

Dated 10 December 2020

- (1) JOHN ALFRED SUCKLING and CHRISTOPHER JOHN SUCKLING
- (2) RAINIER DEVELOPMENTS LIMITED
- (3) BABERGH DISTRICT COUNCIL
- (4) SUFFOLK COUNTY COUNCIL

DEED

**Made pursuant to s.106 of the Town and
Country Planning Act 1990 (as amended)**

Relating to

Land South of Slough Road
Brantham
Suffolk

KJW RR 957951.72

THIS DEED is made the 10 day of December 2020

BETWEEN

(1)	JOHN ALFRED SUCKLING and CHRISTOPHER JOHN SUCKLING of Red House Farm Holbrook Ipswich Suffolk ("the Owner")
(2)	RAINIER DEVELOPMENTS LIMITED (company registration number 08885706) whose registered office is situate at 62 High Street, Henley-In-Arden, B05 5AN ("the Promoter")
(4)	BABERGH DISTRICT COUNCIL of Endeavour House, 8 Russell Road, Ipswich, Suffolk IP1 2BX ("the Council")
(5)	SUFFOLK COUNTY COUNCIL of Endeavour House, 8 Russell Road, Ipswich IP1 2BX ("the County Council")

INTRODUCTION

- 1 The Council and the County Council are Local Planning Authorities for the purposes of the Act for the area in which the Site is situated.
- 2 The County Council is also the Local Highway Authority and Education Authority for the area in which the Site is situated
- 3 The Owner is the freehold owner of the Site registered at HM Land Registry under title number SK173044.
- 4 The Promoter has an interest in the Site pursuant to a promotion agreement dated 15th November 2018 entered into by the Owner and the Promoter and which is registered as a restriction against title number SK173044.
- 5 The Promoter submitted the Application to the Council on 23rd April 2019.
- 6 By way of its Planning Committee, on 9th October 2019 the Council resolved to refuse the Application. The Council refused the Application on 9th October 2019.
- 7 Following refusal of the Application the Promoter submitted an appeal to the Secretary of State, reference APP/D3505/W/19/3241261 ("the Appeal")
- 8 All the parties agree that the planning obligations contained in this Deed are necessary to make the Development acceptable in planning terms and should the Secretary of State of the Planning Inspector grant planning permission on the Appeal and are directly related to the Development and fairly and reasonably relate in scale and kind to the Development

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

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 Housing”	means housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the definitions set out in Annex 2 to the NPPF
“Affordable Housing Scheme”	means a scheme submitted pursuant to paragraph 1.1 of Part 2 of the Second Schedule which shall include details of:- (a) the numbers, type, tenure and location on the Site of the Affordable Housing Units, and (b) the timing of the construction of the Affordable Housing Units, and (c) in relation to the Affordable Rented Housing Units and Shared Ownership Housing Units that are to be managed by a Registered Provider the arrangements for the transfer of the said Affordable Housing Units to a Registered Provider, and (d) the arrangement to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing Units and (e) the occupancy criteria to be used for determining the identity of the occupiers of the Affordable Housing Units and the means by

	<p>which such occupancy criteria shall be enforced in accordance with the Council's nominations procedure in operation at the time</p>
<p>"Affordable Housing Units"</p>	<p>means 35% of the Dwellings to be constructed on Site provided in accordance with the Affordable Housing Scheme and the following unless otherwise agreed in writing with the Council:</p> <ul style="list-style-type: none"> (i) 75% of the Affordable Housing Units to be provided as Affordable Rented Housing Units; and (ii) 25% of the Affordable Housing Units to be provided as Shared Ownership Units
<p>"Affordable Rented Housing Units"</p>	<p>means Affordable Housing Units made available by a Registered Provider as low cost rental accommodation (as defined by s.69 of the Housing and Regeneration Act 2008) with a rent which is no more than eighty per cent (80%) of the equivalent market rent including any service charges applicable and as described in paragraph a) to the definition of 'Affordable Housing' in Annex 2 to the NPPF</p>
<p>"Application"</p>	<p>means the application for outline planning permission submitted to the Council on 23rd April 2019 for the Development and allocated reference number DC/19/01973</p>
<p>"BCIS Index"</p>	<p>means the All In Tender Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation</p>
<p>"Chargee"</p>	<p>means any mortgagee or chargee (or receiver (including an administrative receiver) appointed by the mortgagee or chargee or any other person</p>

	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 Housing Units
“Chargee’s Duty”	means the tasks and duties set out in paragraph 1.7 to the Affordable Housing Part 2 of the Second Schedule
“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 site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, ecological assessment and mitigation works, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly.
“Development”	means the erection up to 65 dwellings (including a minimum of 35% affordable homes), with areas of landscaping and public open space, vehicular access and associated infrastructure works
“Dwelling”	means a dwelling (including a house, flat or maisonette and including both Market Housing Units and Affordable Housing Units) to be constructed pursuant to the Planning Permission or any reserved matters approval consequent thereto

