

Planning Obligation by Deed under Section 106 of the Town and Country

Planning Act 1990

relating to the development of land to the south of Union Road, Onehouse,
Stowmarket, Suffolk (planning application reference: DC/20/01110/OUT)

Dated: (30/04/2021) 2021

MID SUFFOLK DISTRICT COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

PAUL GERALD BARNARD (3)

ENDURANCE ESTATES LAND PROMOTION LIMITED (4)

30/04/2021

PARTIES

- (1) **MID SUFFOLK DISTRICT COUNCIL** of Endeavour House 8 Russell Road Ipswich IP1 2BX (“**the District Council**”)
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich Suffolk IP1 2BX (“**the County Council**”)
- (3) **PAUL GERALD BARNARD** of Marton House, Sun Lane, Woodbridge IP12 1EG (“**the Owner**”)
- (4) **ENDURANCE ESTATES LAND PROMOTION LIMITED** (Co Reg No. 11519956) whose registered office is situated at 4 Birchley Estate, Birchfield Lane, Oldbury, England, B69 1DT (“**the Promoter**”)

together “the Parties”

INTRODUCTION

1. The District Council is a local planning authority for the purposes of the Act for the area in which the Site is situated
2. The County Council is the local highway authority (except for trunk roads) and the local education authority, and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable
3. The Owner is the freehold owner of the Site which comprises the land registered with the Land Registry under title number SK192458 as more fully described in the First Schedule

4. The Promoter has the benefit of a promotion agreement dated 14 November 2019 and the Promoter and the Owner have submitted the Application to the District Council for the Development
5. The District Council has resolved to grant planning permission for the Development pursuant to the Application subject to the prior completion of this Deed to secure the planning obligations contained in this Deed
6. The District Council enters into this Deed to the intent that the requirements of the District Council's policies are met and that any objections by the District Council to the grant of planning permission on the basis of those policies are overcome
7. The District Council and the County Council consider and the Owner acknowledges that the Development should not take place until certain restrictions regulating the use of the Site are imposed in the manner hereafter appearing and pursuant to Section 106 of the Act the parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed
8. The District Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the CIL Regulations

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990 (as amended)
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“Affordable Housing”	subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market as defined in Annex 2 of the NPPF (as may be amended and replaced from time to time)
“Affordable Housing Contribution”	the sum calculated in accordance with the District Council’s affordable housing policies in place at the time (or such other sum as agreed between the Owner and the District Council in writing) to be paid to the District Council to spend on Affordable Housing within the administrative district of the District Council in the event that the Owner is unable to dispose of the Affordable Housing in accordance with paragraphs 1 to 6 (inclusive) and paragraph 8 in Part 1 (A) of the Second Schedule
“Affordable Housing Commuted Sum”	contribution of £31,248.00 (thirty one thousand two hundred and forty eight pounds) towards the provision of Affordable Housing within the district of Mid Suffolk
“Affordable Housing Land”	part(s) of the Site upon which the Affordable Housing Units shall be provided pursuant to the Planning Permission and the Affordable Housing Scheme

<p>“Affordable Housing Nomination Agreement”</p>	<p>an agreement substantially in the form set out in the Sixth Schedule (subject to such amendments as may be reasonably required by the Registered Provider with a view to ensuring that the objectives of that agreement are met) dealing with the allocation of the Affordable Housing by a Registered Provider which shall apply to all of the Affordable Housing Units and “Nomination Agreement” shall have the same meaning (unless otherwise agreed in writing with the District Council)</p>
<p>“Affordable Housing Scheme”</p>	<p>a document detailing the location proposed layout specification mix size and tenure of the Affordable Housing Units (unless otherwise agreed in writing with the District Council)</p>
<p>“Affordable Housing Units”</p>	<p>a minimum of 21% of the Dwellings to be provided as Affordable Housing of which 75% shall be Rental Dwellings and the remaining 25% of which shall be Shared Ownership Dwellings to be constructed in accordance with the Affordable Housing Scheme (unless otherwise agreed in writing with the District Council) AND FOR THE AVOIDANCE OF DOUBT there shall be no obligation or requirement on the Owner to provide more than 21% of the Dwellings as Affordable Housing</p>

“Affordable Rent”

Affordable Housing Units which comply with the Government's rent policy for affordable rent and otherwise complies with the definition of “Affordable housing for rent” at part a) of Annex 2 in the NPPF or as otherwise agreed with the District Council in writing

“Application”

the application for outline planning permission to develop the Site in accordance with the application plans and other materials deposited with the District Council and validated on 9 July 2020 and bearing the District Council's reference number DC/20/01110

“BCIS Index”

the All In Tender Price Index published by the Building Cost Information Services of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto

“BCIS Indexed”

the increase in any sum referred to in the Second Schedule (other than the LEAP Maintenance Contribution and Open Space Maintenance Contribution which are instead to be as adjusted for the change in the Retail Prices Index (All Items) published by the Office for National

	Statistics since 2010/11 as calculated pursuant to Clause 19) and the Third Schedule by an equivalent to be increase in the BCIS Index to be calculated in accordance with Clause 19 of this Deed
“CCG”	the Ipswich and East Suffolk Clinical Commissioning Group
“Chargee”	any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925
“Chargee’s Duty”	the tasks and duties set out in paragraph 10 of Part 1(A) of the Second Schedule
“Choice Based Lettings Scheme”	an integrated electronic and manual information system which enables members of the public who have made or potentially might make an application for housing in the area to which the Choice Based Letting Scheme relates to apply or a selection of suitable properties or be supplied with details of housing available throughout the relevant area operated pursuant to any agreement to which the District Council is a party unless otherwise agreed in writing with the District Council

“CIL”	the community infrastructure levy introduced by the Planning Act 2008 as amended or any successor levy or charge
“CIL Regulations”	the Community Infrastructure Levy Regulations 2010 (as amended)
“Commencement of Development”	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 on the Site pursuant to the Planning Permission other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance and levelling, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, construction of access to the Site and the temporary display of site notices or advertisements and “Commence” and “Commencement” and “Commence Development” shall be construed accordingly
“Completion of Development”	the date that the last Dwelling is first Occupied

“Development”	the development of the Site for the erection of up to 146 dwellings including vehicular and pedestrian accesses, public open space, play space, landscaping, associated highways, drainage and utilities infrastructure in accordance with the Planning Permission
“Dwelling”	any dwelling (including a house flat maisonette or bungalow and including Affordable Housing Units and Market Housing Units) to be constructed pursuant to the Planning Permission and “Dwellings” shall be construed accordingly
“Early Years Contribution”	a contribution of £1,826.05 (one thousand eight hundred and twenty six pounds and five pence) (BCIS Indexed in accordance with Clause 19) per Dwelling permitted to be constructed pursuant to the Planning Permission (subject to any reserved matters application approved) payable to the County Council for the purposes of providing new childcare provision for children between the ages of 2 – 4 years old (inclusive) serving the Development
“Education Contribution”	the Early Years Contribution, the Primary Education Contribution, the Secondary Education Contribution and the Sixth Form Education Contribution together

“HE”	Homes England or its successor body or other appropriate body as the District Council may nominate
“Health Contribution”	a financial contribution of £84,140 (eighty four thousand one hundred and forty pounds) (BCIS Indexed in accordance with Clause 19) to be used towards either: a) the extension, refurbishment or reconfiguration of either Stowhealth or Combs Ford Surgery which serves the Development; and/or b) other resources or infrastructure to increase capacity for health care to the public in the vicinity of the Site and which serves the Development
“Household Waste Contribution”	a contribution of £110.00 (one hundred and ten pounds) (BCIS Indexed in accordance with Clause 19) per Dwelling permitted to be constructed pursuant to the Planning Permission (subject to any reserved matters application approved) payable to the County Council for the purpose of providing new, improved and enhanced waste disposal provision serving the Development
“Index”	shall mean the BCIS Index save for when calculating the LEAP Maintenance Contribution and Open Space Maintenance Contribution when this shall

mean the Retail Prices Index (All Items) or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties hereto

