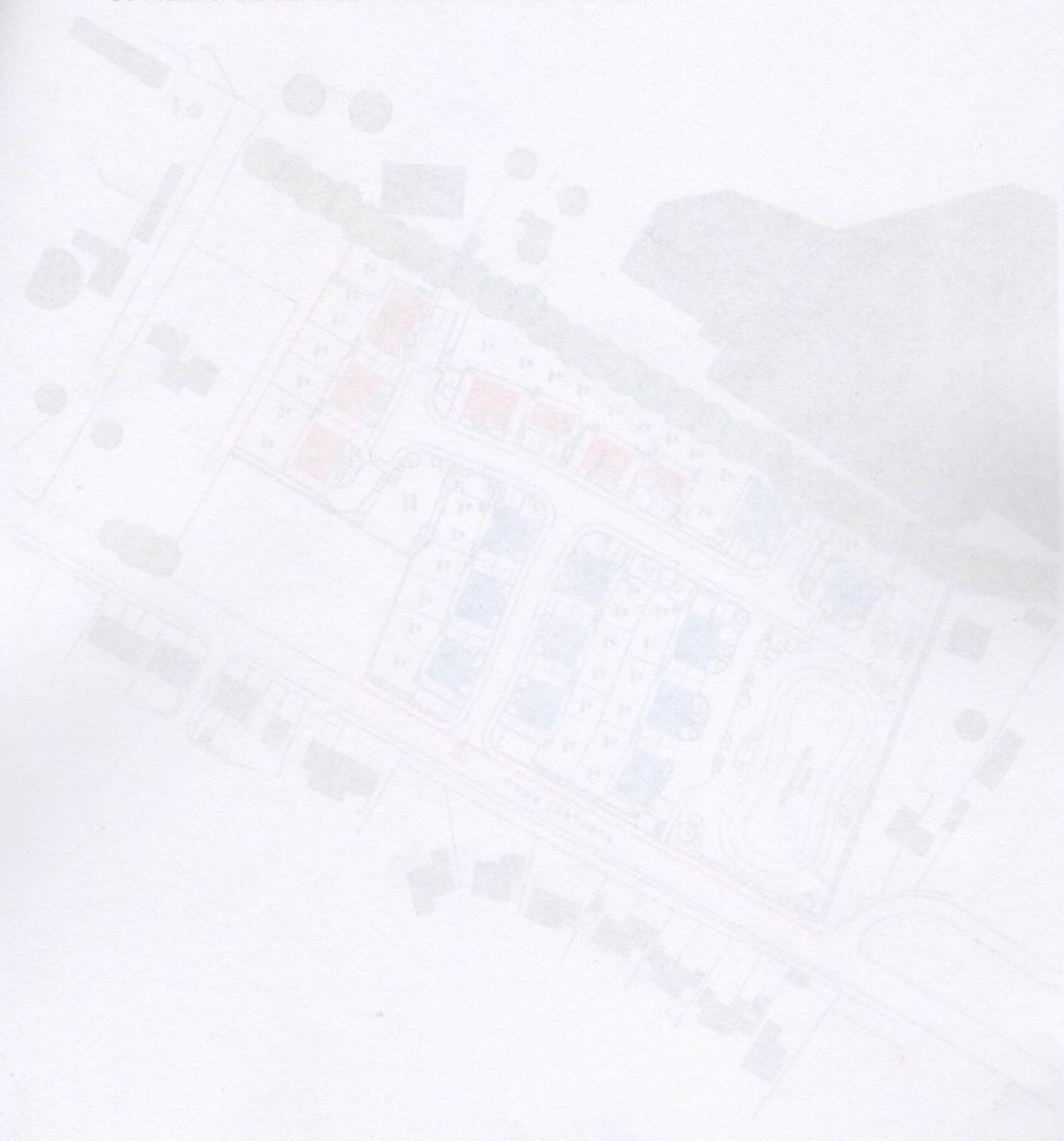
19.1. This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicated original, but all counterparts together shall constitute the one agreement.

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

SCHEDULE 1

**Land Plan
Affordable Housing Plan**

So much of the Land as is contained within the Assent.





