

4.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used), the following provisions will apply:

4.3.1 proceedings by way of judicial review are concluded:

4.3.1.1 when permission to apply for judicial review has been refused and no further application can be made;

4.3.1.2 when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or

4.3.1.3 when any appeal(s) is or are finally determined.

4.3.2 proceedings under Section 288 of the Act are concluded:

4.3.2.1 when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

4.3.2.2 when any appeal(s) is or are finally determined.

## **5. THE OWNER'S COVENANTS AND THE DEVELOPER'S COVENANTS**

5.1 The Owner covenants with the District Council so as to bind the Site and each and every part thereof as set out in Schedule 2;

5.2 The Owner covenants with the County Council so as to bind the Site and each and every part thereof as set out in Schedule 3

5.3 The Developer covenants with the District Council and the County Council to comply with its covenants at clause 7 and agree to be bound by the terms of this Deed on becoming an owner of the Site as a successor in title to the Owner but shall otherwise have no liability under this Deed;

## **6. DISTRICT COUNCIL'S AND COUNTY COUNCIL'S COVENANTS**

6.1 The District Council covenants with the Owner as set out in Schedule 4;

6.2 The County Council covenants with the Owner as set out in the Schedule 5

## **7. MISCELLANEOUS**

7.1 The Developer shall pay to both the District Council and to the County Council on completion of this Deed its reasonable legal costs incurred in the negotiation, preparation and execution of this Deed;

- 7.2 The Developer covenants to pay to the County Council on or before completion a contribution of £412.00 (four hundred and twelve pounds) (no VAT) towards the County Council's reasonable and proper administration costs of monitoring the performance of the planning obligations that the Owner is required to observe and perform pursuant to the terms 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 District Council;
- 7.5 Where the agreement, approval, consent or expression of satisfaction is required by the Owner or the Developer from the District Council or 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 and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council by the Chief Planning Officer or officer acting under his hand and given on behalf of the County Council by the Executive Director of Growth, Highways and Infrastructure 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;
- 7.6 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;
- 7.7 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;
- 7.8 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 (or part where such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the purposes of this clause a person parts with an interest in the Site notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it;
- 7.9 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;
- 7.10 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council and the



County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority;

- 7.11 The Owner agrees that any rights to claim compensation arising for any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived;
- 7.12 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 the County Council;
- 7.13 The Owner covenants and warrants to the District Council and the County Council that they have the full power to enter into this Deed and there is no other person other than the Developer whose consent is necessary to make this Deed binding on the Site and all estates and interests therein;

#### **8. WAIVER**

No waiver (whether expressed or implied) by the District Council or the County Council or the Owner or the Developer 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 Developer from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

#### **9. CHANGE IN OWNERSHIP**

The Owner agrees with the District Council and the County Council to give each of them independently immediate written notice of any change in ownership of any of their interests in the Site (save for disposals of individual Dwellings) occurring before all the obligations under this Deed have been discharged such notice quoting the District Council's reference DC/19/03790 and giving 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 and the title number or numbers thereof;

#### **10. RIGHTS OF ENTRY**

- 10.1 At all times on not less than forty eight (48) 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 the County Council entry to the Site for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

- 10.1.1 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);
- 10.1.2 such entry shall be effected between 08:00 and 18:00 on any Working Day;
- 10.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;
- 10.1.4 such employee or agent may take photographs measurements and levels;
- 10.1.5 such employee or agent may not remain on the Site for any longer than is reasonably necessary for carrying out a proper inspection;
- 10.1.6 such employee or agent and any other accompanying persons shall comply with the Owner or the Owner's representatives, reasonable directions and all the Owner's compliance precautions, procedures and measures in place for the Site at such time in the interests of health and safety;
- 10.1.7 such employee or agent shall not be entitled to access any Dwellings that have been sold;
- 10.1.8 such employee or agent shall be accompanied at all times by the Owner's manager or person in charge at the Site or such other employee or agent of the Owner in the interests of health and safety except in the event that no such person is available (in accordance with clause 10.1.1)
- 10.1.9 for the avoidance of doubt the provisions of this Clause 10 shall be in addition to and does not prejudice the powers conferred on the District Council or the County Council by Sections 169A, 169B and 169C of the Act.