“Interest” interest at four (4) per cent above the base lending rate of the Bank of England from time to time

“LEAP” means a locally equipped area of play to be provided on the Site in accordance with the Open Space Scheme

“LEAP Maintenance Contribution” a financial contribution based on the following formula to be determined by reference to the extent and nature of the LEAP to be constructed pursuant to the Planning Permission (subject to any reserved matters application approved) and to be used for the maintenance of the LEAP for a period to cover 10 (ten) years (or such other sum as agreed between the Owner and the District Council (acting reasonably) pursuant to the Open Space Scheme)

A = extent of LEAP in square metres

B = £0.13 (being the playground cleaning cost per square metre per annum)

C = number of items of play equipment in the LEAP

D = £50 being the cost per item per annum to inspect and routinely maintain

E = £650 (being the cost per annual visit to LEAP to inspect and routinely maintain)

F = £1,050 (being the estimated cost of non-routine annual repairs)

G = 10 (being the number of years maintenance the LEAP Maintenance Contribution is to cover)

H = LEAP Maintenance Contribution (as adjusted for the change in the Retail Prices Index (All Items) published by the Office for National Statistics since 2010/11 as calculated pursuant to Clause 19)

$$((A \times B) + ((C \times D) + E) + F) \times G = H$$

PROVIDED THAT in the event the Management Company are the Nominated Body or where maintenance of the LEAP is to be funded by way of CIL no LEAP Maintenance Contribution shall be payable under this Deed

“Library Contribution”

a contribution of £16.00 (sixteen pounds) (BCIS Indexed in accordance with Clause 19) per Dwelling permitted to be

constructed pursuant to the Planning Permission (subject to any reserved matters application approved) payable to the County Council for use towards provision of books and resources for the Stowmarket Library and library stock serving the Development

“Management Company”

a limited company which may be established or engaged by the Owner to take over the future maintenance and management of the Open Space (and for the avoidance of doubt to include the LEAP) in perpetuity and for the avoidance of doubt may include a residents association established for this purpose, a private limited company or a community interest company or other organisation primarily for the benefit of the general public

“Market Housing Units”

those Dwellings which are not Affordable Housing Units

“Nominated Body”

the Management Company, Parish Council or such other body as approved by the District Council and “Nominated Bodies” shall be construed accordingly

“NPPF”

the National Planning Policy Framework published in February 2019 or any

	subsequent revision or amendment of this document
“Occupation”	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 and “Occupied” and “Occupy” shall be construed accordingly
“Open Space”	an area of space on the Site (including the LEAP) 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 Maintenance Contribution”	a financial contribution to be used for the maintenance of the Open Space (which for the purpose of this definition excludes the LEAP) to be calculated at a rate of £5.06 per square metre for a period to cover 10 (ten) years (as adjusted for the change in the Retail Prices Index (All Items) published by the Office for National Statistics since 2010/11 as calculated pursuant to Clause 19) or such other sum as agreed between the Owner and the District Council (acting reasonably) pursuant to the Open Space Scheme PROVIDED THAT in the event the

Management Company are the Nominated Body or where maintenance of the Open Space is to be funded by way of CIL no Open Space Maintenance Contribution shall be payable under this Deed

“Open Space Plan”

a plan to be submitted to the District Council for approval indicating the location of the Open Space

“Open Space Scheme”

a scheme for the provision of Open Space for use by members of the public including specifications plans and drawings showing but not limited to details of the layout location and design of the Open Space including details of any proposed equipment landscaping drainage features access arrangements fencing and its on-going maintenance (including the arrangements for the funding for on-going management (including details of any covenant in the transfers of the title or leases of Market Housing Units requiring the payment of a fee to the relevant Nominated Body or any Open Space Maintenance Contribution payable in the event that the Parish Council is the Nominated Body) PROVIDED THAT where maintenance of the Open Space is to be funded by way of CIL no Open Space

	Maintenance Contribution shall be payable under this Deed)
“Parish Council”	Onehouse Parish Council
“Planning Permission”	the outline planning permission subject to conditions as may be granted by the District Council pursuant to the Application
“Practical Completion”	issue of a certificate of practical completion by the Owner’s architect or project manager or in the event that the Development is constructed by a party other than the Owner the issue of a certificate of practical completion by that other party’s architect or project manager
“Primary Education Contribution”	a contribution of £5,197.23 (five thousand, one hundred and ninety-seven pounds and twenty-three pence) (BCIS Indexed in accordance with Clause 19) per Dwelling permitted to be constructed pursuant to the Planning Permission (subject to any reserved matters application approved) payable to the County Council for use towards the delivery of a new primary school provision at the Chilton Leys strategic allocation serving the Development
“Protected Tenant”	any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit;
- (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or
- (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 the remaining shares so that the tenant owns the entire Affordable Housing Unit

“Reasonable Terms”

terms which would ensure that the Owner would recover its reasonable costs incurred in constructing and marketing the relevant Affordable Housing Units on the Affordable Housing Land (including

without limitation related finance and legal costs)

“Registered Provider”

a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by HE under Chapter 3 of that Act or such other body to which the Affordable Housing Units are to be transferred as agreed with the District Council pursuant to Paragraph 1 Part 1(A) of the Second Schedule (unless otherwise agreed in writing with the District Council)

“Rental Dwelling”

an Affordable Housing Unit which is to be let at an Affordable Rent or Social Rent and is let on the Registered Provider’s standard form of letting in accordance with the terms of this Deed by a Registered Provider

“Secondary Education Contribution”

a contribution of £4,233.90 (four thousand and two hundred and thirty-three pounds and ninety pence) (BCIS Indexed in accordance with Clause 19) per Dwelling permitted to be constructed pursuant to the Planning Permission (subject to any reserved matters application approved) payable to the County Council for the purposes of the expansion, improvement and enhancement of Stowmarket High

School or Stowupland High School serving the Development

“Shared Ownership Dwellings”

Affordable Housing Units to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in HE’s capital funding guide unless otherwise agreed in writing with the District Council

“Shared Ownership Lease”

a lease or sub-lease of Shared Ownership Dwellings granted at a premium whereby up to 70% (seventy per cent) and not less than 10% on first purchase of the equitable interest in the Shared Ownership Dwellings is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% (one hundred percent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and which lease shall be at an initial rent not exceeding 2.75% per cent of the value of the equity retained by the Registered Provider subject to annual increases not exceeding the Retail Prices Index (All Items) published by the

Office for National Statistics (or if such index ceases to be published such other index as the District Council shall reasonably determine) plus 0.5 percent or such other rent as complies with the requirements from time to time of HE and contain a covenant requiring any capital receipt received by the Registered Provider of shares between 80 and 100% to be retained by the Registered Provider and recycled for affordable housing investment in the district of Mid Suffolk

“Site”

the land against which this Deed may be enforced as shown edged red for identification purposes only on the Site Plan

“Site Plan”

the plan marked “S.106 Location Plan” attached to this Deed

“Sixth Form Education Contribution”

a contribution of £977.05 (nine hundred and seventy-seven pounds and five pence) (BCIS Indexed in accordance with Clause 19) per Dwelling permitted to be constructed pursuant to the Planning Permission (subject to any reserved matters application approved) payable to the County Council for the purposes of expansion, improvement and enhancement of sixth form provision at Stowmarket High School or Stowupland

