

AGREEMENT

Under Section 106 of the Town and Country Planning Act 1990 as amended

BETWEEN

(1) **BELLWAY HOMES LIMITED**

(2) **EILEEN MARIAN HARRINGTON, CHRISTOPHER HARRINGTON, BENJAMIN
HARRINGTON, NICOLA HARRINGTON GEORGE HENRY MARCUS HARRINGTON, AMELIA
ROSE HARRINGTON, FREDERICK JOHN HARRINGTON**

And

(3) **TENDRING DISTRICT COUNCIL**

Entered into pursuant to the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) (and other enabling statutory provisions) relating to the development of land South West of Crockleford Grange Bromley Road Ardleigh Colchester Essex CO7 7SE – Planning application reference 21/02164/FUL

THIS DEED is made the 17th day of November Two Thousand and Twenty Two

BETWEEN:

- (1) **BELLWAY HOMES LIMITED** registered in England and Wales with Company Registration Number 670176 and whose registered office is at Woolsington House, Woolsington, Newcastle Upon Tyne, United Kingdom, NE13 8BF (hereinafter referred to as (the "Developer");
- (2) **EILEEN MARIAN HARRINGTON, CHRISTOPHER HARRINGTON, BENJAMIN HARRINGTON, NICOLA HARRINGTON, GEORGE HENRY MARCUS HARRINGTON, AMELIA ROSE HARRINGTON, FREDERICK JOHN HARRINGTON** of Barn End, Cooks Hall Road, West Bergholt, Colchester CO6 3EX (together, the "Owner"); and
- (3) **TENDRING DISTRICT COUNCIL** of Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE (the "Council")

WHEREAS:

- A. For the purposes of the Act, the Council is the local planning authority for the area within which the Site is located and the authority by whom the obligations in this Deed are enforceable
- B. The Owner is the owner of the freehold interest in the Site, excluding the access road, that is registered at HM Land Registry under title numbers EX952832, EX476695 and EX952831
- C. The Planning Application reference 21/02164/FUL was submitted to the Council by the Developer for Planning Permission for the Development of the Site.
- D. The Council considers it expedient that provision should be made for regulating or facilitating the Development or use of the Site in the manner hereinafter appearing.
- E. The parties have agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council against the Owner and its successors in title.
- F. In order to satisfy the tests in Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 the parties are satisfied that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms and are directly related to the Development and fairly and reasonably relate in scale and kind to the Development.
- G. The Developer intends to develop the Site pursuant to the Planning Permission.
- H. This Deed is enforceable in accordance with section 106 of the Town and Country Planning Act 1990 if permission is granted pursuant to the Planning Application.

NOW THIS DEED WITNESSETH as follows:

1 DEFINITIONS

- 1.1. In this Deed where the context so admits the following words and expressions shall have the following meanings:

"Act"	means the Town and Country Planning Act 1990, as amended;
"Commencement"	means the commencement of the Development by the carrying out of a

material operation (as defined by Section 56 (4) of the Act) provided always that:

- (i) any works necessary in undertaking a land survey of or obtaining soil samples from the land whether that be in respect of any requirements for environmental or ecological studies or otherwise;
- (ii) any remedial works on the land necessary to prevent the risk of harm to human health and safety or required in order to remediate the Site or comply with any condition imposed upon the grant of Planning Permission or any licence;
- (iii) works of demolition and site clearance including earth works, re-grading and landscape clearance works;
- (iv) works of archaeological excavation on the land
- (v) erection of hoardings, temporary enclosures, fences and other security measures on the Site including any advertisements upon them
- (vi) works for the provision and diversion of services

shall for the purposes of this Deed be deemed not to be works which shall begin the Development and "Commence" and "Commence the Development" and "Commenced" shall be construed accordingly

"Development"

means the development described in the Planning Application and authorised by the Planning Permission;

"Index"

means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any such alternative index or comparable measure of price inflation as the Council reasonably requires;

