

Dated:

27th January 2020

NORTH ESSEX HOMES SPV6 LIMITED (1)

and

TENDRING DISTRICT COUNCIL (2)

and

ESSEX COUNTY COUNCIL (3)

and

SALBOY PARTNERSHIPS LIMITED (4)

and

NORTH ESSEX HOMES LIMITED (5)

Deed Of Variation To Planning Obligation 7 September 2020

Planning Reference 25/00996/DOVU5

Relating To: Land At Valley Road Harwich Essex

Reference: EKS/EKS/31840.0026

the Original Agreement and set out in this Deed with effect from the date of this Deed in relation to the Site..

- (G) This Deed is made under s.106A of the 1990 Act and is supplement to the Original Agreement.
- (H) The Parties have agreed to vary the Original Agreement as set out in this Deed.

Agreed terms

1 Definitions and interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Deed of Variation.

1990 Act: means the Town and Country Planning Act 1990 (as amended)

Affordable Housing Plan: means the plan attached to this Deed at Appendix 1.

Original Agreement: means an agreement made under Section 106 of the 1990 Act dated the 7 September 2020 between (1) SATO UK LIMITED; (2) the Council; and (3) the County Council in respect of the Planning Permission granted by the Secretary of State on 5 May 2021 under appeal reference APP/P1560/W/20/3246908 following the refusal by the Council of the Planning Application given reference 18/02109/OUT.

Registered Provider: means a person who is a registered provider of social housing within the meaning of the Housing and Regeneration Act 2008.

Section 73 Planning Permission: means the planning permission granted by the Council on the 29 March 2023 under the reference 23/00242/VOC for:

Application under Section 73 of the Town and Country Planning Act, to allow a variation of condition 9 (Arboricultural Impact Assessment) of appeal decision for 18/02109/OUT to align with 22/01920/DETAIL in terms of soft landscaping. SATO UK Ltd Valley Road Dovercourt Harwich.

Site: means the SATO site Valley Road Harwich Essex shown for identification purposes only edged red on the Plan within the Original Agreement.

Variation Date: the date of this Deed.

IT IS HEREBY AGREED

2. Terms defined in the Agreement

In this Deed, expressions defined in the Original Agreement and used in this Deed have the meaning set out in the Original Agreement unless otherwise defined. The rules of interpretation set out in the Original Agreement apply to this Deed.

3. Legal Basis

- 3.1 This Deed is supplemental to and varies the Original Agreement and is made pursuant to Sections 106 and 106A of the 1990 Act and the covenants and obligations contained in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act enforceable by the Council and to the extent that any covenants and obligations in this Deed are not planning obligations within the meaning of the 1990

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 insofar as the said statutory provisions may be relevant to the enforcement of the obligations contained herein.

3.2 The covenants and obligations contained in this Deed are entered into by the Developer with the intention that they bind the interests held by the Developer in the Site and their successors in title.

3.3 The Developer warrants that they have full power to enter into this Deed and there is no other person save for as recited in this Deed whose consent is necessary to make this Deed binding on the Site.

4. Variation

4.1 With effect from the Variation Date, the parties agree to vary the Original Agreement as set out in this Deed in relation to the Site and shall thereafter be read and construed accordingly.

4.2 Except as set out in clause 4.1, the Original Agreement shall continue in full force and effect in so far as it relates to the Site.

4.3 To the extent of any conflict between the terms of the Original Agreement and this Deed in relation to the Site, the terms of this Deed shall prevail.

4.4 This Deed shall forthwith be registered as a local land charge for the purposes of the Local Land Charges Act 1975

5. Affordable Housing Provider Approval

The Council confirms for the purposes of the Original Agreement that Landspeed Limited (Company Registration Number 07950438 whose registered office is at Top Floor Buckley House, 31a The Hundred, Romsey, SO51 8GD is an approved Registered Provider for the purposes of Schedule 2 of the Original Agreement.

6. Mortgagee and Second Mortgagee's consent

The First Mortgagee and Second Mortgagee both consent to the completion of this Deed and acknowledge that from the date of this Deed the Site shall be bound by the terms of this Deed, as if it had been executed and registered as a land charge prior to the creation of the First Mortgagee and Second Mortgagee's interest in the Site.

7. Legal Costs

On completion of this Deed the Developer shall pay the Council's and the County Council's reasonable legal costs associated with the drafting, negotiation and completion of this Deed.