	High School or any facilities which replace either of these facilities and which serve the Development
“Social Rent”	Affordable Housing Units which comply with the Government’s rent policy for social rent and otherwise complies with the definition of “Affordable housing for rent” at part a) of the definition of affordable housing at Annex 2 of the NPPF
“Travel Plan”	a travel plan providing a package of measures aimed at promoting more sustainable and active travel choices and reducing reliance on the private car by residents of the Development
“Travel Plan Contribution”	a contribution of £462.12 (four hundred and sixty-two pounds and twelve pence) (BCIS Indexed in accordance with Clause 19) per Dwelling permitted to be constructed pursuant to the Planning Permission (subject to any reserved matters application approved) payable to the County Council for the purpose of implementing a Travel Plan for the Development
“Working Days”	Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, sub-clause, schedule, paragraph, sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause, sub-clause, schedule, paragraph, sub-paragraph 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 as 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 insofar as such obligation relates to land within such party's ownership 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 party deriving title through or under that party and in the case of the District Council and the County Council any successor to its statutory functions (as appropriate)
- 2.7 Where this Deed requires a plan, drawing, scheme or strategy or other document to be submitted to the District Council or County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan, drawing, scheme or strategy or other document

- 2.8 Save for the provisions of Paragraph 9 of Part 1(A) of the Second Schedule none of the covenants contained in this Deed on the part of the Owner shall be enforceable against owner occupiers mortgagees or tenants of the Dwellings nor against those deriving title from them
- 2.9 None of the covenants in this Deed shall be enforceable against any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services
- 2.10 The headings are for reference only and shall not affect construction
- 2.11 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person
- 2.12 If the District Council agrees following an application under section 73 of the Act to vary or to be released from any condition contained in the Planning Permission or if a condition is varied or released following an appeal under section 78 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 unless the District Council in determining the application for the new planning permission indicate that consequential amendments are required to this Deed to reflect the impact of the section 73 application, when a separate deed under section 106 of the Act will be required to secure relevant planning obligations relating to the new planning permission
- 2.13 Fractions of a whole figure will be rounded up to the nearest whole number from and including 0.5 and rounded down from less than 0.5

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers

- 3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council in respect of the matters set out in the Second Schedule and by the County Council in respect of the matters set out in the Third Schedule as local planning authorities against the Owner or their successors in title
- 3.3 This Deed is a deed and may be modified or discharged in part or in total at any time after the date of this Deed by deed between the parties in the form of a deed
- 3.4 This Deed is a local land charge and upon completion shall be registered by the District Council as such

4 CONDITIONALITY

- 4.1 This Deed shall take effect on the date that it is completed but performance of the planning obligations contained in this Deed at Clause 5 and the Schedules are conditional upon:
- (i) the grant of the Planning Permission; and
 - (ii) the Commencement of Development

5. THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the District Council as set out in the Second Schedule so as to bind the Site and each and every part thereof
- 5.2. The Owner covenants with the County Council as set out in the Third Schedule so as to bind the Site and each and every part thereof

6. THE DISTRICT COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

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

7. MISCELLANEOUS

- 7.1 The Parties shall act in good faith and shall co-operate with each other to facilitate the discharge and performance of all obligations contained herein and following the Commencement of Development the Owner shall comply with any reasonable requests of the District Council and/or the County Council and their duly authorised officers or agents to have reasonable access to any part of the Site (for the purposes of inspection only) or any reasonable requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein
- 7.2 The Owner agrees declares and covenants both with the District Council and the County Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Deed
- 7.3 The Promoter shall pay to the District Council on completion of this Deed the proper and reasonable legal costs of the District Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.4 The Promoter shall pay to the County Council on completion of this Deed the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed
- 7.5 The Owner shall pay to the County Council £1,236.00 (one thousand and two hundred and thirty-six pounds) in the following manner towards the costs incurred in monitoring the obligations contained in this Deed:
- 7.5.1 25% (£309) on the completion of this Deed; and
 - 7.5.2 the remaining 75% (£927) within 10 (ten) Working Days of the submission of the first reserved matters application which is submitted pursuant to the Planning Permission.

- 7.6 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 7.7 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owner and/or Promoter from either the District Council or the County Council under the terms of this Deed such approval or consent or expression of satisfaction or subsequent deed shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the District Council by the Professional Lead – Growth and Sustainable Planning (or an officer fulfilling an equivalent function) or an officer acting under his authority and on behalf of the County Council by the Executive Director of Growth Highways and Infrastructure (or an officer fulfilling an equivalent function or an officer acting under his authority)
- 7.8 Following the performance and satisfaction of all the obligations contained in this Deed and on the written request of the Owner the District Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed
- 7.9 Insofar as any clause or other provision of this Deed is 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
- 7.10 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 expires by effluxion of time before the Commencement of the Development or is modified (without the consent of the Owner or Promoter) and following any of those events the District Council will effect cancellation of all entries in the Register of Local Land Charges in respect of this Deed
- 7.11 No person will be liable for any breach of any of the planning obligations or other provisions of this Deed if he no longer has an interest in the Site (or that part of the Site in respect of which such breach occurs) but without prejudice to liability for any

subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or any part or parts of the Site) shall constitute an interest for the purposes of this Clause

7.12 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

7.13 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the District Council or County Council

7.14 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authorities

8. WAIVER

No waiver (whether expressed or implied) by the District Council or the County Council or the Owner or the Promoter 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 District Council or the County Council or the Owner or the Promoter from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default. No single or partial exercise of any right or remedy on the part of any Party shall prevent or restrict the further exercise of that right or any other right or remedy

9. CHANGE IN OWNERSHIP

The Owner agrees with the District Council and the County Council to give each of them written notice of any transfer in ownership of any of its freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged such notice to be served within 20 (twenty) Working Days of such transfer and 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 transfers of individual Dwellings within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like

10. INTEREST

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

11. RIGHT OF ENTRY

At all times on not less than 48 (forty-eight) hours written notice except in case of emergency with or without notice the Owner shall allow any employee or agent of the District Council or County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed only PROVIDED THAT:

- 11.1 such employee or agent on arrival at the Site shall if requested by any person present who appears to be the Owner the manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Site);
- 11.2 such entry shall be effected between 08.00 and 17.00 on any Working Day;
- 11.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;
- 11.4 such employee or agent may take photographs measurements and levels;

11.5 such employee or agent may not remain on the Site for longer than is reasonably necessary for carrying out a proper inspection;

11.6 such employee or agent and any other accompanying persons shall comply with the Owner's or the Owner's representative's reasonable directions and precautions in the interests of safety; and

11.7 such employee or agent may only enter onto the Site following the Commencement of Development.

11.8 for the avoidance of doubt the provisions of this Clause 11 shall be in addition to and does not prejudice the powers conferred on the District Council or County Council by Sections 169A, 169B and 169C of the Act

12. VAT

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

13. PROMOTER'S CONSENT

13.1 The Promoter acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that their rights shall take effect subject to this Deed PROVIDED THAT the Promoter shall otherwise have no liability under this Deed (save as expressly provided in this Deed) unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

14. NOTICES

14.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as

otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 14.2

14.2 The address for any notice or other written communication in the case of each party to this Deed shall be as follows:-

The District Council	The Chief Planning Officer, Mid Suffolk Council, Endeavour House 8 Russell Road Ipswich IP1 2BX
The County Council	The Executive Director of Growth Highways and Infrastructure (or a duly appointed successor) Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX
The Owner	Marton House, Sun Lane, Woodbridge IP12 1EG
The Promoter	Howes Percival LLP, Flint Buildings, 1 Bedding Lane, Norwich, NR3 1RG (Ref: JZC/229503.0003)

14.3 Any notice or other written communication to be given by the District Council or the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the District Council or the County Council by a duly authorised officer of the District Council or the County Council (as appropriate)

15. DISPUTE RESOLUTION

15.1 Any dispute or difference of any kind whatsoever arising between any or all of the Parties out of or in connection with this Deed (including without limitation any

question regarding its existence validity or termination) shall be referred to arbitration before a single Expert (the "Expert")