## **11. DISPUTE PROVISIONS**

- 11.1 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 an independent single Expert ("the Expert");



- 11.2 The Expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant under clause 11.1;
- 11.3 The Parties to the dispute shall jointly appoint the Expert not later than twenty (20) Working Days' after service of a request in writing by any Party to the dispute to do so;
- 11.4 If the Parties to the dispute are unable to agree within twenty (20) Working Days' as to the appointment of such Expert then the Expert shall be appointed on the application of either of the Parties to the dispute as follows:
- 11.4.1 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
- 11.4.2 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
- 11.4.3 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 but in default of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or
- 11.4.4 if such difference of question relates to planning and related matters it shall be referred to a chartered town planner agreed upon by the Parties but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.
- 11.5 In the event of a reference to an Expert the Parties to the dispute agree to:
- 11.5.1 prosecute any such reference expeditiously; and
- 11.5.2 do all things or take all steps reasonably necessary in order to enable the Expert to make a final determination as soon as reasonably practicable and in any event within one (1) month of his appointment Provided That if the Expert fails to do so either Party to the dispute may apply to the President for the time being of the Institution of Law Society, Civil Engineers, Royal Institution of Chartered Surveyors or Royal Town Planning Institute (as appropriate) for a substitute to be appointed in which case the same procedure shall be repeated;

- 11.6 The Expert shall invite written representations from each of the Parties;
- 11.7 The Expert will have the power to consolidate proceedings or hold concurrent proceedings;
- 11.8 The findings of the Expert shall be in writing signed by the Expert;
- 11.9 The findings of the Expert shall be final and binding both on the Parties to the dispute except in the case of manifest, material error;
- 11.10 The Expert shall act as an expert and not as an arbitrator;
- 11.11 The costs of the Expert shall be payable by the Parties in such proportion as may be determined by the Expert and failing such determination to be borne in equal shares by the Parties;
- 11.12 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 11 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed;
- 11.13 Nothing in the provisions of this clause 11 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

## **12. INDEXATION**

Any sum referred to in this Deed (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index or RPI Index (as the context dictates) 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:

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

C is the Index or RPI Index as appropriate for the month two (2) months before the date on which the sum is payable;

D is the Index or RPI Index as appropriate for the month two (2) months before the date of this deed; and

C/D is not less than 1



**13. INTEREST ON PAYMENTS**

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**

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

**15. NOTICES**

15.1 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 15.2;

15.2 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 District Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX.
The County Council	The Executive Director of Growth, Highways and Infrastructure, Suffolk County Council, Endeavour House, 8 Russell Road, Ipswich IP1 2BX
The Owner	Eric John Noy, Elizabeth Mary Stiff, Helen Alexandra Hall and John Edward Noy of Red House Farm, Station Road, Haughley, Stowmarket, Suffolk IP14 3QT
The Developer	Michael Howard Homes Limited of Poplar Cottage, Boulge, Woodbridge, Suffolk IP13 6BT

**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 for a certificate to that effect and upon the District Council (acting reasonably) being satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the District Council 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 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 (acting reasonably) shall replace those previously approved.

**18. COMMUNITY INFRASTRUCTURE LEVY**

18.1 The Parties to this Deed agree that for the purposes of the CIL Regulations the obligations imposed in this Deed are:

18.1.1 necessary to make the Development permitted pursuant to the Application acceptable in planning terms;

18.1.2 directly related to the Development permitted pursuant to the Application;  
and

18.1.3 fairly and reasonably related in scale and kind to the Development permitted pursuant to the Application.

**19. LAND OUTSIDE THE OWNER'S CONTROL**

Nothing in this Deed shall require the performance of any obligation whatsoever in, over or under land outside the ownership or control of any Party to this Deed.