“Expert”	means the independent expert appointed for the purposes of clause 8 below
“Habitats Sites”	means those sites on the Suffolk Coast which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations
“Habitat Sites Mitigation Contribution”	means the sum of £121.89 (one hundred and twenty one pounds and eighty nine pence) multiplied by the total number of Dwellings proposed pursuant to the Planning Permission (Index Linked) to be paid by the Owner to the District Council as contribution towards the impact of development on Habitats Sites
“Head of Planning”	means the Council’s Head of Planning or their appointed representative for the time being
“Homes England”	means Homes England of 110 Buckingham Palace Road, Victoria London SW1W 9SW or its statutory successors or agent
“Index”	means the BCIS Index or such other index as the Council or the County Council as the case may be may in writing approve
“Interest”	means interest at 4% per cent above the base lending rate of the Bank of England.
“Management Company”	means a company or body who will take over responsibility for the future maintenance of the Open Space in perpetuity and which definition may include a resident’s association established for this purpose or a private limited company
“Maintenance Scheme”	means a maintenance scheme for the Open Space that is submitted to and approved by the Council in accordance with paragraph 12 of Part 1 of the Second Schedule (as may be amended from time to time by agreement in writing between the Owner and

	the Council) and which shall accord with the requirements set out in Appendix 1 of this Deed
“Management Services”	means the services to manage and maintain the Open Space in accordance with the Maintenance Scheme and services to manage and maintain the SUDS in accordance with the approved maintenance plan required by condition
“Market Housing Units”	means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing;
“NPPF”	means the National Planning Policy Framework published in February 2019 by the Department for Communities and Local Government including any updates or revisions thereto
“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.
“Open Space”	means an area of space which is for informal or (if laid out) formal recreational use by the public and the area of open space shown indicatively on the Open Space Plan
“Open Space Plan”	means a plan to be submitted to the Council for approval indicating the location of the Open Space
“Open Space Certificate of Practical Completion”	means a certificate issued by the Council to the effect that the land comprised within the Open Space Land is practically complete save for such minor outstanding works as the Council may agree or such a certificate deemed to have been issued under paragraphs 3 Part 1 of the Second Schedule

<p>“Open Space Certificate of Final Completion”</p>	<p>means a certificate issued by the Council to the effect that the land comprised within the Open Space Land is finally complete and all defects which have become manifest since the issue of the Open Space Certificate of Practical Completion and all outstanding works identified in the Open Space Certificate of Practical Completion have been made good and completed or such a certificate is deemed to have been issued under paragraphs 2 and 3 of Part 1 of the Second Schedule</p>
<p>“Open Space Specification”</p>	<p>means the specification for the delivery of the Open Space including the specification plans and drawings showing but not limited to the layout and design of the Open Space, the phasing and timing of the delivery of the Open Space including details of any landscaping, paths and access arrangements for the Open Space to be agreed in writing with the Council in line with Council's current policies and requirements in accordance with paragraph 1 of Part 1 of the Second Schedule</p>
<p>“Plan”</p>	<p>means the plan attached to this Deed at the First Schedule</p>
<p>“Planning Permission”</p>	<p>means the planning permission subject to conditions to be granted by the Secretary of State pursuant to the Application</p>
<p>“Practical Completion”</p>	<p>means issue of a certificate of practical completion by the NHBC or other body nominated by the Owner to inspect the Development for the purposes of compliance with building regulations</p>
<p>“Protected Tenant”</p>	<p>any tenant who:</p> <p>(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</p>

	<p>equivalent contractual right) in respect of a particular Affordable Housing Unit</p> <p>(b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit</p> <p>(c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Housing Unit and the tenant has subsequently purchased from the Registered Provider all remaining shares so that the tenant owns the Affordable Housing Unit</p> <p>(d) any successor in title to (a), (b) and (c) above</p>
“Provide”	<p>means complete save for very minor defects so that the relevant works can be used for the purpose and operate in the manner for which they were designed and “Provision” shall be construed accordingly.</p>
“Public Rights of Way Contribution”	<p>means the total sum of Thirteen Thousand Two Hundred and Ten Pounds (£13,210.00) to be paid to the County Council to provide:-</p> <p>the upgrade of Footpath 1 Brantham to bridleway status and widening accordingly and</p> <p>the creation of a small section of bridleway from Footpath 1 Brantham at the south western corner of the Development, running north then east to meet the end of the driveway north of the proposed SUDs and joining the permissive route payable in accordance with Part 1 of the Third Schedule</p>
“Reasonable Consideration”	<p>means offer prices from Registered Providers which give the Owner a reasonable consideration having regard to current market conditions in the disposal</p>

	of Affordable Housing of a similar type and location by Registered Providers on a grant free basis
“Registered Provider”	means a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 (including any statutory replacement or amendment) who is registered (or such other body duly registered) with Homes England pursuant to that Act and may lawfully provide or fund affordable housing from time to time whom unless on the Council’s list of approved Registered Providers has been approved in writing by the Council.
“School Transport Contribution”	means the sum of Fifty Seven Thousand Six Hundred Pounds (£57,600) payable by the Owner to the County Council in accordance with Part 2 of the Third Schedule as a contribution towards the provision of school transport to and from the nearest secondary school in East Bergholt
“Shared Ownership Unit(s)”	means Affordable Housing Units to be let on a Shared Ownership Lease for sale as described in paragraph d) in the definition of ‘Affordable Housing’ in Annex 2 of the NPPF
“Shared Ownership Lease”	means a lease of a Shared Ownership Unit in the form approved by Homes England or where there is no such lease in a form approved by the Council such lease to provide for the following:- <ul style="list-style-type: none"> a) Not more than 70% and not less than 25% of the equity (or such other percentages as the Council may agree) shall be initially sold to the purchaser by the Registered Provider b) power for the purchaser to increase their ownership up to 100% if they so wish