15.2 The Parties to the dispute shall jointly appoint the Expert not later than 20 (twenty) Working Days after service (on all other Parties to the dispute) of a request in writing by any Party to the dispute to do so

15.3 If the Parties to the dispute are unable to agree within 20 (twenty) Working Days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the Parties to the dispute as follows:

15.3.1 difference or question relates to the rights and liabilities of either Party to the dispute or to the terms or conditions to be embodied in the Deed or document appertaining to the Deed it shall be referred to a solicitor or barrister notified by or on behalf of the President for the time being of the Law Society; or

15.3.2 difference or question relates to highway works engineering demolition building or construction works it shall be referred to a chartered civil engineer notified by or on behalf of the President for the time being of the Institution of Civil Engineers; or

15.3.3 difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Parties to the dispute but in default of agreement appointed at the request of a Party to the dispute by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or

15.3.4 if such difference or question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Parties to the dispute but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute

- 15.4 In the event of a reference to arbitration the Parties to that dispute agree to:
- 15.4.1 prosecute any such reference expeditiously; and
 - 15.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable
- 15.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award
- 15.6 The award shall be in writing signed by the Expert and shall be finalised within 10 (ten) Working Days of the hearing
- 15.7 The award shall be final and binding in the absence of manifest error both on the Parties to the dispute and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be and the Expert's costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares
- 15.8 Unless this Deed has already been terminated each of the Parties to the dispute shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause 15 but without prejudice to the rights and obligations of the Parties in relation to the termination of this Deed and other methods of enforcement
- 15.9 The provisions of this clause shall not affect the ability of a party to apply for and be granted any of the following: declaratory relief, injunction, specific performance,

payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief

16. SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

Where in the opinion of the Owner any of the provisions of this Deed have been satisfied the Owner shall be entitled to apply to the District Council or the County Council (as appropriate) for a certificate to that effect and upon the District Council or the County Council (as appropriate) being reasonably satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the District Council or the County Council (as appropriate) shall forthwith issue a certificate to such effect

17. APPROVALS

Where any details, programmes, plans, strategies, reports, matters or materials are approved by the District Council or the County Council (as appropriate) under the terms of this Deed further or amended details programmes plans strategies reports matters or materials may be submitted from time to time and if approved by the District Council or the County Council (as appropriate) shall replace those previously approved and shall be deemed to have been incorporated into this Deed

18. NOTIFICATION

18.1 The Owner covenants to inform the District Council by way of written notice within 10 (ten) Working Days following:

- a) Commencement of Development;
- b) First Occupation of the first (1st) Dwelling;
- c) Completion of Development.

18.2 The Owner covenants to inform the County Council by way of written notice within ten (10) Working Days following:

- a) Commencement of Development
- b) first Occupation of the first (1st) Dwelling
- c) first Occupation of the thirty-seventh (37th) Dwelling
- d) first Occupation of the seventieth (70th) Dwelling
- e) Completion of Development

18.3 The Owner further covenants to inform the County Council by way of written notice six (6) months following the Commencement of Development

19. INDEXATION

19.1 Any sum referred to in the Second Schedule and Third Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index (unless the context reads otherwise) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

19.1.1 A is the sum payable under this Deed;

19.1.2 B is the original sum calculated as the sum payable;

19.1.3 C is the Index for the month 2 (two) months before the date on which the sum is payable;

19.1.4 D is the Index for the month 2 (two) months before the date of this Deed (save for when calculating the LEAP Maintenance Contribution and Open Space Maintenance Contribution where "C" shall be the Index in 2010/11 unless otherwise agreed in writing with the District Council).

19.1.5 C/D is greater than 1 (one)

20. JURISDICTION

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

21. DELIVERY

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

22. COUNTERPARTS

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

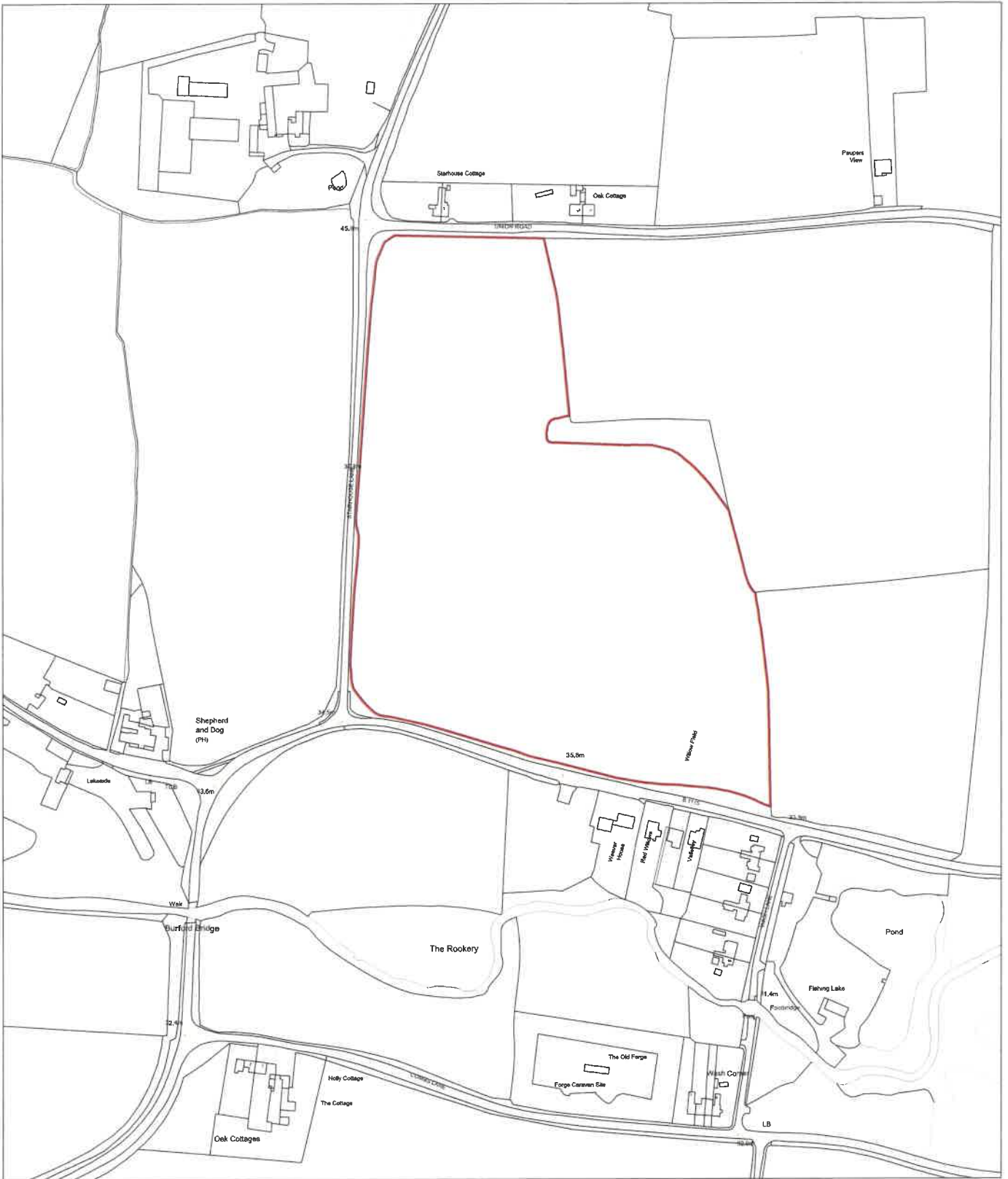
FIRST SCHEDULE

PART 1

FREEHOLD INTERESTS

The Owner is the freehold owner of the Site shown edged red for identification purposes only on the Site Plan the title to which is the land registered at the Land Registry with Title Absolute under Title Number SK192458