"Index Linked"

means increased by applying the RPI All Items Index: Jan 1987 = 100 published by the Office for National Statistics using

the formula $A = B \times C$ divided by D - where A is the amount actually payable - B is the amount specified as payable - C is the RPI All Items Index two months before the date of payment - and D is the RPI All Items Index two months before the date of this Deed

"Occupation"

means occupation of a building constructed as part of the Development and shall not include day time occupation by workmen involved in the construction of the Development or in so far as such uses are ancillary to the construction of the Development the use of finished buildings for sales purposes for use as temporary offices for site security or for the storage of plant and materials and "Occupy" and "Occupied" shall mutatis mutandis be construed accordingly;

"Plan"

means the plan incorporated within this Deed;

"Planning Application"

means the planning application submitted to the Council given reference number 21/02164/FUL by the Council for the construction of 14 dwellings, new access, landscaping and associated works;

"Planning Permission"

means the planning permission granted in pursuance of the Planning Application subject to conditions;

"Residential Dwellings"

means the residential dwellings permitted by the Planning Permission;

"Site"

means the land known as land South West of Crockleford Grange Bromley Road Ardleigh Colchester Essex CO7 7SE under title EX952832, EX476695, EX952831 and AA9531 (title for the access road) shown for identification edged red on the Plan;

1.2. Where the context so requires:

- (a) A reference in this Deed to an Act of Parliament or any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same.
- (b) Words importing the masculine gender include the feminine gender and vice versa. Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.
- (c) Any headings or side notes are for ease of reference only and shall not affect the construction of this Deed.
- (d) Where a party includes more than one person any obligations of that party shall be joint

and several.

2. INTERPRETATION AND LEGAL EFFECT

2.1. This Deed is made pursuant to Section 106 of the Act and the covenants contained herein are planning obligations for the purposes of Section 106 of the Act in respect of which:

- (a) The Owner owns the freehold title to the Site;
- (b) The Council is the Local Planning Authority entitled to enforce the provisions of this Deed and the covenants contained in this Deed shall be so enforceable;
- (c) This Deed is entered into in respect of the Site with the intent that it shall bind the Owner's freehold interest in the Site;
- (d) This Deed shall be binding on all successors and assigns in title of the Owner and any persons claiming under or through them;
- (e) This Deed has been executed as a Deed and the Owner shall supply a copy of it to the Council so that it may be registered by the Council against the Site as a Local Land Charge and entered into the planning register maintained by the Council under the Act;

2.2. To the extent that any of the obligations contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers;

2.3. Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval and is conditional on the grant of Planning Permission;

2.4. Save in respect of Clauses 2 – 4 and 6 which shall come into effect on the date hereof this Deed shall not become effective until the Planning Permission has been issued and the Development Commenced by the Owner;

2.5. The provisions of this Deed shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999;

3. MISCELLANEOUS

3.1. Nothing in this Deed shall prohibit the rights to develop any part of the Site in accordance with a grant of further planning permission (other than the Planning Permission) issued after the completion of this Deed;

3.2. No person shall be liable for any breach of this Deed unless they hold an interest in that part of the Site in respect of which such breach occurs or held such an interest at the date of the breach neither the reservation of rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site will constitute an interest for the purposes of this Clause;

3.3. the Owner shall save for liability in respect of any antecedent breach upon parting with its respective interests in the Site or part thereof be released from all obligations rights and duties under the terms of this Deed and all outstanding obligations rights and duties shall pass to the Owner's successors in title to the Site;

3.4. The obligations in this Deed will not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker;

3.5. The obligations in this Deed will not be enforceable against a purchaser an occupier or tenant or mortgagee of any completed Market Dwelling or against any successor in title or against anyone deriving title from any of them;

- 3.6. The provisions and obligations set out in the Second Schedule of this Deed shall not be enforceable against any Approved Body or any owner or occupier or tenant or mortgagee of any Affordable Dwelling or any mortgagee of an Approved Body or against anyone deriving title from any of them;
- 3.7. The provisions of this Deed will come to an end if the Planning Permission is quashed revoked or otherwise withdrawn or modified without the consent of the Owner before the Commencement of the Development or the Planning Permission expires;

Where the provisions of this Deed come to an end under Clause 3.7 the Owner may request that the Council vacate or cancel the entry made in the Local Land Charges register in relation to this Deed or otherwise to record the fact that it has come to an end and no longer affects the Site.