8. Governing law

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

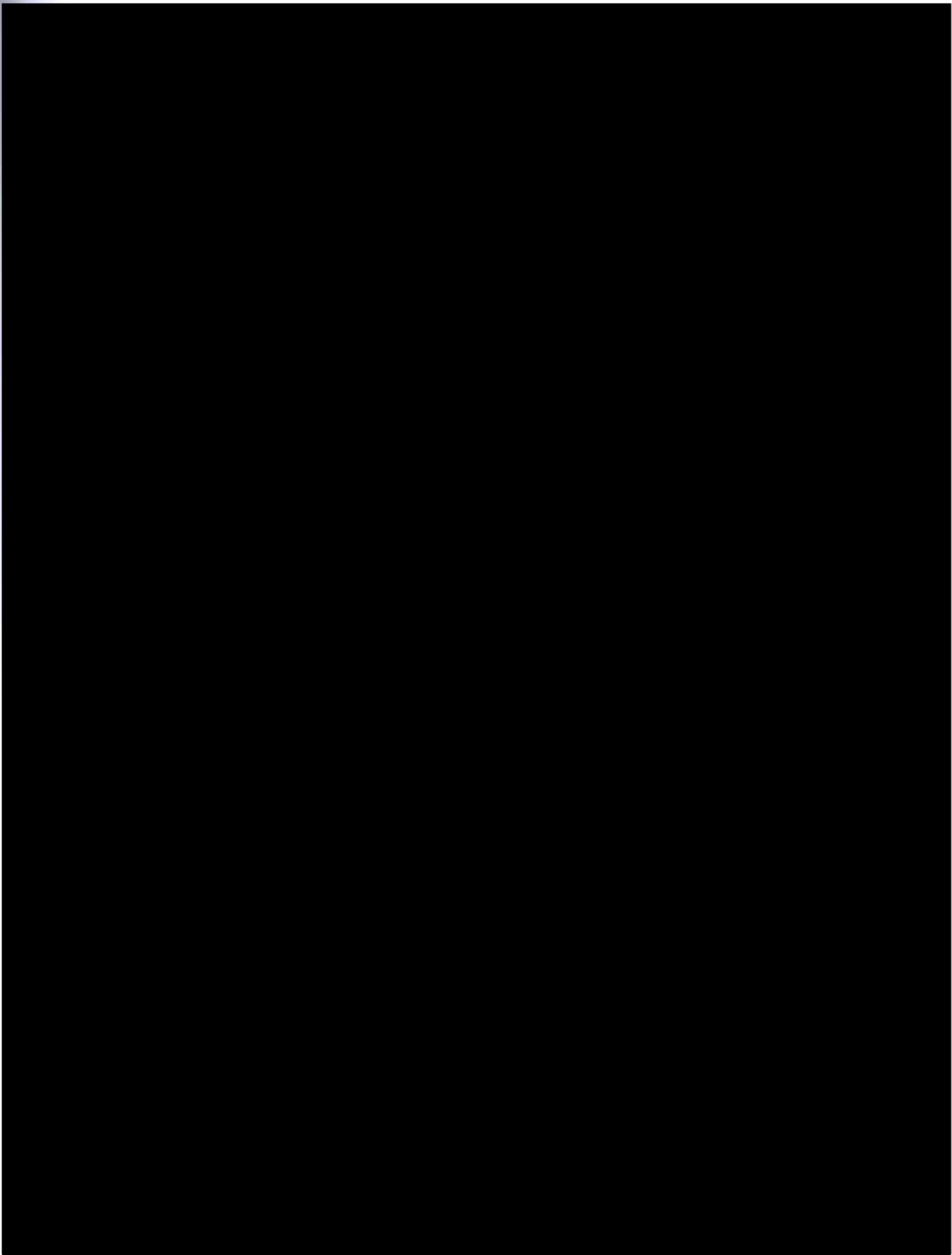
9. Jurisdiction

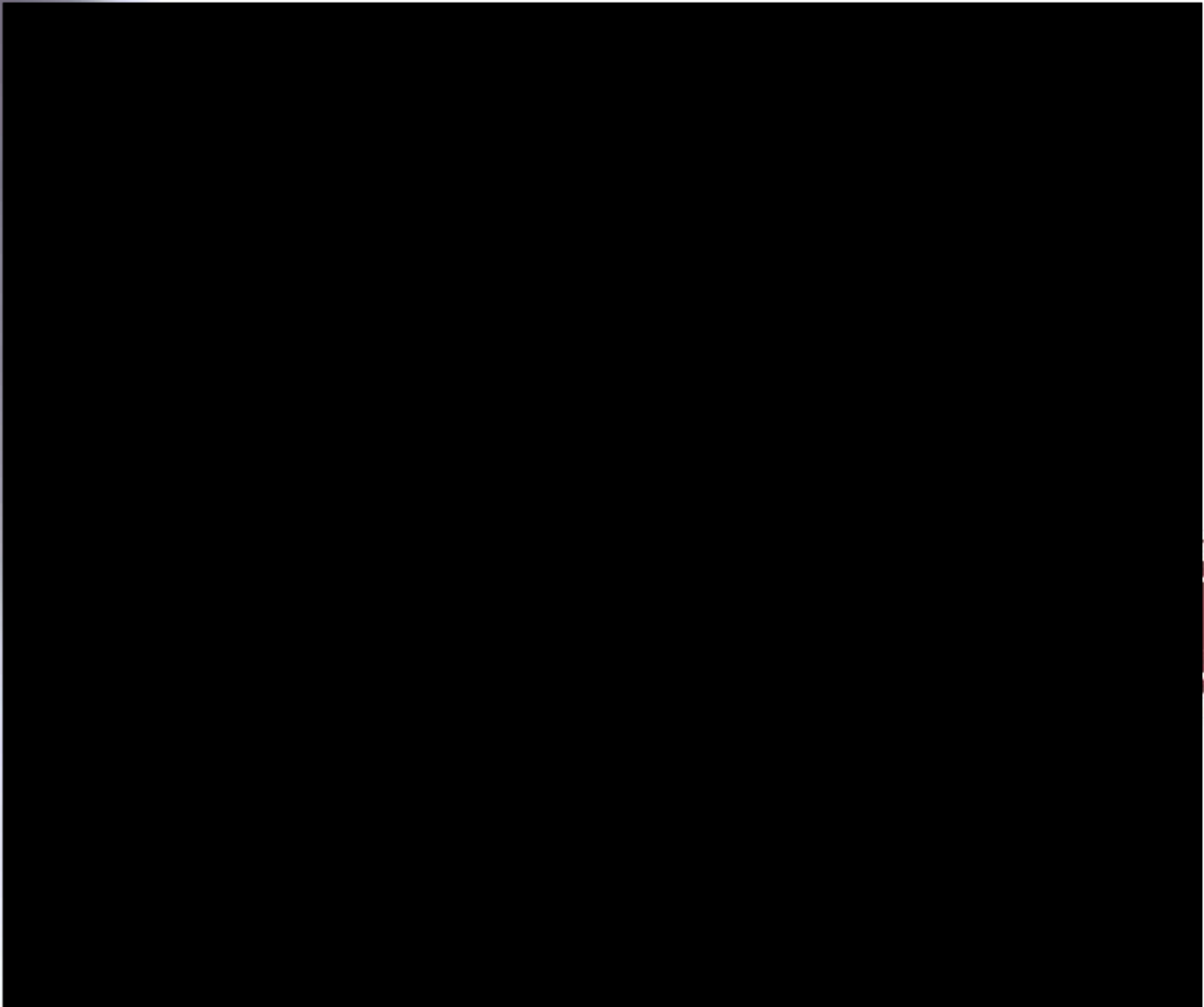
Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Deed or its subject matter or formation.

10. Counterparts

This Deed may be executed in any number of counterparts and by the Parties hereto in separate counterparts each of which when executed and delivered shall be an original but all the counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF this document has been executed and delivered as a deed on the date first stated above.





Schedule 1

Variations to the Original Agreement

1. VARIATIONS TO DEFINITIONS.

- 1.1 The definition of **Affordable Housing Dwellings** in Schedule 2 Part 1 of the Original Agreement is deleted and replaced with:

"Affordable Housing Dwellings" means two x 1 bed flat Dwellings and four x 2 bed Dwellings to be provided as Shared Equity units or Shared Ownership Units being plots 36, 37, 38, 39, 40 and 41 on the Development as shown on the Affordable Housing Plan.

- 1.2 A new definition of **Shared Equity** shall be inserted as follows:

"Shared Equity" means affordable housing sold to a purchaser for consideration of no more than 75% of the open market value with the balance of the equity held by the Registered Provider by way of legal charge or legal charges.

- 1.3 The definition of **Chargee** in Part 3 Schedule 2 shall be deleted and replaced with:

"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 (each a Receiver)) of the whole or any part of the Affordable Housing Dwellings or any persons or bodies deriving title through such mortgagee or chargee or Receiver

- 1.4 The definition of **Affordable Housing Plan** in Part 1 Schedule 2 shall be deleted and replaced with:

"Affordable Housing Plan" means the plan with drawing number 012 approved by the Council showing the

**location of the Affordable Housing
Dwellings and attached to this Deed as
Appendix 3**

- 1.5 the Affordable Housing Plan attached to this Deed at Appendix 1 shall be inserted into the Original s106 Agreement as a new Appendix 3