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S.106 LOCATION PLAN - Land south of Union Road, Onehouse, Stowmarket



SECOND SCHEDULE
THE OWNER'S COVENANTS WITH THE DISTRICT COUNCIL

PART 1

(A) ON-SITE AFFORDABLE HOUSING

- 1 The Owner shall endeavour to agree with the District Council the identity of the Registered Provider to which the Affordable Housing Units are to be transferred such agreement not to be unreasonably withheld or delayed. The Owner may Commence the Development whilst that process is ongoing but shall not Occupy or permit Occupation of any Dwellings until the identity of the Registered Provider has been agreed with the District Council
- 2 Not to Commence the Development until an Affordable Housing Scheme has been submitted to and approved by the District Council in writing PROVIDED THAT a revised Affordable Housing Scheme may be submitted to and approved by the District Council following the Commencement of Development
- 3 Not to Occupy or permit Occupation of more than 50% of the Market Housing Units until:
 - 3.1 50% of the Affordable Housing Units to be provided under the approved Affordable Housing Scheme have been constructed in accordance with the Planning Permission and transferred to a Registered Provider (or individual plot owners where appropriate, or where no transfer is required their ongoing provision has been secured) and written notification of such has been received by the District Council; or
 - 3.2 contracts have been exchanged with a Registered Provider for the transfer of the Affordable Housing Land with obligations to secure delivery of 50% of the Affordable Housing Units in accordance with the Planning Permission prior to

- the Occupation of 50% of the Market Housing Units and written notification of such has been received by the District Council
- 4 Not to Occupy or permit Occupation of more than 80% of the Market Housing Units until:
 - 4.1 all of the Affordable Housing Units to be provided under the approved Affordable Housing Scheme have been constructed in accordance with the Planning Permission and transferred to a Registered Provider (or individual plot owners where appropriate, or where no transfer is required their ongoing provision has been secured) and written notification of such has been received by the District Council; or
 - 4.2 contracts have been exchanged with a Registered Provider for the transfer of the Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units in accordance with the Planning Permission prior to the Occupation of 80% of the Market Housing Units and written notification of such has been received by the District Council
 - 5 To construct the Affordable Housing Units accordance with the Affordable Housing Scheme agreed in writing by the District Council
 - 6 In the event that the approved Affordable Housing Scheme requires the Affordable Housing Units (or Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units) to be transferred to a Registered Provider to procure a covenant in the transfer(s) of these Affordable Housing Units (or Affordable Housing Land (if appropriate)) that the Registered Provider will enter into an Affordable Housing Nomination Agreement with the District Council and for this document to be completed between the District Council and the Registered Provider within 3 (three) months of the date of the transfer(s) to it of the Affordable Housing Units (or Affordable Housing Land (if appropriate)) and covenants from the Registered Provider substantially in the form set out in the remainder of this Part 1 (A) of the Second

Schedule. Those covenants bind the Registered Provider, not the Owner (save that Paragraph 9 of this Part 1 (A) of the Second Schedule binds the Owner until he disposes of the Affordable Housing to the Registered Provider). The Affordable Housing Nomination Agreement and the covenants in this Schedule shall be subject to such amendments as may be reasonably required by the Registered Provider and the District Council with a view to ensuring that the objectives of this Deed are met

7 In the event that the Owner has not been able to exchange contracts with a Registered Provider on Reasonable Terms to dispose of the Affordable Housing Units (or Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units) in accordance with paragraphs 1 – 6 (inclusive) and paragraph 8 of this Part 1 (A) of the Second Schedule after using reasonable endeavours to offer these to the market for a minimum period of 6 (six) months (and for the avoidance of doubt this period may be before the Practical Completion of the Affordable Housing Units) the Owner may:

7.1 notify the District Council following a period of at least 6 (six) months of marketing the Affordable Housing Units;

7.2 set out the reasons (together with supporting evidence) in writing why it has not been possible to exchange contracts with a Registered Provider for the disposal of the Affordable Housing Units (or Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units) on Reasonable Terms and pursuant to paragraphs 1 – 6 (inclusive) and paragraph 8 of this Part 1 (A) of the Second Schedule;

7.3 submit any other information reasonably requested by the District Council to satisfy the District Council (acting reasonably) as to why the Owner has not been able to exchange contracts with a Registered Provider for the disposal of the Affordable Housing Units (or Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units) on Reasonable Terms and pursuant to paragraphs 1 – 6 (inclusive) and paragraph 8 of this Part 1 (A) of the Second Schedule;

- 7.4 to make a written offer to transfer the Affordable Housing Units to the District Council as Affordable Housing Units (or Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units) and on Reasonable Terms;
- 7.5 in the event the District Council make an acceptable offer to the Owner on Reasonable Terms (within two (2) months' of written invitation pursuant to paragraph 7.4 of this Part 1 (A) of this Second Schedule) for the Affordable Housing Units (or Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units) then the Owner shall not Occupy or permit Occupation of more than eighty per cent (80%) of the Market Housing Units until the Owner has provided the District Council with a freehold transfer document unconditionally released for completion for the transfer of the Affordable Housing Units (or Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units) on Reasonable Terms;
- 7.6 in the event the District Council does not make an acceptable offer to the Owner on Reasonable Terms (within two (2) months' of written invitation pursuant to paragraph 7.4 of this Part 1 (A) of this Second Schedule) to purchase all of the Affordable Housing Units (or Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units) or the District Council indicates that they do not want to purchase the Affordable Housing Units (or Affordable Housing Land with obligations to secure delivery of all of the Affordable Housing Units) (within two (2) months' of written invitation pursuant to paragraph 7.4 of this Part 1 (A) of this Second Schedule) the District Council shall as soon as practicable (and in any event within 5 (five) Working Days) serve on the Owner written confirmation that the Owner shall be permitted to sell the Affordable Housing Units (or Affordable Housing Land (as the case may be)) on the open market free from any restriction in this Part 1 (A) of this Second Schedule and instead shall pay an Affordable Housing Contribution to the District Council within 28 Working Days of the final sale of such Affordable Housing Units (or

the Affordable Housing Land (as the case may be)) on the open market in lieu of the provision of Affordable Housing on the Site;

- 7.7 Upon service of the written confirmation by the District Council that the Owner shall be permitted to sell the Affordable Housing Units (or Affordable Housing Land (as the case may be)) on the open market free from any restriction in this Part 1 (A) of this Second Schedule (as referred to in paragraph 7.6 of this Part 1 (A) of the Second Schedule) the relevant clauses in this Second Schedule shall no longer be applicable in respect of the provision of those Dwellings that were the Affordable Housing Units (or Affordable Housing Land (as the case may be)) (save for the Owner's covenant to pay the Affordable Housing Contribution to the District Council within 28 Working Days of the final sale of such Affordable Housing Units in paragraph 7.6 of this Part 1(A) of the Second Schedule) and the Owner shall be free to dispose of the said Dwellings (or Affordable Housing Land (as the case may be)) as Market Housing Units (or the Dwellings to be constructed on the Affordable Housing Land (as the case may be))
- 8 The Affordable Housing Units which are Shared Ownership Dwellings shall only be Occupied by persons allocated in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and the Rental Dwellings shall only be Occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or chosen pursuant to the Affordable Housing Nomination Agreement made pursuant to this Part 1 (A) to the Second Schedule which confers nomination rights on the District Council unless otherwise agreed by the District Council in writing
- 9 From the date of Practical Completion the Affordable Housing Units shall not be used other than for Affordable Housing save that this obligation shall not be binding on:

- a) any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
- b) any Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duty; or
- c) any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor
- d) a person acquiring an interest in an Affordable Housing Unit under a statutory right to buy or acquire;
- e) an owner-occupier of an Affordable Housing Unit who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest by or a person who has acquired 100% of a Shared Ownership Dwelling
- f) all persons or bodies deriving title under or through any persons or bodies referred to in this paragraph 9 (including their successors in title)