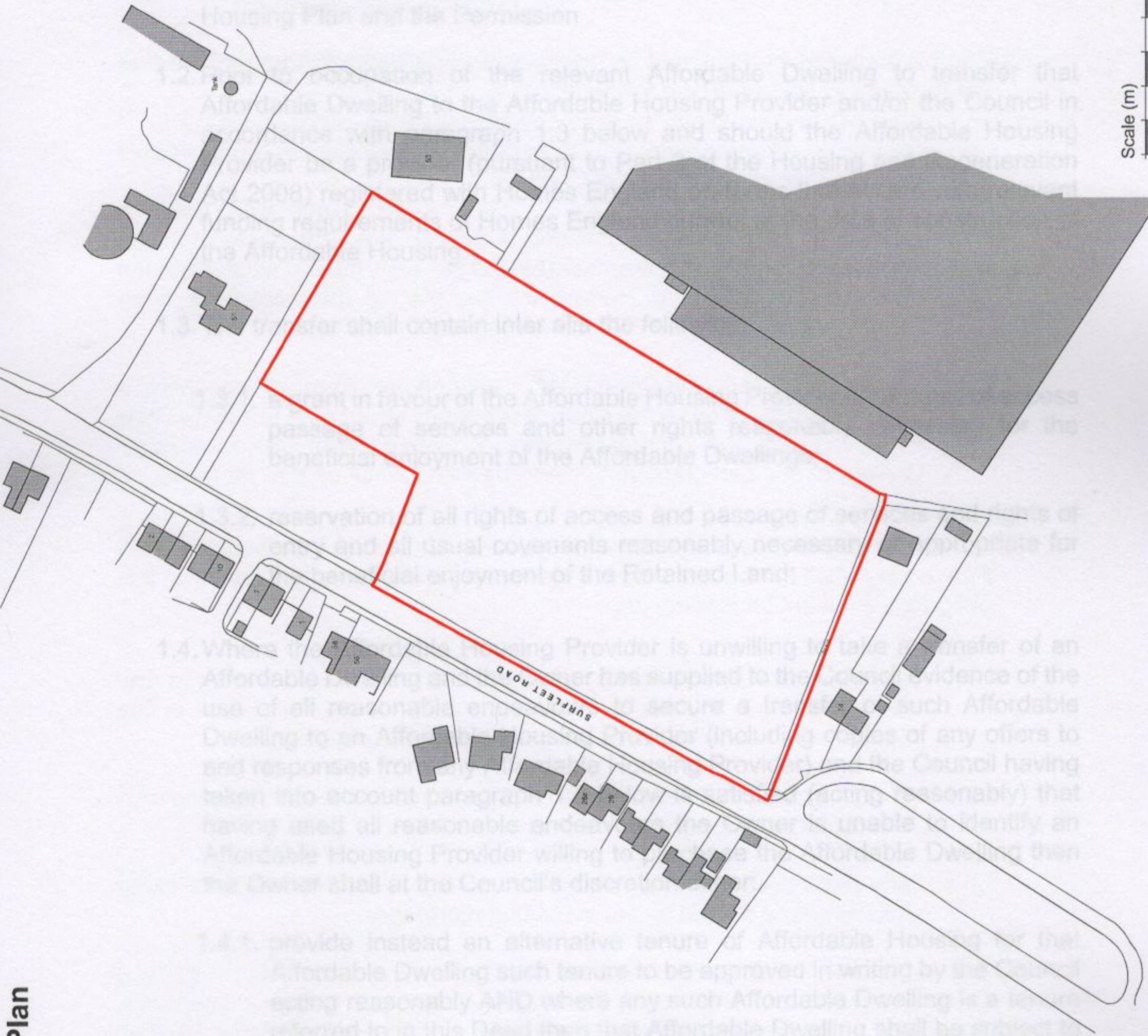
Key

 Affordable Rent

 Shared Ownership

Site Location Plan

Scale: 1:1250



Rev	Date	Drawn	Check
P10	25/01/2022	JAG	
P03	01/03/2022	JAG	
P04	04/03/2022	JAG	

Red line indicates
Layout outline

MINSTER
PROPERTY GROUP

HEA
ARCHITECTURE & PLANNING
01753 821111
01753 821112

Minster Property Group Ltd.