	<p>c) an initial rent not exceeding 2.75% of the value of the equity retained by the Registered Provider 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 Homes England</p>
“Site”	<p>the land against which this Deed may be enforced known as land south of Slough Road Brantham as detailed in the First Schedule and as shown edged red on the Plan</p>
“SUDS”	<p>means the sustainable urban drainage system being the sequence of water management practices and facilities as may be necessary to serve the Development and designed to drain surface water to be provided in accordance with details submitted to and approved by the Council pursuant to condition</p>
“SUDS Specification”	<p>means the specification for the carrying out of the SUDS to an appropriate and reasonable standard and the maintenance plan for the long term maintenance of the SUDS to be implemented by the Owner pursuant to condition and in accordance with Part 3 of the Second Schedule</p>
“Working Day(s)”	<p>Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England</p>

2. CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or 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 interchangeable in that manner.
- 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 and County Council the successors to their respective statutory functions.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and in so far as any provision of this deed is not within the powers of S106, Section 111, 120 and 139 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and section 9 of the Open Spaces Act 1906.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner by the Council and the County Council under this Deed create planning obligations pursuant to Section 106 of

the Act and are enforceable by the Council or the County Council as the case may be as local planning authority against the Owner.

4 CONDITIONALITY

- 4.1 This Deed is conditional upon:
- 4.1.1 the grant of the Planning Permission; and
 - 4.1.2 the Commencement of Development
- SAVE FOR the provisions of Clauses 7.1.1, 7.2.1, 15 and 16 and any other relevant provisions 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 in the Second Schedule.
- 5.2 The Owner covenants with the County Council as set out in the Third Schedule

6 THE COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Fourth Schedule.
- 6.2 The County Council covenants with Owner as set out in the Fifth Schedule.

7 MISCELLANEOUS

- 7.1 The Promoter shall pay to the Council:-

7.1.1 on completion of this Deed the reasonable legal costs of the Council incurred in the negotiation, preparation and execution of this Deed; and

- 7.2 The Promoter shall pay to the County Council:-

7.2.1 on completion of this Deed the reasonable legal fees of the County Council incurred in the negotiation, preparation and execution of this Deed; and

7.2.2 upon the grant of Planning Permission £490.00.00 in respect of the County Council costs incurred in the monitoring of this Deed.

- 7.3 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.4 This Deed shall be registered as a local land charge by the Council.
- 7.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the Council by the Head of Planning.
- 7.6 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 7.7 The Owner agrees that they will notify the Council's Head of Planning in writing of the date of Commencement of Development within 10 Working Days of the said Commencement of Development and within 10 Working Days of Occupation of the first Dwelling comprised in the Development provided that such notification shall be unnecessary if the covenants and other provisions in this Deed shall have been performed or complied with and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 7.8 The Owner agrees that they will notify the County Council in writing of the date of Commencement of Development within 10 Working Days of the said Commencement of Development and within 10 Working Days of Occupation of the first Dwelling comprised in the proposed Development provided that such notification shall be unnecessary if the covenants and other provisions in this Deed shall have been performed or complied with and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 7.9 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

- 7.10 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.
- 7.11 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 7.12 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 7.13 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.14 For the avoidance of doubt a failure to pay a sum when required to be paid by this Deed shall, until it is remedied, be deemed to be a continuing breach enforceable (at the election of the enforcing authority) against any successor in title to, and any person deriving title from, the person in default at the time payment was first due to be paid against the first defaulter
- 7.15 Other than the provisions affecting Affordable Housing Units in Part 2 of the Second Schedule, and SUDS in Part 3 of the Second Schedule this Deed shall not be enforceable against owners or occupiers of Dwellings nor those deriving title from them
- 7.16 Other than the provisions affecting Affordable Housing Units in Part 2 of the Second Schedule this Deed shall not be enforceable against the Registered Provider.
- 7.17 The obligations in this Deed shall not be enforceable against any statutory undertaker whose apparatus may be situated within the Site or any other person who acquires any part of the Site or interest therein for the purpose of the supply of electricity, gas, water, drainage, telecommunications services or public transport services.
- 7.18 Where in this Deed there is an obligation to pay a contribution or part thereof or to obtain approval or take specified action before the occurrence of a stated event or state of affairs,

the Owner shall not cause or permit the stated event or state of affairs (including, where it relates to occupation of the Development or any part thereof) until the obligation to pay such contribution or part thereof has been satisfied or such approval or action has been undertaken.

7.19 If any Court or the Secretary of State determines that any obligation contained within this Deed is not:

a) necessary to make the Development acceptable in planning terms

b) directly related to the Development

c) fairly and reasonably related in scale and kind to the Development and

d) compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010

and accordingly attaches no weight to such obligation in determining the Appeal then the relevant obligation shall immediately (without further act by the parties) cease to have any effect and the Owner shall be under no obligation to comply with that obligation

7.20 This Deed may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Deed

7.21 If the Council pursuant to an application under Section 73 of the Act to vary or release any condition contained in the Planning Permission or if any such condition is varied or released following an appeal under Section 78 of the Act (without as part of the decision a requirement to vary or impose additional planning obligations under Section 106 of the Act) the covenants or provisions of this Deed shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission

8. PROMOTER'S CONSENT

8.1 The Promoter acknowledges and declares that:-

8.1.1 this Deed has been entered into by the Owner with its consent, and

8.1.2 the Site shall be bound by the obligations contained in this Deed

9. DETERMINATION OF DISPUTES

- 9.1. Any dispute or difference relating to any matter or thing arising out of or in connection with this Deed shall be determined by an independent expert (who will act as an expert not an Arbitrator) in accordance with the following clauses 9.2 to 9.11.
- 9.2. If the parties do not make the appointment of the Expert by agreement within 14 days of service of the notice requiring reference of the dispute, the Expert shall be nominated upon the application of any party by the President or other officer to whom the making of such appointments is for the time being delegated by the Law Society and the Expert shall be an independent person who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than 10 years.
- 9.3. Unless the Expert shall direct to the contrary, not more than 28 days after his appointment the parties shall exchange and copy to the Expert written summaries of their cases together with a bundle of key documents relied upon.
- 9.4. The Expert shall be at liberty to visit the land relevant to the dispute unaccompanied and to call for such written evidence from the parties as he may require.
- 9.5. The Expert shall not, unless he directs to the contrary, hear oral representations from any party to the dispute.
- 9.6. The Expert shall fully consider all submissions and evidence when making his decision.
- 9.7. The Expert shall give his decision in writing and shall give reasons.
- 9.8. The Expert shall use all reasonable endeavours to give his decision and the reason for it as speedily as possible and in any event within 42 days of his appointment.
- 9.9. The Expert's decision including his decision as to costs shall be final and binding.
- 9.10. The Expert's fees shall be payable by the parties in such proportions as he shall determine and in default of such determination equally between them.
- 9.11. If it shall be impossible to procure the appointment of such an Expert or if the Expert so appointed shall fail or be unable to reach a determination of the matter referred to him then any party to the dispute shall be entitled to have the dispute referred to a single arbitrator

who failing agreement shall be appointed by the President or a Vice-President of the Chartered Institute of Arbitrators and the arbitration shall be conducted in accordance with the Rules of the Chartered Institute of Arbitrators.

10 WAIVER

- 10.1 No waiver (whether expressed or implied) by the Council or the County Council or 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 County Council as the case may be or Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11. CHANGE IN OWNERSHIP

- 11.1 The Owner agrees with the Council and County Council to give the Council and County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan provided that this obligation shall not apply to the sale of individual Dwellings.

12. INDEXATION

- 12.1 Any financial contribution referred to in the Second and Third Schedule shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum or part thereof is payable

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 date of payment.

14. VAT

14.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

15. JURISDICTION

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

16. DELIVERY

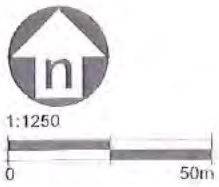
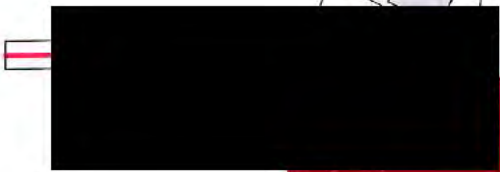
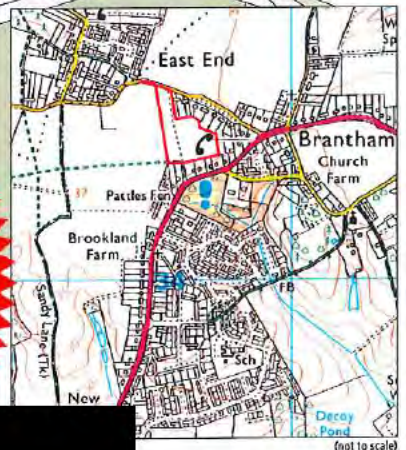
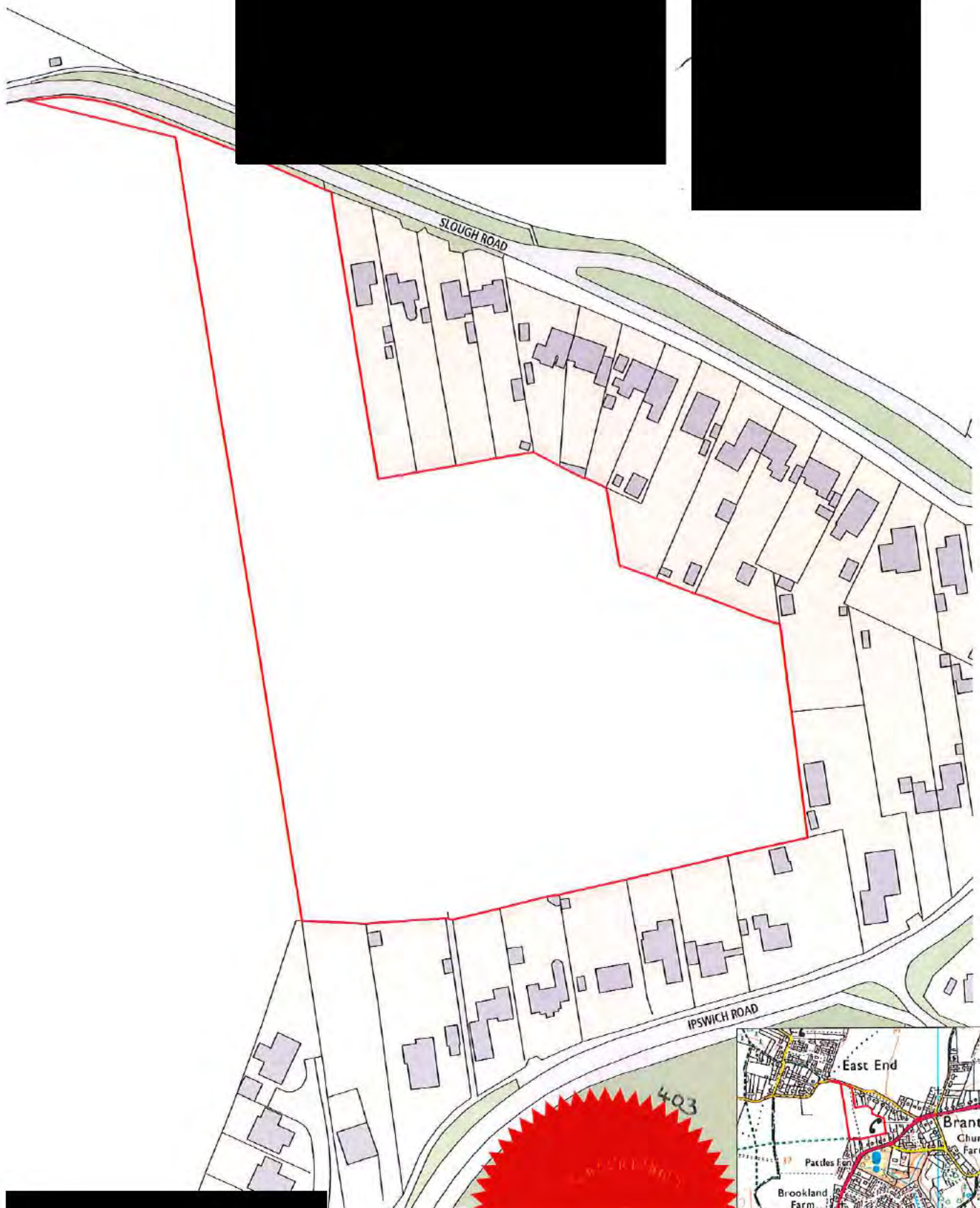
16.1 The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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