10 The Chargee shall prior to seeking to dispose of any of the Affordable Housing Units pursuant to any default under the terms of its mortgage or charge comply with the requirements under Part 2 of Chapter 4 of the Housing and Regeneration Act 2008

(B) OFF SITE AFFORDABLE HOUSING

1. The Owner covenants with the District Council to pay the Affordable Housing Commuted Sum to the District Council prior to the Occupation of more than 75% of the Dwellings; and
2. The Owner covenants with the District Council not to Occupy or allow the Occupation of more than 75% of the Dwellings unless and until the Affordable Housing Commuted Sum has been paid to the District Council

PART 2

OPEN SPACE

- 1 Prior to the Commencement of Development the Owner shall submit the Open Space Scheme with the Open Space Plan for the written approval of the District Council
- 2 The Owner covenants not to Commence the Development unless and until the Open Space Plan and the Open Space Scheme have been provided to and approved by the District Council in writing such approval not to be unreasonably withheld or delayed
- 3 The Owner covenants not to allow more than 75% of the Dwellings to be Occupied until the Open Space has been provided and laid out in accordance with the approved Open Space Scheme
- 4 Following the provision of the Open Space in accordance with Paragraph 3 Part 2 of this Second Schedule the Owner shall thereafter maintain the Open Space at their own cost in accordance with the approved Open Space Scheme and the Planning Permission until such time as the Open Space has been transferred to the Nominated Body in accordance with the provisions contained herein and for the avoidance of doubt the Open Space can be transferred in full to the Nominated Body or if the Owner and the District Council (acting reasonably) so agree in part to different Nominated Bodies
- 5 The Owner shall not permit first Occupation of more than 75% of the Dwellings until the Owner in respect of the Open Space has given written notice to the District Council confirming the identity of the Nominated Body
- 6 In the event that the Management Company is the Nominated Body not to Occupy or allow the Occupation of more than 90% of the Dwellings until: (a) the Management Company has been created or engaged to the satisfaction of the District Council; and

(b) the memorandum and articles of association and the form of transfer of the Open Space to the Management Company has been submitted to the District Council for approval and has been approved by the District Council (such approval not to be unreasonably withheld or delayed)

- 7 Not to Occupy or allow Occupation of more than 90% of the Dwellings until the Open Space has been transferred to the Nominated Body in accordance with the terms set out at Part 3 of this Second Schedule

PART 3

TERMS OF OPEN SPACE TRANSFER

- 1 Unless otherwise agreed in writing with the District Council any transfer of the Open Space (which for the avoidance of doubt, includes the LEAP) shall contain the following terms and be approved in writing by the District Council:
 - 1.1 a grant by the Owner to the Nominated Body of all rights of access and passage of services and all other rights reasonably necessary for the beneficial use and enjoyment of the Open Space;
 - 1.2 a reservation of all rights of access, installation, diversion, repair, maintenance and passage of services and rights of entry reasonably necessary for the purpose of the Development and the use and enjoyment of the Owner's retained land;
 - 1.3 a reservation of all rights of access, entry and otherwise necessary for the Owner to enable him to comply with his obligations set out in this Deed;
 - 1.4 such other covenants and reservations as the Owner may reasonably require including but not limited to the preservation of the appearance of the Development once it is completed;
 - 1.5 a covenant by the Nominated Body to restrict the Open Space to be utilised solely for recreational and amenity purposes by the general public;
 - 1.6 a covenant by the Nominated Body to restrict the LEAP to be utilized solely on the Site as a locally equipped area of play
 - 1.7 a covenant by the Nominated Body and their successors in title to maintain the Open Space for the purposes of the recreational facilities or amenity land for use by the general public as open space in perpetuity;

1.8 in the event that the Parish Council is the Nominated Body pursuant to the provisions of Part 2 of the Second Schedule the Open Space Maintenance Contribution and the LEAP Maintenance Contribution shall be paid to the Parish Council or District Council (as appropriate) on completion of the transfer of the Open Space AND FOR THE AVOIDANCE OF DOUBT there shall be no obligation to pay the Open Space Maintenance Contribution and the LEAP Maintenance Contribution if the Nominated Body is the Management Company or such other body as the District Council may approve or where maintenance of the Open Space and the LEAP is to be funded by way of CIL.

PART 4

HEALTH CONTRIBUTION

- 1 The Owner covenants with the District Council not to Occupy or allow the Occupation of more than 75% of the Dwellings on the Site unless and until the Health Contribution has been paid in full to the District Council

THIRD SCHEDULE
THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

PART 1

EDUCATION CONTRIBUTION

- 1 The Owner covenants with the County Council as follows:
 - 1.1 To pay twenty five percent (25%) of the Education Contribution to the County Council prior to first Occupation of the first Dwelling; and
 - 1.2 Not to allow first Occupation of the first Dwelling to take place prior to payment of twenty five percent (25%) of the Education Contribution to the County Council;
 - 1.3 To pay a further twenty five percent (25%) of the Education Contribution to the County Council prior to first Occupation of the 37th Dwelling; and
 - 1.4 Not to allow first Occupation of the 37th Dwelling to take place prior to payment of a further twenty five percent (25%) of the Education Contribution to the County Council;
 - 1.5 To pay the remaining fifty percent (50%) of the Education Contribution to the County Council prior to first Occupation of the 70th Dwelling; and
 - 1.6 Not to allow first Occupation of the 70th Dwelling to take place prior to the payment of the remaining fifty percent (50%) of the Education Contribution to the County Council

PART 2

LIBRARY CONTRIBUTION

- 1 The Owner hereby covenants with the County Council to pay the Library Contribution to the County Council as follows:
 - 1.1 To pay the Library Contribution to the County Council prior to the first Occupation of the 70th Dwelling; and
 - 1.2 Not to permit or allow first Occupation of more than sixty-nine (69) Dwellings until the Library Contribution has been paid in full to the County Council

PART 3

HOUSEHOLD WASTE CONTRIBUTION

- 1 The Owner hereby covenants with the County Council to pay the Household Waste Contribution to the County Council as follows:
 - 1.1 To pay the Household Waste Contribution to the County Council prior to the first Occupation of the 70th Dwelling; and
 - 1.2 Not to permit or allow first Occupation of more than sixty-nine (69) Dwellings until the Household Waste Contribution has been paid in full to the County Council.

PART 4

TRAVEL PLAN CONTRIBUTION

1 The Owner hereby covenants with the County Council to pay the Travel Plan Contribution to the County Council as follows:

1.1 To pay the Travel Plan Contribution to the County Council as follows:

- a) 25% within six (6) months of the Commencement of Development; and
- b) 75% prior to the first Occupation of the first Dwelling.