2. VARIATIONS TO EXISTING OBLIGATIONS

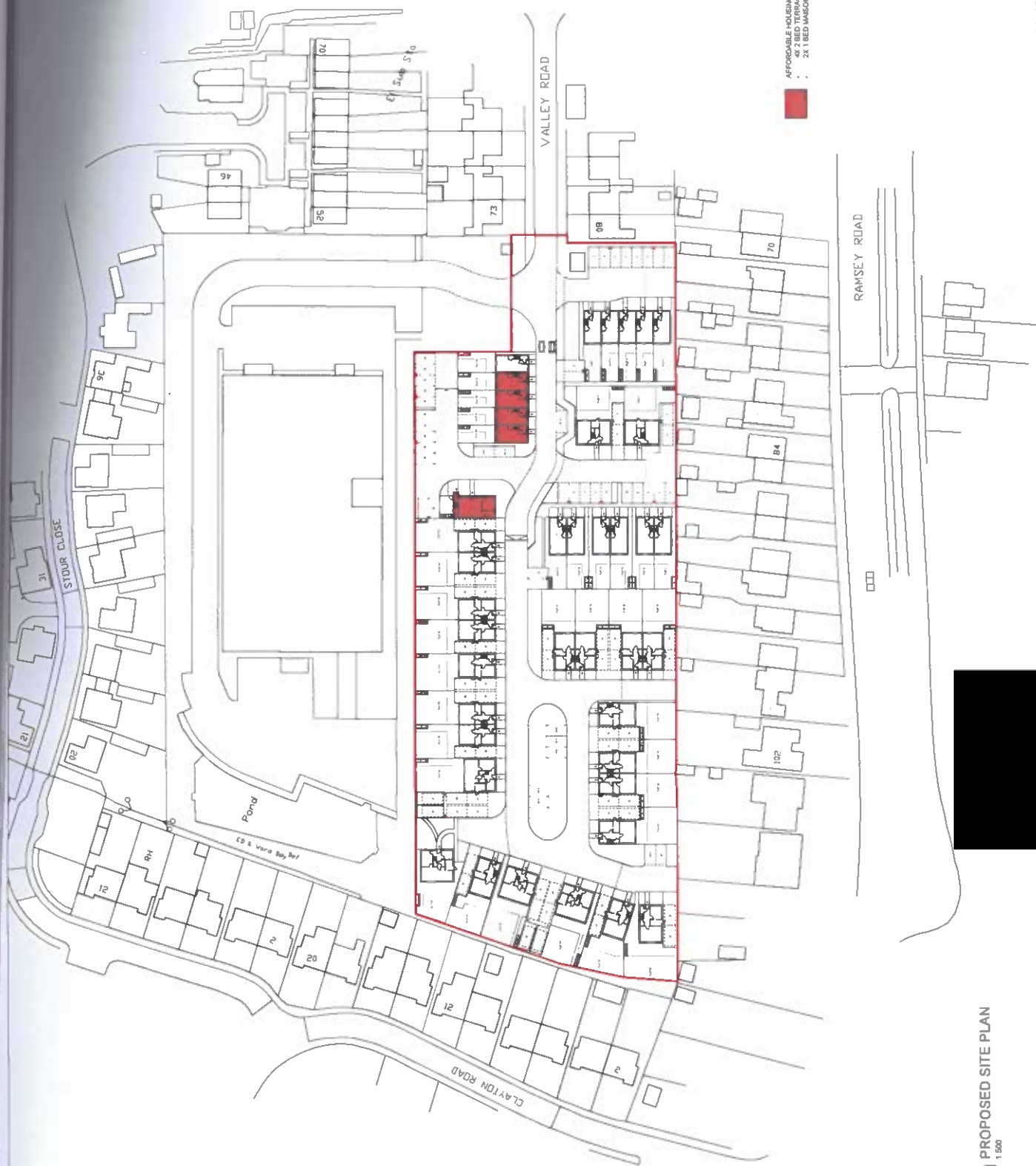
- 2.1 Paragraph 4 of Part 1 of Schedule 2 shall be deleted and replaced with:

“(Subject always to paragraph 6 of this Part 1 and Part 4 of this Schedule) that the Affordable Housing Dwellings shall be Occupied for no purpose other than as Shared Equity units or Shared Ownership Units

- 2.2 Clause 2 Paragraph 2.6 of the Original Agreement shall be deleted and replaced with:

“2.6 The obligations in this Deed will not be enforceable against the individual owners, lessees or occupiers of any Dwellings constructed on the Site pursuant to the Planning Permission or any mortgagee or chargee of such owner, lessee or occupier save for the covenants and exemptions in Schedule 2 of this Deed in respect of individual owners, lessees or occupiers or mortgagees or Chargees of the Affordable Housing Dwellings.”

Appendix 1
Affordable Housing Plan



 AFFORDABLE HOUSING UNITS
 42 2 BED TERRACE
 28 1 BED MANSIONETTES

Project Name	Valley Rd. SPV
Location	Valley Road, Haverhill, CO12 4RR
Client	Valley Road Housing Association
Project Type	Affordable Housing Units
Scale	1:500
Date	10.10.22
Drawn by	BW
Checked by	
Project No.	BA-22105
Sheet No.	012
PL	PL

 PROPOSED SITE PLAN
 1:500



BLOC
 ARCHITECTS