4. NOTICES

- 4.1. All notices given or served or required to be given or served under this Deed shall be given or served as follows:
 - (a) by personal delivery by hand (in which case service is immediately effected).
 - (b) by first class post (in which case service is effected on the second day after posting) or
 - (c) by electronic mail where an email address is given by a party for service (in which case service is effected immediately in the absence of evidence of a delay at the time the message was sent)

4.2. The address for service of notices:

4.2.1 for the Council by email to obligations@tendringdc.gov.uk and marked for the attention of the s106 Officer or if by post as set out above addressed to the Assistant Director of Planning at the Council's address at the head of this Deed and all notices shall be marked with reference 21/02164/FUL

4.2.2 to the Owner as aforesaid.

5. THE OWNER'S COVENANTS

- 5.1. The Owner HEREBY COVENANTS in favour of the Council :
- 5.2. To serve on the Council a notice in writing not less than four (4) weeks prior to Commencement stating the expected date of Commencement; ;
- 5.3. To serve on the Council a notice in writing of the Commencement of Development not more than ten (10) days after the date on which the Commencement of the Development occurred;
- 5.4. To serve on the Council a notice in writing not less than 10 days before the Occupation of the first Market Dwelling;
- 5.5. To observe the planning obligations contained in this Deed and the Schedules to this Deed;

6. JURISDICTION

- 6.1. This Deed is to be governed by and interpreted in accordance with the law of England and the courts of England are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Deed.

7. DISPUTE RESOLUTION

7.1. In the event of any dispute or difference arising between the Parties in respect of any matter contained in this Deed including questions of value and any question of reasonableness the same shall (subject to Clause 7.5) be referred to an independent person (the "Specialist") for determination in accordance with the following provisions:

7.1.1 the Specialist shall have at least 10 years post qualification experience in the subject matter of the dispute;

7.1.2 where such dispute relates to engineering construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers;

7.1.3 where such dispute relates to the valuation of property it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors; and

7.1.4 where such dispute relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the parties or in default of agreement appointed on the application of either party or at the direction of the President for the time being of the Royal Town Planning Institute;

PROVIDED THAT the parties may otherwise agree an alternative Specialist appropriate to the nature of the dispute.

7.2. Unless otherwise agreed by the parties to the dispute the Specialist is to act as an independent expert and:

7.2.1 each party may make written representations within 21 working days of the appointment of the Specialist and will copy the written representations to the other party;

7.2.2 each party is to have a further 14 working days to make written comments on the other's representations and will copy the written comments to the other party;

7.2.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he may reasonably require;

7.2.4 the Specialist is not to take oral representations from the parties without giving both parties the opportunity to be present and to give evidence and to cross examine each other; and

7.2.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision.

7.3. Responsibility for the costs of referring a dispute to a Specialist under this clause 7 including costs connected with the appointment of the Specialist and the Specialist's own costs will be decided by the Specialist.

7.4. The provisions of this clause shall not affect the ability of either party to apply for and be granted any of the following: declaratory relief; injunctions; specific performance; payment of any sum; damages, and any means of enforcing this Deed and consequential and interim orders and relief.

7.5. No dispute difference or question may be referred to the Specialist unless the dispute difference

or question has first been communicated from one party to the other party by notice in writing and the parties shall have met in good faith to resolve the dispute or difference amicably but have failed to do so within 14 days from the date of that meeting.

8. TRANSFER OF INTERESTS

8.1 Otherwise than in relation to individual purchasers of Residential Dwellings the Owner shall give to the Council within one (1) month of the Owner disposing of any part of the land comprised in the Site written notice of the name and address of the person to whom the land has been transferred.