FIRST SCHEDULE

DETAILS OF TITLE, DESCRIPTION OF THE SITE AND PLAN

The Freehold land shown edged red on the Plan being land on the south side of Slough Road, Brantham, Suffolk registered at the Land Registry under title number SK173044



client:
Rainier Developments Limited
 project:
Land off Slough Road, Brantham
 drawing title:
Site Boundary Plan

RAM102 1001D
 1:1250 @ A3 AJ
 April 2018 Planning

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SECOND SCHEDULE

PART 1 – ON SITE OPEN SPACE

1. Prior to Commencement of Development and in parallel with the relevant reserved matters application or discharge of condition application to submit to the Council for approval the Open Space Plan and the Open Space Specification.
2. Not to Commence the Development unless and until the Open Space Plan and the Open Specification have been provided to and approved by the Council in writing such approval not to be unreasonably withheld or delayed.
3. If the Council fails within twenty (20) Working Days' of submission of the Open Space Plan and the Open Space Specification to notify the Owner of its approval of the of the Open Space Plan and Open Space Specification the Owner shall be entitled to assume deemed approval of the Open Space Plan and Open Space Specification.
4. To Provide the Open Space in accordance with the approved Open Space Plan and the Open Space Specification prior to the first Occupation of more than 50% of the Dwellings.
5. Upon the completion of the laying out of the Open Space Land the Owner shall:
 - 5.1 invite the Council in writing to inspect the Open Space with a view to issuing an Open Space Certificate of Practical Completion in respect of that Open Space and the Council may inspect the Open Space within 28 days of receipt of the invitation and may issue a notice to the Owner within 14 days of such an inspection confirming whether or not that Open Space has been laid out to the Council's reasonable satisfaction;
 - 5.2 if the Council issues a notice in accordance with paragraph 5.1 above which states that the Open Space has not been laid out to the Council's reasonable satisfaction and which details the work required to reach that standard to use reasonable endeavours to complete the works specified in the notice as soon as reasonably practicable and invite the Council to re-inspect the Open Space;
6. The procedure set out in paragraphs 5.1 and 5.2 shall be repeated in respect of the Open Space until such time as the Council either:

- 6.1 issues an Open Space Certificate of Practical Completion or
 - 6.2 fails to inspect the requisite Open Space within the 28 days of receipt of a written invitation to inspect in which case an Open Space Certificate of Practical Completion shall be deemed to have been issued in respect of that Open Space Land 28 days following receipt of the relevant invitation; or
 - 6.3 fails to serve within 14 days of their inspection a notice detailing any further works to be carried out in order for the Open Space to be laid out to their reasonable satisfaction in which case an Open Space Certificate of Practical Completion shall be deemed to have been issued in respect of that Open Space Land 14 days following the date of the inspection
7. The Owner shall maintain the Open Space for a period of 12 months from the issue of the Open Space Certificate of Practical Completion maintaining the Open Space and rectifying any defects as notified by the Council in accordance with paragraph 8 below which arise in the laying out of the Open Space and replacing any equipment that has become faulty or defective.
 8. The Owner shall notify the Council at the end of each period of 12 months referred to in paragraph 7 and invite the Council in writing to inspect the Open Space with a view to issuing an Open Space Certificate of Final Completion (and the provisions of paragraphs 6.1.1 to 6.1.3 5.3.1 to 5.3.3 shall apply mutatis mutandis) in respect of the Open Space and to continue to maintain the Open Space in accordance with the requirements of paragraph 3 until its transfer.
 9. The Owner shall at its own expense appoint a Management Company not later than the date of first Occupation of the first Dwelling
 10. Upon an Open Space Certificate of Final Completion being issued or deemed to have been issued in respect of the Open Space the Owner shall transfer the Open Space to the Management Company upon the terms set out in the Sixth Schedule hereto who shall thereafter become responsible for maintenance in accordance with the Maintenance Scheme.