Proposed Residential Development at
Land off Surfleet Road,
Pinstock

Site Location Plan

Planning

1:1250

JAG

20050 0100

SCHEDULE 2

THE OWNER'S COVENANTS

The Owner covenants with the Council in respect of the Affordable Permission as follows:

1. AFFORDABLE HOUSING

1.1. To construct the Affordable Dwellings in accordance with the Affordable Housing Plan and the Permission

1.2. Prior to occupation of the relevant Affordable Dwelling to transfer that Affordable Dwelling to the Affordable Housing Provider and/or the Council in accordance with paragraph 1.3 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.

1.3. The transfer shall contain inter alia the following:

1.3.1. 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;

1.3.2. 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 Land;

1.4. Where the Affordable Housing Provider is unwilling to take a transfer of an Affordable Dwelling and the Owner has supplied to the Council evidence of the use of all reasonable endeavours to secure a transfer of such Affordable Dwelling to an Affordable Housing Provider (including copies of any offers to and responses from any Affordable Housing Provider) and the Council having taken into account paragraph 1.5 below 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:

1.4.1. 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 Affordable 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

- 1.4.2. 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 Affordable 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 Affordable Dwelling

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

- 1.6.1. 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
- 1.6.2. any Chargee provided that the Chargee shall have first complied with the obligations contained in paragraph 1.7 below; and
- 1.6.3. any purchaser from a mortgagee of an individual Affordable Dwelling following any default by the individual mortgagor

1.7. The affordable housing provisions in this Deed shall not be binding on a Chargee PROVIDED THAT such Chargee shall first give written notice to the Council of its intention to dispose of the Affordable Dwellings and has used reasonable endeavours over a period of three (3) months from the date of the written notice to complete a disposal of the Affordable Dwellings to another

registered provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses AND if such disposal has not completed within such three (3) month period, the Chargee shall be entitled to dispose of the Affordable Dwellings free from the affordable housing provisions in this Deed which provisions shall determine absolutely

1. AFFORDABLE HOUSING

2. EDUCATION CONTRIBUTION

2.1. To pay the Education Contribution to the Council prior to Occupation of 50% of the Affordable Dwellings

3. HEALTHCARE CONTRIBUTION

3.1. To pay Healthcare Contribution to the Council prior to Occupation of 50% of the Affordable Dwellings.

4. TRO CONTRIBUTION

4.1 To pay in full the TRO Contribution to the Council prior to Commencement of Development

2.2.1 apply the Education Contribution towards the Primary Education Purpose, Secondary Education Purpose and the Sixth Form Education Purpose, the need of which arises from the Development (as appropriate) and for no other purposes whatsoever.

2.2.2. return any unspent part of the Education Contribution to the Council after the expiry of 10 years from the date of receipt of the Education Contribution.

2.3. To pay to the person who made the payment 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 person who made the payment within 10 years of receipt by the Council of the Education Contribution.

3. HEALTHCARE CONTRIBUTION

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

3.2 To pay the Healthcare Contribution to the Health Care Provider upon receipt of a binding written confirmation from the Health Care Provider that they will

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 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 binding written commitment from the Education Authority confirming that they will:

2.2.1. apply the Education Contribution towards the Primary Education Purpose, Secondary Education Purpose and the Sixth-Form Education Purpose, the need of which arises from the Development (as appropriate) and for no other purposes whatsoever.

2.2.2. return any unspent part of the Education Contribution to the Council after the expiry of 10 years from the date of receipt of the Education Contribution.

2.3. To pay to the person who made the payment 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 person who made the payment within 10 years of receipt by the Council of the Education Contribution.