FOURTH SCHEDULE

DISTRICT COUNCIL'S COVENANTS

1. The District Council covenants with the Owner:
 - 1.1 To use all the contributions it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid.
 - 1.2 To account for interest at the base rate of the Bank of England from time to time on all the contributions it receives under the terms of this Deed as if such contributions were held in an interest bearing account.
 - 1.3 Save for the Health Contribution, if any of the contributions or any part of them have not been committed (by an unconditional contract or by the expenditure of the monies) or spent for the purposes for which they were paid under the terms of this Deed within 5 (five) years from payment the District Council shall repay any unspent balance to the person who made such payments together with a sum equivalent to the interest accrued thereon.
 - 1.4 At the written request of the Owner the District Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed
 - 1.5 On receipt of the Health Contribution the District Council shall place the Health Contribution into an interest bearing account and in the event that the District Council do not receive the confirmations required by the CCG as set out at Paragraph 1.6 of this Fourth Schedule by the 5th anniversary of the date the Health Contribution was received by the District Council then the District Council shall use all of the Health Contribution that has not been passed to the CCG (or which has been returned to the District Council from the CCG) towards the provision of Affordable Housing within the district of Mid Suffolk including any

accrued interest thereon and for the avoidance of doubt this does not have any effect on the Affordable Housing Commuted Sum or the Affordable Housing Contribution obligations in this Deed

- 1.6 The District Council shall not pass any part of the Health Contribution to the CCG until it has obtained from the CCG all of the following confirmations in writing from the CCG for the benefit of the District Council, the Owner and the Promoter but on receiving such confirmation shall pay the Health Contribution and all interest accrued to the CCG to use for the purposes for which the Health Contribution were paid under this Deed:
- (i) that the Health Contribution will be placed into an interest- bearing account;
 - (ii) that the Health Contribution shall be used only for the purposes of a defined project which has a relationship with the Development as set out in this Deed and shall be spent towards those purposes by the 5th anniversary of the date the Health Contribution was received by the District Council;
 - (iii) if the Health Contribution or any part of it is not spent towards such purposes by the 5th anniversary of the date the Health Contribution was received by the District Council the CCG shall return the Health Contribution (or the unexpended part of it if part of the Health Contribution has been spent towards such purposes) together with all accrued interest thereon to the District Council to utilise towards the provision of Affordable Housing; and
 - (iv) on receipt of a written request from the Owner and/or the Promoter for the CCG to provide the Owner and the Promoter (as appropriate) with a statement confirming whether and when the Health Contribution has been spent and if the said Health Contribution has been spent in whole or in part outlining how the Health Contribution has in whole or in part been spent

FIFTH SCHEDULE

COUNTY COUNCIL'S COVENANTS

1. The County Council covenants with the Owner:
 - 1.1 To use all the contributions it receives under the terms of this Deed for the purposes specified in this Deed for which they are to be paid unless specified otherwise in this Deed.
 - 1.2 In the event that any of the contributions or any part of them have not been committed (by an unconditional contract or by the expenditure of the monies) for the purposes for which they were paid under the terms of this Deed the County Council shall if requested to do so in writing after the expiry of ten (10) years of the date of Completion of Development, within a further period of one (1) year repay any unspent balance to the person who made such payments together with any interest accrued at the Bank of England Base Rate minus 2 basis points compounding annually at financial year end. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period.
 - 1.3 At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed owed to the County Council when satisfied that such obligations have been performed

SIXTH SCHEDULE

DRAFT AFFORDABLE HOUSING NOMINATIONS AGREEMENT

IS MADE THE DAY OF

2021

LAND TO THE SOUTH OF UNION ROAD, ONEHOUSE, STOWMARKET, SUFFOLK
(PLANNING APPLICATION REFERENCE: DC/20/01110/OUT)

THIS DEED OF NOMINATION RIGHTS

BETWEEN:

(1) [] whose registered address is at []
[] ('the Registered Provider') and

(2) ('THE DISTRICT COUNCIL')

1. DEFINITIONS

In this Deed:

- 1.1. 'Affordable Housing' means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market;
- 1.2. 'Affordable Housing Units' means the 21% of the dwellings on the Land to be Affordable Housing of which 25% of the Affordable Housing shall be Shared Ownership Dwellings and shall be occupied by persons in accordance with the Government's Help to Buy Scheme (or any subsequent scheme) and 75% of the Affordable Housing shall be let at an Affordable Rent and shall be occupied by persons allocated in accordance with a Choice Based Lettings Scheme to which the District Council is a party or otherwise nominated by the District Council pursuant to this deed of nomination rights as varied from time to time and "Affordable Housing Unit" shall be construed accordingly;
- 1.3. 'Affordable Rent' means housing made available by a Registered Provider as low-cost rent accommodation (as defined by the Housing and Regeneration Act 2008 Section 69) with a rent charged at a level up to 80% of the equivalent market rent inclusive of any service charge applicable;

- 1.4. 'Chargee' means any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925;
- 1.5. 'Chargee's Duties' means the tasks and duties set out in Clause 10.4 of this deed;
- 1.6. 'Gateway to Homechoice' means the Greater Haven Gateway sub-regional Choice Based Lettings system;
- 1.7. 'Homes England' means the non-departmental public body responsible for creating thriving communities and affordable homes in England or such other body that may replace it in either function;
- 1.8. 'Initial Let' means the first tenancy of such newly constructed and previously unoccupied Affordable Housing Unit;
- 1.9. 'Land' means the development on land to the south of Union Road, Onehouse, Stowmarket shown edged red for identification purposes only on the plan annexed
- 1.10. 'Local Connection Criteria' means had his only or principal home in the District of Mid Suffolk for a continuous period of not less than 2 years and in the event that there are no or insufficient individuals qualifying under this sub-paragraph then the choice of person shall default to (but with no preference in ranking order) to those individuals fulfilling the criteria set out in the following sub-paragraphs 1.10.1 to 1.10.3 inclusive
 - 1.10.1. a member of whose household has a parent adult child brother or sister whose only or principal home is and has been for a continuous period of not less than 2 years in the District of Mid Suffolk and wishes to be near that relative; or
 - 1.10.2. is employed in the District of Mid Suffolk on the date of the consideration of the individual's entitlement for an Affordable Housing Unit and has been continuously so employed for 2 years; or
 - 1.10.3. who during the period commencing from the date on which an Affordable Housing Unit to which such individual is eligible pursuant to this sub-paragraph becomes available (for the purposes of this sub-paragraph called

the “Availability Date”) can provide satisfactory written evidence to the District Council of his or her former residency in the District of Mid Suffolk for either (i) six months out of the preceding twelve months or (ii) three years out of the preceding five years and in either case such period of former residency shall end with the Availability Date

- 1.11. Mutual Exchange means the procedure by which a tenant may exchange their house with another Council or Housing Association tenant
- 1.12. ‘Nomination List’ means the Gateway to Homechoice Short List produced in accordance with the Gateway to Homechoice SLA;
- 1.13. ‘Nominee’ means a person named on the Gateway to Homechoice Short List who satisfies the Local Connection Criteria and is verified by the District Council as best meeting the criteria for the category of Affordable Housing Unit in respect of which the Registered Provider is to select a person from the Nomination List and offer a Tenancy Agreement;
- 1.14. ‘Practical Completion’ means issue of a certificate of practical completion by the Registered Provider’s surveyor or in the event that the Affordable Housing Units are constructed by a party other than the Registered Provider the issue of a certificate of practical completion by that other party’s surveyor
- 1.15. ‘Protected Tenant’ means any Nominee who 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 Unit;
- 1.16. ‘Registered Provider’ means a registered provider of social housing as defined in section 80(2) of the Housing and Regeneration Act 2008 and listed in the register kept by Homes England under Chapter III of that Act;
- 1.17. ‘the Service Level Agreement’ or ‘SLA’ means the Gateway to Homechoice service level agreement or such other service level agreement for the time being in force made

between the Registered Provider and Others (1) and the District Council and Others (2);

- 1.18. 'Shared Ownership Dwelling' means an Affordable Housing Unit to be let on a Shared Ownership Lease in accordance with the terms as set out in the Homes England capital funding guide or any other such guidance as shall replace it;
- 1.19. 'Shared Ownership Lease' means a lease or sub-lease of an Affordable Housing Unit granted at a premium whereby up to seventy percent (70%) and not less than ten percent 10% of the Open Market Value on first purchase of the legal and equitable interest in the Affordable Housing Unit is paid by the tenant upon completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% of the legal and equitable interest in the Affordable Housing Unit at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease subject to annual increases not exceeding the Retail Prices Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the District Council shall reasonably determine) plus 0.5 percent or such other rent as complies with the requirements from time to time of Homes England and contain a covenant requiring any capital receipt received by the Registered Provider of shares between 80 and 100% to be retained by the Registered Provider and recycled for affordable housing investment in the district of Mid Suffolk or such other figure permitted by Homes England from time to time. In the event of any shared ownership lessee staircasing up to 100% ownership;
- 1.20. 'Tenancy Agreement' means an assured tenancy agreement in a form prepared by the Registered Provider and containing terms which accord with the form of tenancy agreement being used by the Registered Provider from time to time for its general lettings;
- 1.21. 'Vacancy Notice' means a written notice (in a form to be agreed between the Registered Provider and given by the Registered Provider to the District Council within five (5) weeks from the date of this Deed) the function of such notice being the notification to

the District Council by the Registered Provider of the expected date on which the construction and fitting out of the Affordable Housing Units will be complete;