11. The Owner shall in the transfer to the Management Company take all necessary steps to ensure that the Management Company is required to carry out the Management Services in accordance with the approved Maintenance Scheme and the requirements of Appendix 1
12. Before Commencement of Development the Owner shall submit details to the Council for the approval of the Maintenance Scheme and to implement and maintain the approved Maintenance Scheme until such time as Open Space is transferred to the Management Company in accordance with paragraph 11 above.
13. Any amendments to the Management Scheme must be approved by the Council in writing.

PART 2: AFFORDABLE HOUSING

1. Affordable Housing: On site provision

- 1.1 Prior to Commencement of Development to submit to the Council for approval an Affordable Housing Scheme.
- 1.2 Not to permit or allow the Commencement of Development until the Affordable Housing Scheme has been agreed in writing by the Council.
- 1.3 No more than 50% of the Market Housing Units shall be Occupied until written notice has been given to the Council that 50% of the Affordable Housing Units have:-
 - 1.3.1 been constructed in accordance with the Planning Permission
 - 1.3.2 been made ready for residential occupation; and
 - 1.3.3 been transferred to the Registered Provider.
- 1.4 No more than 80% of the Market Housing Units shall be Occupied until written notice has been given to the Council that all of the Affordable Housing Units have:-
 - 1.4.1 been constructed in accordance with the Planning Permission;
 - 1.4.2 been made ready for residential occupation; and
 - 1.4.3 been transferred to the Registered Provider.
- 1.5 The transfer of the Affordable Housing Units referred to at paragraph 1.3.3 and 1.4.3 above shall include the following:-
 - 1.5.1 full and free rights of access both pedestrian and vehicular from the public highway to the Affordable Housing Unit(s);
 - 1.5.2 full and free rights to the passage of water, soil, electricity, gas and other services through the pipes, drains, channels, wires, cables and conduits in the adjoining land up to the boundary of the Affordable Housing Unit(s), all such services to be connected to the mains; and
 - 1.5.3 a reservation of all rights of access and passage of services and rights of entry necessary for the purposes of the Development.
- 1.6 From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing in accordance with this Deed and the approved

Affordable Housing Scheme unless otherwise agreed in writing with the Council, save that this obligation shall not be binding on:-

- 1.6.1 any Protected Tenant, any mortgagee or chargee of a Protected Tenant or any person deriving title from a Protected Tenant, or any successor in title to a Protected Tenant and their respective mortgagees or chargees; or
- 1.6.2 any Chargee provided that he has first complied with the Chargee's Duty; or
- 1.6.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.

1.7 The Chargee shall, before seeking to dispose of the Affordable Housing Units pursuant to any default under the terms of the mortgage or charge, give not less than three months' prior notice to the Council of its intention to dispose, and the following provisions shall apply, provided that the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage;

- 1.7.1 If the Council responds within two months from receipt of the Chargee's notice and indicates that arrangements for the transfer of the Affordable Housing Units can be made in such a way as to safeguard them as Affordable Housing, the Chargee shall co-operate with those arrangements and use its reasonable endeavours to complete the transfer 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
- 1.7.2 If the Council or any other person cannot within two months of the date of service of its response under paragraph 1.7.1 complete the transfer then, provided that the Chargee has complied with the obligations under paragraph 1.7.1, the Chargee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this paragraph 1 which shall then cease to apply to those units;
- 1.7.3 If the Council does not serve its response to the Chargee's notice within two months, the Chargee shall be entitled to dispose of the Affordable Housing Units free from the restrictions set out in this paragraph 1 which shall then cease to apply to those units.

1.8 If a Registered Provider cannot be found for the transfer of any of the Affordable Housing Units within six (6) months from the date of the Practical Completion of the Affordable Housing Units despite the Owner's reasonable endeavours to do so the

Owner may provide notification to the Council that demand from the Registered Provider has not been forthcoming for a Reasonable Consideration.

1.9 If the Council is satisfied following service of the notice pursuant to paragraph 1.8 above that a Registered Provider cannot be found for the transfer of any of the Affordable Housing Units despite the Owner's reasonable endeavours to do so for a Reasonable Consideration the Owner shall upon written confirmation from the Council be permitted to sell the Affordable Housing Units on the open market and the Owner shall pay a commuted sum to be calculated by the Council within two (2) months of receipt of written confirmation (such sums to be calculated in accordance with the Council's policies as are applicable at the time of calculation) ("the Affordable Housing Commuted Sum") in lieu of the provision of Affordable Housing on the Site to be applied by the Council for the provision of Affordable Housing in the District.

1.10 Upon payment of the Affordable Housing Commuted Sum the provisions of this paragraph 1 shall no longer be applicable in respect of those Dwellings that were Affordable Housing Units and the Owner shall be free to dispose of the Affordable Housing Units as Market Housing Units free from the provisions of this paragraph 1.

PART 3 – SUDS

1. The Owner shall provide the SUDS in accordance with the approved SUDS Specification prior to Occupation of the First Dwelling on Site.
2. The Owner shall properly maintain the SUDS in accordance with the approved maintenance plan unless and until such time as the SUDS is transferred to the Management Company or Statutory Body who shall thereafter become responsible for the Management Services.