3. HEALTHCARE CONTRIBUTION

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

3.2. To pay the Healthcare Contribution to the Health Care Provider upon receipt of a binding written commitment from the Health Care Provider that they will:

3.2.1. apply the Healthcare Contribution for the purposes of Healthcare Purpose, the need of which arises from the Affordable Development (as appropriate) and for no other purposes whatsoever; and

3.2.2. return any unspent part of the Healthcare Contribution to the Council after the expiry of 10 years from the date of receipt of the Healthcare Contribution.

3.3. To pay to the person who made the payment any unspent monies received by them pursuant to 3.2.2 within 28 days of receipt from the Health Care Provider or if such sum is not then paid to the Health Care Provider then to repay to the person who made the payment within 10 years of receipt by the Council of the Healthcare Contribution.

4. TRO CONTRIBUTION

4.1. To notify the County Council within 10 working days of receipt of the TRO Contribution that the Council is in receipt of the TRO Contribution.

4.2. To pay the TRO Contribution to the County Council upon receipt of a binding written commitment from the County Council confirming that they will:

4.2.1. apply the TRO Contribution towards the TRO Purpose, the need of which arises from the Development and for no other purposes whatsoever.

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

4.3. to pay to the person who made the payment any unspent monies received by them pursuant to paragraph 4.2.2 within 28 days of receipt from the County Council or if such sum is not then paid to the County Council then to repay to the person who made the payment within 5 years of receipt by the Council of the TRO Contribution

5. GENERAL

5.1. 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.

5.2. At the written request of the Owner the Council shall without unreasonable delay 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 4
NOMINATION AGREEMENT**

Dated

20....

**South Holland District Council
and
[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

SOUTH HOLLAND DISTRICT COUNCIL of Council Offices Priory Road Spalding
PE11 2XE ("the Council"); and
[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 Dwellings and [..... (...) Intermediate/Shared Ownership Dwellings] shall be provided to meet the obligation to provide affordable housing.
- (B) The Association intends to take a transfer of the Rented Dwellings and by this Deed the Association agrees with the Council that the said Rented Dwellings 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 Dwelling and thereafter at least 75% of the tenants of each Rented Dwelling.
- (C) The Association intends to take a transfer of the Intermediate/Shared Ownership Dwellings and by this Deed the Association agrees with the Council that the Intermediate/Shared Ownership Dwellings (other Intermediate Rented Dwellings) shall be disposed of by the Association in accordance with Clause 5 below

NOW THIS DEED WITNESSES as follows

1. DEFINITIONS

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

"the Development"	means the erection of dwellings on land [insert location] with planning application reference
"District"	means the District of South Holland
"Intermediate Dwelling"	means the (...) intermediate dwellings (being plot numbers x, x, x and x on the Development) as defined in sub-clause (d) of the definition of Affordable housing in Annex 2 of the National Planning Policy Framework dated July 2021 or any replacement amendment or supplemental guidance to it on the land to which the allocation procedure in Clause 5 shall relate
"Local Housing Need"	means local housing need as determined by the Council in accordance with the Council's Housing Allocations Policy and

	for the avoidance of doubt does not include any local connection criteria for the Shared Ownership Dwellings
<i>"Nomination Notice"</i>	means a notice served by the Council on the Association providing details of nominated prospective tenants for a Rented Dwelling in accordance with Clause 4.3.3 of this Deed
<i>"Protected Tenant"</i>	means (i) any tenant who has: (a) exercised the right to acquire pursuant to the Housing Act 1996 or the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a Rented Dwelling; or (b) exercised any statutory right to buy (or any equivalent contractual right) in respect of a Rented Dwelling; and (ii) any lessee of a Shared Ownership Dwelling
<i>"Rented Dwellings"</i>	means the (...) rented dwellings (being plot numbers x, x, x and x on the Development) to be provided as affordable rented dwellings [and (being plot numbers x, x, x and x on the Development) to be provided as intermediate rented dwellings] [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 July 2021 or any replacement amendment or supplemental guidance to

	it on the land to which the nomination rights contained in Clause 4 shall relate
<i>"Shared Ownership Dwelling"</i>	means the (...) shared ownership dwellings (being plot numbers x, x, x and x on the Development) as defined in Annex 2 of the National Planning Policy Framework dated July 2021 or any replacement amendment or supplemental guidance to it on the land to which the allocation procedure in Clause 5 shall relate
<i>"Vacancy Notice"</i>	means a notice served by the Association giving the Council notice that a Rented Dwelling is available for occupation or re-let as appropriate
<i>"Working Day"</i>	means any day other than a Saturday Sunday or public or bank holiday in England

2. CONSTRUCTION OF THIS DEED

- 2.1. Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed.
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably
- 2.4. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that act or deriving validity from it.
- 2.6. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council, successors to its functions.