8.2 The provisions of Clause 8.1 shall apply in relation to any successor in title of the Owner as the owner of the Site or any part thereof mutatis mutandis.

9. COSTS

The Owner hereby agrees to pay prior to the date of this Deed the Council's reasonable legal costs and disbursements incidental to the preparation negotiation and entering into of this Deed.

10. EXECUTION

The parties have executed this Deed as a deed and it is delivered on the date set out above

PLAN



450mm strip retained by vendor

Ancient Woodland

15m set to ancient woodland

Site Area within Red Line
6224.3m (1.539 acres)
Inclusive of land retained by vendor

Existing Bellway Development Site

Client **Bellway Homes Ltd**
Essex Division

Project **Land SW of Crockleford Lodge**
Bromley Rd, Ardleigh, Essex

Drawing **Site layout red line**

1:500 @ A3

Phase **Planning**

Drawn **Pjt**

Revised

Issued

930-PL-001

ROBERT HUTSON
THE MILL - THE TYE - EAST HANNINGFIELD - ESSEX - CH11 4AE

ARCHITECTS



"Dwellings"	means the Residential Dwellings to be constructed on the Site pursuant to the Planning Permission;
"Homes England"	means the public body set up to fund and regulate the provision of Affordable Housing in England and any successor body;
"Housing Administrator"	has the meaning ascribed to it in the Housing and Planning Act 2016;
"Housing Needs Register"	means the register maintained by the Council or its nominee or an Approved Body for Persons in Housing Need;
"Intermediate Dwellings"	means dwellings for sale including low cost homes (but not including low cost market housing) shared ownership shared equity and equity loan products as approved by the Council
"Intermediate Housing"	means one or more of Intermediate Dwellings, Shared Equity Dwellings, Shared Ownership Dwellings and Intermediate Rented Dwellings as agreed by the Council;
"Intermediate Rented Dwellings"	means dwellings at rents above those of Social Rented Dwellings but below local market rents;
"Market Dwelling"	means the Residential Dwellings that are not Affordable Housing Dwellings;
"Person in Housing Need"	means a person or persons registered on the Housing Needs Register or such other person considered by the Council or the Approved Body to be in housing need having regard to their income and local house prices and rents;
"Protected Tenant"	means any tenant who: <ul style="list-style-type: none"> (a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling; (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Dwelling; (c) has been granted a shared ownership lease in exercise of that person's statutory right in respect of a particular Affordable Housing Dwelling;
"Shared Equity Dwellings"	means dwellings purchased on a shared equity basis whereby not more than 75% of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition of the initial share and upon a payment equating to the additional equity being purchased payable to the Approved Body (or

	such other body as the Council may elect). Such payment to be based on the actual market value as at the date of acquisition of the additional equity such scheme to be secured by a mechanism and in a form agreed with and approved by the Council (or such other body as the Council may elect);
"Shared Ownership Dwellings"	means dwellings purchased on a Shared Ownership Lease
"Shared Ownership Lease"	means a lease in a form approved by the 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 50% 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 Approved Body - 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 Approved Body subject to annual increases not exceeding 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 the Homes England;
"Social Rented Housing"	means housing let at below market rent which is owned by local authorities and/or private registered providers (as defined in Section 80 of the Housing and Regeneration Act 2008), for which the rent levels are determined through the Government's national rent policy for social rent;
"Specification"	means a specification for the design and construction of the Affordable Housing Dwellings which shall reflect the standard requirements for the provision of Social Rented Housing and/or Affordable Rented Dwellings;
"100% Staircaser"	means a lessee of an Affordable Housing Dwelling under a shared ownership or shared equity arrangement who has acquired 100% of the equity in the said Affordable Housing Dwelling;

2. The Owner hereby covenants with the Council as follows:

2.1. Not to Commence the Development unless and until the Affordable Housing Scheme has been submitted to the Council for approval and the Council has approved the said Affordable Housing Scheme in writing PROVIDED THAT the said document shall be deemed to have been approved if no decision thereon has been submitted in writing by the Council to the Owner within 6 weeks of the date on which each said document is submitted to the Council.