**20. FUTURE MORTGAGEES**

The obligations in this Deed shall not be enforceable against any mortgagee or chargee of the whole or any part of the Site from time to time or any person deriving title from such mortgagee or chargee unless and until any such party takes possession of the Site (or any part of it to which such obligation relates) in which case it shall be liable as if it were a successor in title to the Owner in relation to the Site (or the relevant part of it) Provided That neither any mortgagee nor chargee nor person deriving title from such mortgagee or chargee shall be liable for any breach of the obligations contained in this Deed unless committed at a time when that person is in possession of the Site (or any part of the Site to which such obligation relates).



**21. JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

**22. 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.

**23. COUNTERPARTS**

This Deed may be executed in a number of separate identical counter-parts which on completion shall be construed together as one Deed.

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

The Common Seal of )  
**MID SUFFOLK DISTRICT** )  
**COUNCIL** )  
was hereunto affixed )  
In the presence of: )



Authorised Signatory



The Common Seal of )  
**SUFFOLK COUNTY COUNCIL** )  
was hereunto affixed )  
in the presence of )



Authorised Signatory





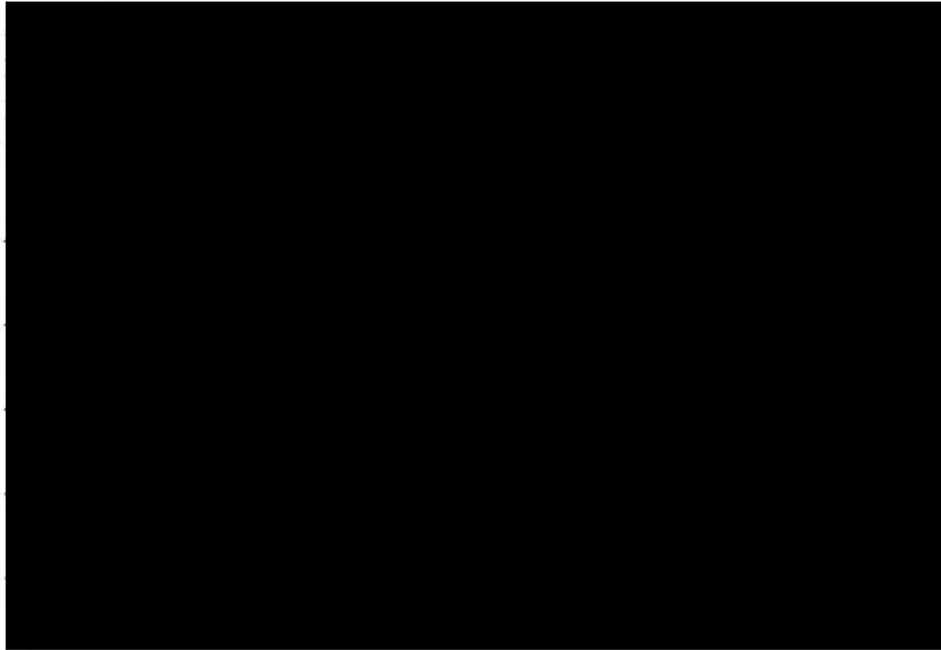
Executed as a Deed by  
**ERIC JOHN NOY**  
in the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



Executed as a Deed by )  
**ELIZABETH MARY STIFF** )  
in the presence of: )

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



Executed as a Deed by )  
**HELEN ALEXANDRA** )  
**HALL** )  
in the presence of: )



~~Witness Signature: \_\_\_\_\_  
Witness Name: \_\_\_\_\_  
Witness Address: \_\_\_\_\_  
\_\_\_\_\_   
Witness Occupation: \_\_\_\_\_~~

Executed as a Deed by )  
**JOHN EDWARD NOY** )  
in the presence of: )

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



~~Executed as a deed by )  
**MICHAEL HOWARD** )  
**HOMES LIMITED** acting )  
by a director and a )  
director or its secretary:  
\_\_\_\_\_  
Director  
\_\_\_\_\_~~



Executed as a Deed by )  
**ERIC JOHN NOY** )  
in the presence of: )

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Occupation: \_\_\_\_\_

Executed as a Deed by )  
**ELIZABETH MARY STIFF** )  
in the presence of: )

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Occupation: \_\_\_\_\_

Executed as a Deed by )  
**HELEN ALEXANDRA** )  
**HALL** )  
in the presence of: )