3. NOTICES

- 3.1 Any notice or document which is required to be given under the terms of this Deed shall be sent by email and shall be deemed to be sufficiently served if signed by or on behalf of the party issuing the notice.
- 3.2 The Council's email for service is allocations@sholland.gov.uk (or such other email address as the Council may from time to time notify the Association).
- 3.3 The Association's email address for service is [RP Email Address] (or such other email address as the Association may from time to time notify the Council).
- 3.4 Service shall be deemed to be made on the day of transmission if transmitted before 4:00 pm on a Working Day but otherwise on the next following Working Day

4. NOMINATIONS PROCEDURE: RENTED DWELLINGS

- 4.1. Subject to the provisions of this Deed the initial occupiers of each of the Rented Dwellings 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 Dwellings 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
 - 4.3.1.1. 4 weeks' notice that a Rented Dwelling is ready for occupation in respect of an initial let; and
 - 4.3.1.2. 5 Working Days' notice of impending vacancy of a Rented Dwelling in respect of a re-let
 - 4.3.2. the Vacancy Notice shall include the following details:
 - 4.3.2.1. address of the Rented Dwelling;
 - 4.3.2.2. weekly rental and any service charges;
 - 4.3.2.3. number of bedrooms and maximum occupancy;
 - 4.3.2.4. age designation; and
 - 4.3.2.5. any other relevant information such as adaptations to the Rented Dwelling
 - 4.3.3. The Council shall within ten (10) 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 Dwelling shall be offered to occupiers in accordance with the following provisions:
 - 4.3.5.1. the tenancy of a Rented Dwelling shall first be offered to the person whose name appears first on the Nomination Notice;
 - 4.3.5.2. if that person shall refuse or fail to accept the offer of a tenancy the Rented Dwelling 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;
 - 4.3.5.3. 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 Dwelling 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:

4.3.6.1. within ten (10) Working Days of the end of the acceptance period where the prospective tenant fails to accept a tenancy;

4.3.6.2. within ten (10) Working Days where a prospective tenant provisionally accepts a tenancy;

4.3.6.3. within ten (10) Working Days where a prospective tenant refuses the tenancy including any reasons for refusal given;

4.3.6.4. within ten (10) 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

4.3.6.5. 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.

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

5. ALLOCATION PROCEDURE: INTERMEDIATE/SHARED OWNERSHIP DWELLING

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

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

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 Assistant Director 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 or their successors in title;
- 7.1.2. any mortgagee or charge of a Protected Tenant or their successors in title;
- 7.1.3. any mortgagee or chargee 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) (each a Receiver) of the whole or any part of the Rented Dwellings and/or Intermediate/Shared Ownership Dwelling or any persons or bodies deriving title through such mortgagee or chargee 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:-

by D



Authorised Signatory



A = the Affordable Housing Contribution

B = the value of the relevant dwelling if subject to the alternative basis outlined in paragraph 14.1 of Schedule 2 as determined by an independent expert and agreed

EXECUTED and DELIVERED as a

DEED by **MINSTER PROPERTY GROUP (PINCHBECK) LIMITED**

acting by a Director in the
presence of:

..... to the percentage difference between house price inflation

Signature of Director (ex) and the index calculated with reference to the figures last

Signature of Witness: date 12-months after the date of this Deed and the figure last

Name of Witness (block capitals): ment.