2.2. Not to Occupy (or allow, cause or permit the Occupation of) more than five (5) Market Dwellings unless and until the Affordable Housing Dwellings referred to in the Affordable Housing Scheme have been:

2.2.1. constructed in accordance with the Affordable Housing Scheme including the approved Specification and are capable of and available to be Occupied for their intended

purpose; and

2.2.2. transferred to the Approved Body and for the purposes of this Schedule only the expression "transferred" shall mean a transfer of the freehold interest (of any house or block of flats) or leasehold interest (of any flat in a block that also contains one or more Market Dwellings) that comprises the Affordable Housing Dwellings or an agreement for sale or lease agreed with the Approved Body that has been unconditionally released for completion by the Owner PROVIDED ALWAYS that any transfer of the Affordable Housing Dwellings to the Approved Body shall be subject to the provisions contained in Part Two of this Schedule.

3. (Subject always to paragraph 4 of this Schedule) the Affordable Housing Dwellings shall be Occupied for no purpose other than as Affordable Housing.
4. Without prejudice to paragraph 3 the obligations and restrictions contained in this Schedule shall not bind:
 - 4.1. a Chargee (or any receiver or administrative receiver appointed by such Chargee) of the whole or part of the Affordable Housing Dwellings or any successors in title to such Chargee PROVIDED THAT such Chargee (or any receiver or administrative receiver appointed by such Chargee) acting pursuant to any event of default has first complied with the provisions of paragraph 5 of this Schedule;
 - 4.2. a Protected Tenant;
 - 4.3. any 100% Staircaser;
 - 4.4. any mortgagee or chargee of an occupier, lessee or owner of a non-rented Intermediate Affordable Housing Dwelling lawfully exercising the mortgagee protection provisions within the lease;
 - 4.5. any person or body deriving title through or from any of the parties mentioned in paragraphs 4.1 – 4.4 above
5. Any Chargee claiming the protection granted by paragraph 4.1 of this Schedule must first:
 - 5.1. Give written notice to the Council of its intention to dispose of the Affordable Housing Dwellings;
 - 5.2. Have used reasonable endeavours over a period of twelve (12) weeks from the date of the written notice referred to in paragraph 5.1 to dispose of the Affordable Housing Dwellings to another Approved Body or to the Council for a consideration not less than the amount due and outstanding to the Chargee under the terms of the mortgage or charge including all accrued principal monies, interest and all other costs and expenses incurred by the Chargee in respect of the mortgage or charge; and
 - 5.3. If such disposal has not taken place within the twelve (12) week period the Chargee shall be entitled to dispose of the Affordable Housing Dwellings free from the affordable housing provisions contained in this Deed

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage.

Part Two

A. The transfer of the Affordable Housing Dwellings to the Approved Body shall be with vacant possession.

B. The transfer deed for the transfer of the Affordable Housing Dwellings to the Approved Body shall be prepared by the Owner and the Owner shall pay the Approved Body's reasonable costs of transferring the Affordable Housing Dwellings up to a total aggregate limit of £1,500 (One Thousand Five Hundred Pounds) on completion of the transfer deed.

C. The transfer deed shall contain:

1. a grant by the Owner of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Affordable Housing Dwellings;

2. a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the Development; and

3. such other covenants and reservations as the Owner may reasonably require including but not limited to the maintenance of the Development once it is completed and the preservation of the appearance thereof.

SECOND SCHEDULE

Recreational Disturbance, Avoidance & Mitigation Contribution (RAMS)

1. In this Schedule the following words and expressions shall have the following meaning:

"Natura 2000"	has the meaning ascribed to it in section 3(1) Conservation and Habitats and Species Regulations 2017;
"RAMS"	means the Essex Coast Recreation Disturbance Avoidance Mitigation Strategy in relation to Essex Coast Natura 2000 European Designations;
"RAMS Contribution"	means the sum of one hundred and thirty seven pounds and seventy one pence (£137.71) per Dwelling Index Linked (which for 14 Dwellings will equal £1,927.94 Index Linked) as set out in the RAMS;
"RAMS Contribution Purpose"	means the funding of strategic 'off-site' measures identified by the draft or adopted RAMS (as the case maybe at Commencement of Development) to mitigate any increased use as a result of the Development at Essex Coast Natura 2000 European Designations (in particular Hamford Water SPA and SAC).