PART 4 - HABITATS SITES MITIGATION CONTRIBUTION

1. Within twenty-eight (28) days of Commencement of Development in respect of the Development the Owner shall pay the Council the Habitat Sites Mitigation Contribution.
2. Not to cause or permit Occupation until the Habitats Sites Mitigation Contribution has first been paid to the Council

THIRD SCHEDULE

The Owner's Covenants with the County Council

PART 1 - PUBLIC RIGHTS OF WAY CONTRIBUTION

1. The Owner covenants to pay to the County Council the Public Rights of Way Contribution prior to First Occupation of any Dwelling
2. The Owner hereby covenants not to Occupy or permit Occupation of any Dwellings until the Public Rights of Way Contribution has been paid to the County Council.

PART 2 – SCHOOL TRANSPORT CONTRIBUTION

1. The Owner covenants to pay to the County Council the School Transport Contribution prior to First Occupation of any Dwelling
2. The Owner hereby covenants not to Occupy or permit Occupation of any Dwellings until the School Transport Contribution has been paid to the County Council.

FOURTH SCHEDULE
COUNCIL'S COVENANTS

Repayment of contributions (General)

1. The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid, or for such other purposes for the benefit of the Development as the Owner and the Council shall agree in writing.
2. The Council hereby covenants with the Owner that it will pay to the Owner such amount of any payment made by the Owner to the Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten years of the date of receipt by the Council (and where contributions are paid by instalment within ten years from receipt by the Council of the final instalment) of such payment together with interest at the Bank of England base rate from time to time for the period from the date of payment to the date of refund.
3. The Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this Deed.

Discharge of obligations

4. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed and mark appropriately all related entries in the Register of Local Land Charges.

FIFTH SCHEDULE

COUNTY COUNCIL'S COVENANTS

1. The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Deed for the purposes specified in this Deed for which they are to be paid, or for such other purposes for the benefit of the Development as the Owner and the County Council shall agree in writing both parties acting reasonably.

2. At the written request of the Owner the County Council shall provide to the Owner such evidence, as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner under this deed.

3. The County Council covenants the Owners that it will pay to the Owner such amount of any payment made by the Owner to the County Council under this Deed which has not been expended or committed in accordance with the provisions of this Deed within ten years of the date of receipt by the County Council of such payment together with interest at the Bank of England base rate from time to time for the period from the date of payment to the date of refund.

SIXTH SCHEDULE

TRANSFER OF THE OPEN SPACE LAND TO THE NOMINATED BODY

The Owner shall transfer ownership of the Open Space to the Management Company in accordance with the requirements set out below:

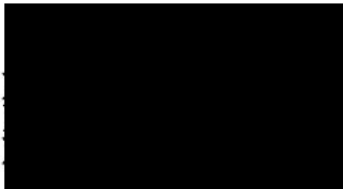
- 1.1 The Open Space is transferred with vacant possession free from any encumbrances on completion.
- 1.2 The Owner shall transfer with Full Title Guarantee.
- 1.3 The National Conditions of Sale (20th Edition) shall be deemed to be incorporated so far as they are not inconsistent with the provisions of these conditions.
- 1.4 Title should be deduced in accordance with the Land Registration Act 2002.
- 1.5 The purchase price is nil consideration.
- 1.6 In the transfer of the Open Space to the Management Company the Management Company will covenant with the transferor for themselves and their successors in title that the same will run with and bind the land into whosoever hands the same may pass:
 - 1.6.1 Not to develop the Open Space or any part thereof for any purpose whosoever save for the erection of non commercial buildings ancillary to its recreational purposes to the intent that it shall remain in perpetuity as public open space for the enjoyment of the general public
 - 1.6.2 Not to use or permit the Open Space to be used in a manner which may be or become a nuisance (whether or not amounting to a legal nuisance), annoyance, disturbance or cause damage to the rest of the Development
 - 1.6.3 To maintain the Open Space in reasonable condition to a reasonable standard and conforming to good horticultural practice
 - 1.6.4 To grant to the Owner and any successors in title such rights and easements to go onto the Open Space to manage and maintain the SUDS