Witness Address:

The Affordable Housing Contribution will be paid in full to the Council when no more

Witness Occupation: ings have completed. The costs for re-determining the values

of B and C will be fully recharged to the Owner. The independent expert will be

EXECUTED AS A DEED by)

ELIZABETH JILL WARRICK)

in the presence of:)

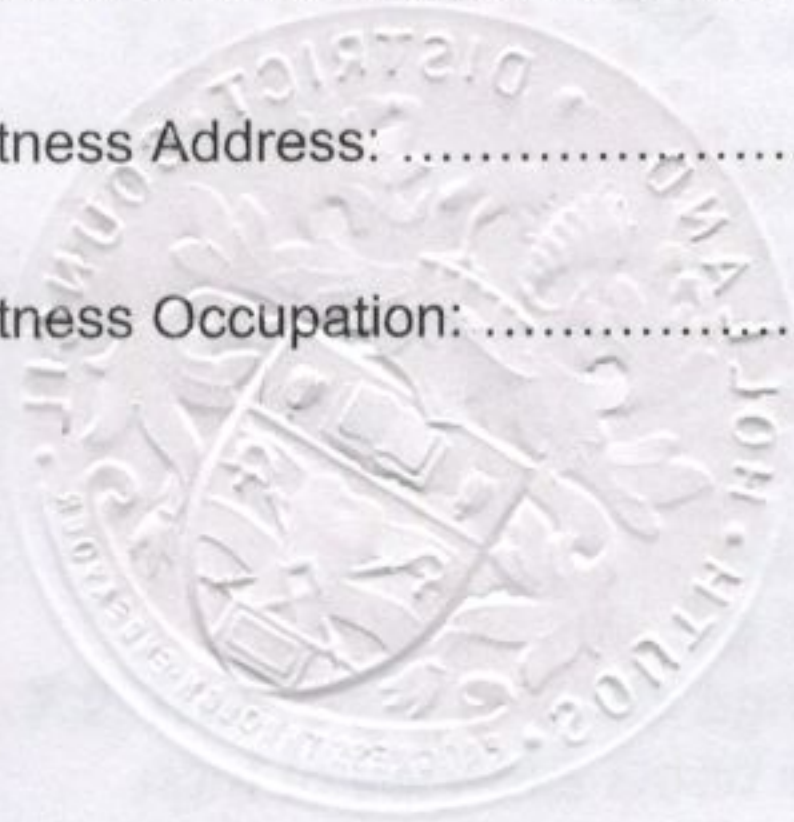
Witness:

A = the Affordable Housing Contribution

Witness Name:

Witness Address:

Witness Occupation:



Signed on behalf of SOUTH
HOLLAND DISTRICT COUNCIL

Signed on behalf of
(ASSOCIATION)

EXECUTED and DELIVERED as a
DEED by MINISTER PROPERTY
GROUP (PINCHBECK) LIMITED
acting by a Director in the
presence of:

Signature of Director

Signature of Witness

Name of Witness (block capitals)

Witness Address:

Witness Occupation:

EXECUTED AS A DEED by

ELIZABETH JILL WARRICK

in the presence of

Witness

ANNEX A AFFORDABLE HOUSING CONTRIBUTION FORMULA

Part 1

The Affordable Housing Contribution is calculated as follows: $A = (B \text{ less } C)$ multiplied by D

Where:

A = the Affordable Housing Contribution

B = the value of the relevant dwelling if subject to the alternative tenure referred to in paragraph 1.4.1 of Schedule 2 as determined by an independent expert and agreed by all parties

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

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

The Affordable Housing Contribution will be paid in full to the Council when no more than 85% of the Dwellings have completed. The costs for re-determining the values of B and C will be fully recharged to the Owner. The independent expert will be appointed and act under Clause 15

Part 2

The Affordable Housing Contribution is calculated as follows: $A = (B \text{ less } C)$ multiplied by D

Where:

A = the Affordable Housing Contribution

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

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

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

The Affordable Housing Contribution will be calculated by the independent expert appointed and acting under Clause 15 when no more than 60% of the Dwellings have been completed and will be paid in full to the Council when no more than 85% of the Dwellings have completed. The Owner will reimburse the Council for the full cost of the independent valuation in all but exceptional circumstances.