2. The Owner hereby covenants to give notice to the Council of the expected commencement of the Development to allow the calculation of the RAMS Contribution prior to Commencement of Development and to pay to the Council the RAMS Contribution prior to Commencement of Development and the Owner shall not Commence Development nor permit the Commencement of Development unless and until the RAMS Contribution has been paid to the Council.
3. The Council hereby covenants with the Owner to use the RAMS Contribution for the RAMS Contribution Purpose.
4. Notifications and payments shall be marked for the attention of the Section 106 Officer, Tendring District Council in accordance with Clause 4 of this Deed.

IN WITNESS WHEREOF this Deed has been executed as a Deed the day and year first before written

EXECUTED AS A DEED on behalf of
BELLWAY HOMES LIMITED by

.....
(signature 1)

.....
(signature 2)

.....
(print name)

.....
(print name)

in exercise of the powers
conferred on them by a Power of
Attorney dated

In the presence of:-

.....
Attestation of signature 1

.....
Attestation of signature 2

Witness

Name:.....

Address:.....

.....

Witness

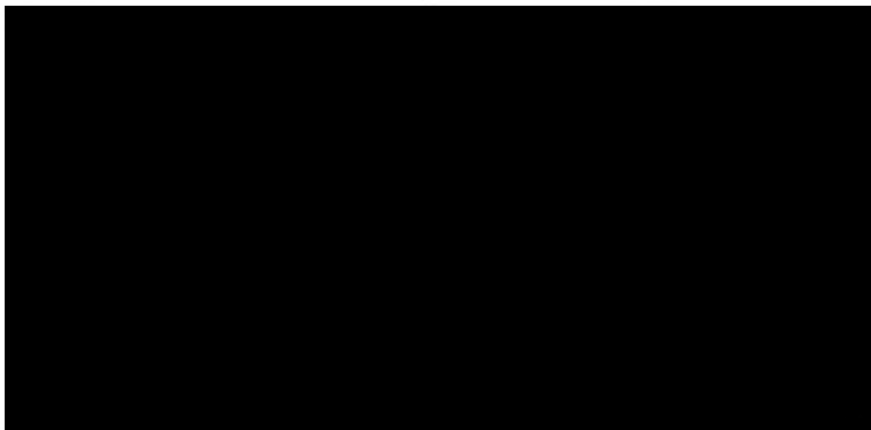
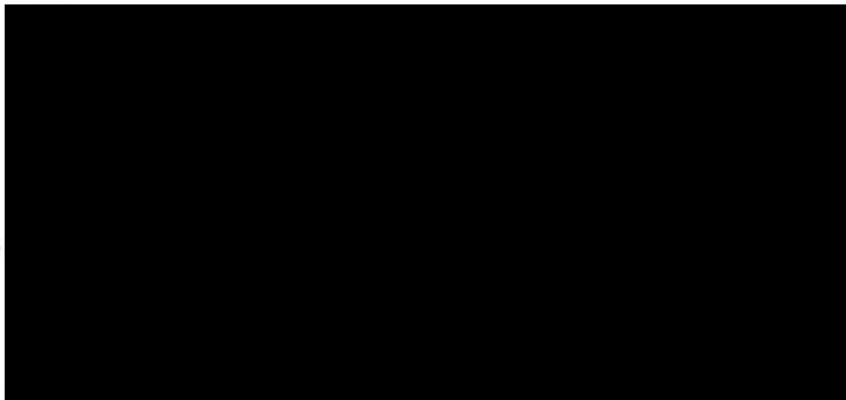
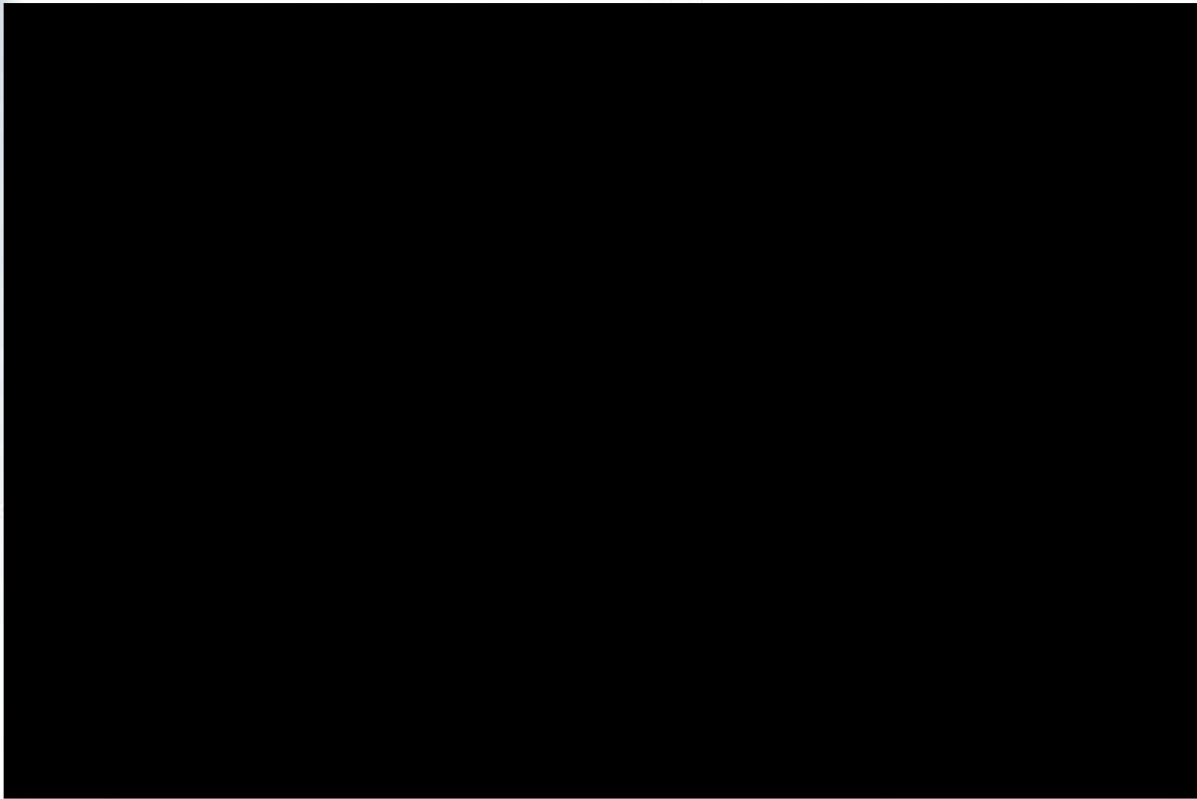
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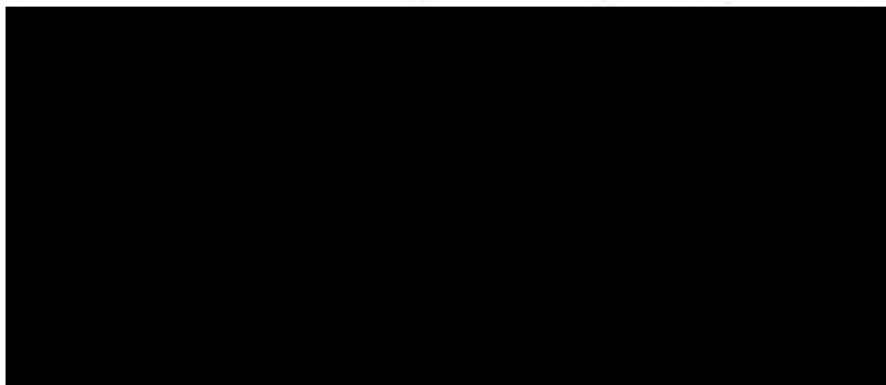
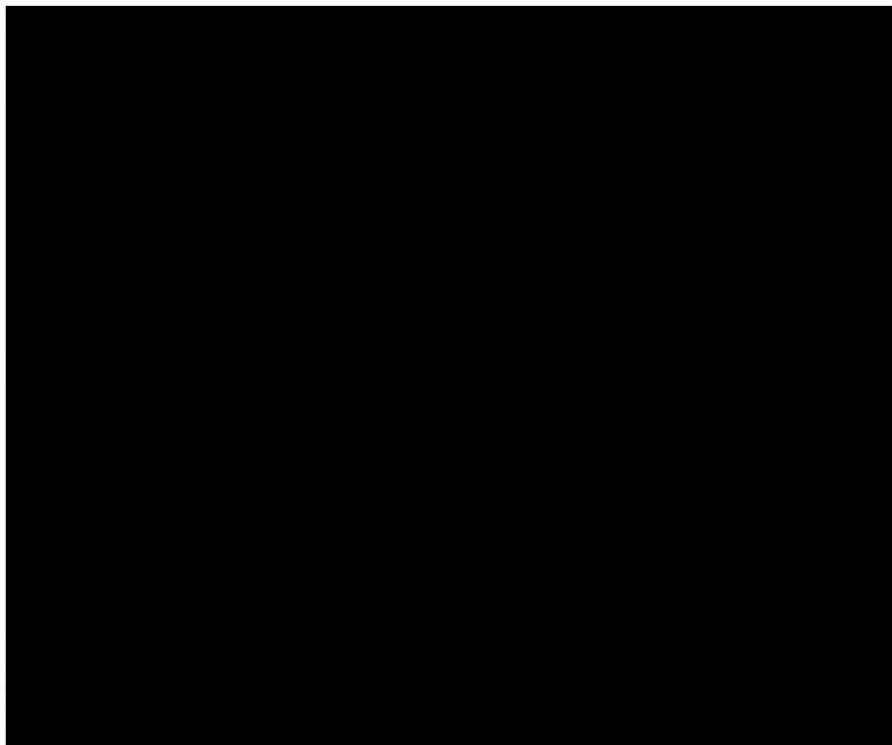
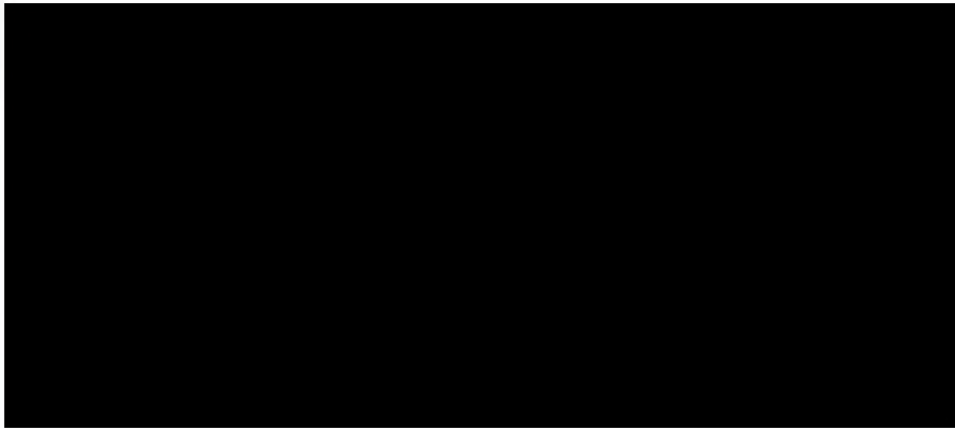
Address:.....

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IN WITNESS WHEREOF this Deed has been executed as a Deed the day and year first before written







SEAL REGISTER
18597
NUMBER