APPENDIX 1

MANAGEMENT COMPANY OPEN SPACE MAINTENANCE SCHEME REQUIREMENTS

1. Maintenance of all items contained within the Open Space shall be to good working order and appearance, with the replacement of part or all of each of the facilities as necessary.
2. Maintenance of Public Liability Insurance shall be kept at all times of at least £5 million in regard to any one incident and to ensure any contractors undertaking work have current public liability insurance of at least £5 million in regard to any one incident such levels of cover to be reviewed by the Owner and the Council on a five yearly basis having regard to generally acceptable market practice
3. Maintenance of a contact phone number which shall be displayed on all signage at the Open Space which shall also allow for 24 hour reporting of emergencies to the Owner.
4. All equipped play facilities on the Open Space Land to be maintained and inspected fully in accordance with BS/EN 1176 (2008) as amended.
5. All facilities on the Open Space shall be inspected visually at least monthly in addition to any reactive visits / inspections in the light of reported problems. All inspections to be duly recorded and held available for inspection for a minimum of 5 years.
6. All grounds maintenance shall be undertaken in accordance with BS 7370-4:1993 (Grounds maintenance).
7. All sports pitch facilities shall be maintained in accordance with the relevant national governing body standards for those types of provision.
8. Cleansing shall be of a frequency that ensures at all times litter levels do not exceed Level B of the 1990 Environmental Protection Act (as amended)
9. Risk assessments for the use of the Open Space shall be prepared and thereafter maintained by the Owner
10. All legislation affecting the Open Space shall be complied with by the Owner
11. The Owner shall ensure that the retained and newly created ecological habitats are subject to a 5 yearly review by a suitably qualified ecologist to ensure habitat quality is being sustained or improved and shall prepare a photographic report of each review making any recommendations for alterations to the habitat management regime, for approval by the Council. The Owner shall, upon receipt of the Council's approval, undertake the recommendations.
12. The Owner shall ensure that the weekly, quarterly and annual play equipment inspections are undertaken by suitably qualified people with relevant qualifications in accordance with BS/EN 1176 2008 (as amended) and in the case of the annual inspections be an RPII (or its successor bodies) registered inspector.
13. The Owner shall ensure that mature tree management and maintenance is only undertaken by suitably qualified people with an appropriate formal arboricultural qualifications to Level 3 or higher and holding Arboricultural Association (AA) Technician Membership and for more complex items of work level 5 and holding current AA Fellowship and Professional Membership.
14. The Owner shall ensure that Health and Safety and Risk Management is only undertaken by suitably qualified people with an appropriate formal - Level 2 or higher qualifications in regard to risk assessment and management.
15. Any proposed changes to the physical facilities other than their routine upkeep, maintenance and like for like replacement, shall only be made with the written agreement of the Council
16. Any proposed changes to the maintenance of the site from those set out in the landscape and ecology management plan can only be made with the written agreement of the Council

SIGNED as a DEED by
JOHN ALFRED SUCKLING
In the presence of:-

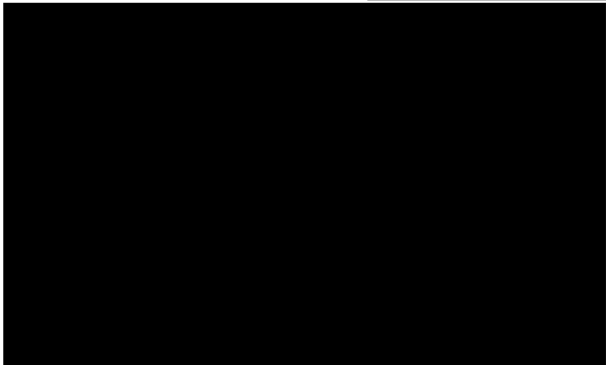


Witness Signature:

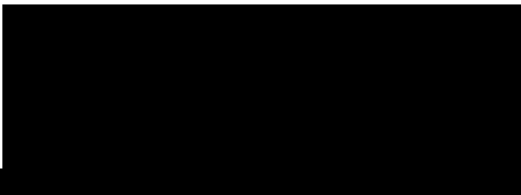
Witness Name:

Witness Address:

Witness Occupation:



SIGNED as a DEED by
CHRISTOPHER JOHN SUCKLING
In the presence of:-

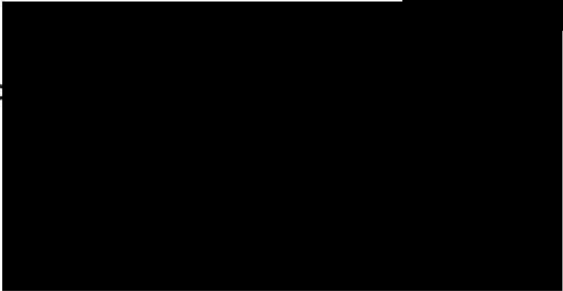


Witness Signature:

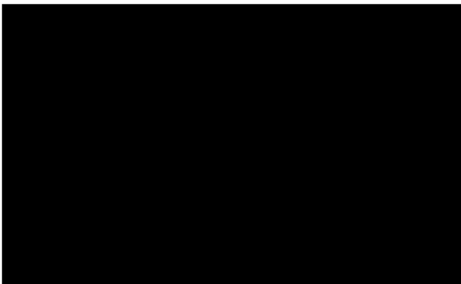
Witness Name:

Witness Address:

Witness Occupation:



EXECUTED as a **DEED** by)
RAINIER DEVELOPMENTS LIMITED)
acting by a director)
Director



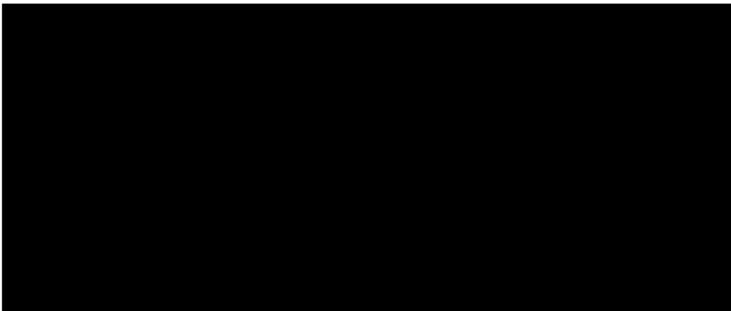
in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



THE COMMON SEAL of BABERGH
DISTRICT COUNCIL
was hereunto affixed in the presence of:



Designated Officer:



THE COMMON SEAL OF SUFFOLK COUNTY
COUNTY COUNCIL
was hereunto affixed in the presence of:

Designated Officer