1.22. 'Void' means an Affordable Housing Unit which is vacant otherwise than as a result of the tenant having:

1.22.1. moved to other accommodation either by transfer or decant provided by the Registered Provider;

1.22.2. moved to other accommodation under a reciprocal arrangement provided by another Registered Provider;

1.22.3. vacated and moved to other accommodation as a consequence of the tenant having accepted a mutual exchange which provides such tenant with accommodation elsewhere;

1.23. 'Void Notice' means a written notice given by the Registered Provider to the District Council (in a form to be agreed between the Registered Provider and the District Council within five (5) weeks from the date of this Deed) the function of such a notice being the notification to the District Council of a Void.

2. ENABLING PROVISIONS

This Deed is made pursuant to the Local Government Act 1972 Section 111 and all other enabling powers.

3. PROCEDURE

3.1. The parties agree that the Service Level Agreement procedure to which they are signatories and the Local Connection Criteria shall apply to the nomination of persons in respect of the Affordable Housing Units.

3.2. Initial Lets

The Registered Provider hereby grants the District Council nomination rights for 100% of the Initial Lets and thereafter [75%/100%] for Voids in relation to the Affordable Rent

dwellings. In relation to the Initial Lets of the Affordable Housing Units the following provisions shall apply:

3.2.1. The Registered Provider shall give the District Council not less than four (4) months' written notice of the date when all the Affordable Housing Units will be ready for occupation;

3.2.2. The Registered Provider shall serve a Vacancy Notice upon the District Council in respect of an Affordable Housing Unit not earlier than ten (10) weeks prior to an Affordable Housing Unit becoming available for occupation;

3.3. Voids

Should any Affordable Housing Unit become a Void after the Initial Let or the Registered Provider has reasonable cause to believe it will become a Void then and in each case the Gateway to Homechoice SLA procedure shall apply.

4. SUPPLEMENTAL PROVISIONS RELATING TO ALLOCATING INITIAL LETS AND VOIDS

4.1. Where there are two or more applicants applying to occupy one of the Affordable Housing Units the Local Connection Criteria set out in clause 1.10 of this Nominations Agreement and subject to clause 4.2 of this Nominations Agreement preference must be given to the applicant/s who have the highest housing need according to the District Council's current allocations policy;

4.2. If any of the Affordable Housing Units are designed or adapted for people with disabilities then any such dwelling may be first offered to a person or persons with disabilities who require such accommodation even where such person(s) have a lesser Local Connection

under clause 1.10 of this Nominations Agreement than someone who does not have disabilities.

5. REGISTERED PROVIDER COVENANTS

The Registered Provider covenants with the District Council to the intent that the Local Government (Miscellaneous Provisions) Act 1982 applies:

- 5.1. to ensure the Affordable Housing Units comprised within the Land are used as Affordable Housing Units;
- 5.2. to ensure that the Affordable Housing Units are let on the basis of a Tenancy Agreement at an Affordable Rent or Shared Ownership Lease and they are all retained and managed by a Registered Provider in accordance with the objectives of such Registered Provider;
- 5.3. the Affordable Housing Units in accordance with current Homes England requirements.

6. ALTERATION OF LISTS

The District Council and the Registered Provider agree that the nomination rights contained in this Deed may be varied from time to time by agreement in writing by the parties.

7. NOTICES

Any notice required to be served hereunder shall be sufficiently served on the parties at the address indicated above or such other address notified by one party to the other and any notice shall be deemed to have been served two (2) working days after posting or in the case of electronic mailing the day such notice was transmitted by the party serving the notice.

8. TRANSFER TO OTHER REGISTERED PROVIDER

The Registered Provider shall use reasonable endeavours to ensure that any Registered Provider to which the Land and Affordable Housing Units erected thereon are transferred otherwise than by direction of the Homes and Communities Agency under its statutory powers

shall enter into a similar Deed mutatis mutandis with the District Council and Gateway to Homechoice simultaneously on completing the transfer of the Land

9. DISPUTES

Where any matters fail to be agreed between the parties or any dispute or difference occurs the question shall be referred on the application of either party for the determination of a single expert to be agreed between the parties or in default of agreement to be nominated by or on behalf of the President for the time being of the Chartered Institute of Housing on the application of either party

10. AGREEMENTS AND DECLARATIONS

The parties agree:

10.1. Nothing in this Deed fetters or restricts the exercise by the District Council of any of its powers

10.2. The obligations and covenants contained in this Deed are covenants for the purpose of the Local Government (Miscellaneous Provisions) Act 1982 Section 33

10.3. From the date of Practical Completion the Affordable Housing Units shall be let in accordance with the terms of this deed save that the obligations and restrictions contained in this deed shall not be binding on:

10.3.1. any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from a Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or

10.3.2. any Chargee and any successor in title to the Chargee PROVIDED THAT the Chargee shall have first complied with the Chargee's Duties; or

10.3.3. any mortgagee and any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor and any successor in title to either of them;

10.4. The Chargee shall prior to seeking to dispose of the Affordable Housing Unit(s) pursuant to any default under the terms of its mortgage or charge give not less than one (1) months' prior notice to the District Council of its intention to dispose and:

10.4.1. in the event that the District Council responds within one (1) month from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit(s) can be made in such a way as to safeguard them as Affordable Housing then the Chargee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer at a price and upon such terms as are reasonably acceptable to the Chargee;

10.4.2. if the District Council does not serve its response to the notice within the said period of one (1) months contained in clause 10.4.1 then the Chargee shall be entitled to dispose free of the restrictions set out in this deed;

10.4.3. if the District Council or any other person cannot within two (2) months of the date of service of its response under clause 10.4.1 secure such transfer then provided that the Chargee shall have complied with its obligations under clause 10.4 the Chargee shall be entitled to dispose free of the restrictions set out in this deed PROVIDED THAT at all times the rights and obligations in this clause shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the District Council shall give full consideration to protecting the interest of the Chargee in respect of moneys outstanding under the charge or mortgage.

11. Mutual Exchanges

The requirements of this Deed shall apply to all requests for Mutual Exchanges

AS WITNESS whereof the parties have executed this Instrument as a Deed hereto the day and year first above written

THE COMMON SEAL OF)

MID SUFFOLK DISTRICT COUNCIL)

was affixed in the presence of:)

Authorised Officer

THE COMMON SEAL OF)

REGISTERED PROVIDER'S NAME)

Signature of Authorised Officer)

AS WITNESS whereof the parties have executed this Instrument as a Deed hereto the day and year first above written

THE COMMON SEAL OF)

MID SUFFOLK DISTRICT COUNCIL)

was affixed in the presence of:)

Authorised Officer

THE COMMON SEAL OF)

SUFFOLK COUNTY COUNCIL)

was affixed in the presence of:)

Authorised Officer

SIGNED and DELIVERED

by the said **PAUL GERALD BARNARD**

as his deed in the presence of:

Witness signature

.....

Full Name

.....

Address

.....

.....

.....

Occupation

.....

EXECUTED and DELIVERED)

as a Deed by **ENDURANCE ESTATES**)

LAND PROMOTION LIMITED)

acting by a director in the presence of:)

.....

Director

Signature of witness

Full Name of witness

Witness address.....

Witness occupation