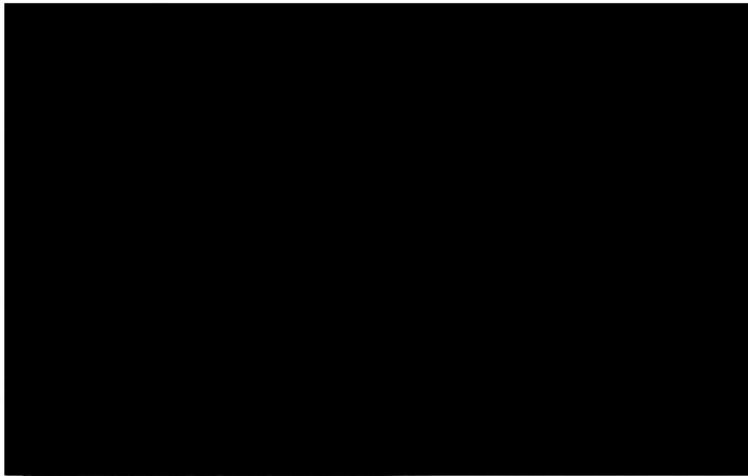


Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:



Executed as a Deed by  
**JOHN EDWARD NOY**  
in the presence of:

)  
)  
)

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Witness Name:

\_\_\_\_\_

Witness Address:

\_\_\_\_\_

\_\_\_\_\_

Witness Occupation:

\_\_\_\_\_

Executed as a deed by )  
**MICHAEL HOWARD** )  
**HOMES LIMITED** acting )  
by a director and a )  
director or its secretary:

\_\_\_\_\_  
Director

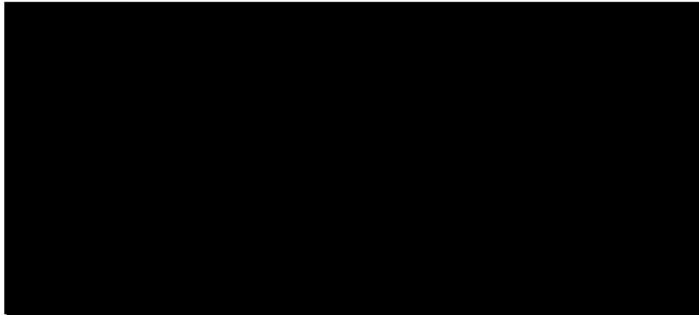
\_\_\_\_\_



Executed as a deed by )  
**MICHAEL HOWARD** )  
**HOMES LIMITED** )  
acting by Patrick )  
Hockley a director )  
in the presence of



Witness signature



Witness name:

Witness occupation:





Director / Secretary

## **SCHEDULE 1**

### **DETAILS OF THE OWNER'S TITLE AND DESCRIPTION OF THE SITE**

The freehold land shown edged with red on the Plan and being part of the land on the north side of Station Road, Haughley registered at the Land Registry under title number SK242261

## **SCHEDULE 2**

### **THE OWNER COVENANTS WITH THE DISTRICT COUNCIL**

#### **Part 1**

1. The Owner shall serve the District Council with:
  - 1.1 the Notice of Expected Commencement not less than five (5) Working Days' before the date that the Owner expects Commencement of the Development to occur; and
  - 1.2 within fifteen (15) Working Days of Commencement of Development having occurred, the Notice of Actual Commencement in order to confirm that Commencement has occurred.
2. The Owner shall within fifteen (15) Working Days' give written notice to the District Council following
  - 2.1 the date of Occupation of the first Dwelling;
  - 2.2 the date of Occupation of the final Dwelling; and
  - 2.3 Completion of the Development.

#### **Part 2**

#### **Affordable Housing**

1. Having given notice under paragraph 1 and paragraph 2 of Schedule 2 Part 1 above the Owner shall submit the Affordable Housing Scheme to the District Council for approval
2. The Development shall consist of the Affordable Housing Units as set out in the Affordable Housing Table unless otherwise agreed in writing with the District Council
3. Having given notice under paragraph 1 and paragraph 2 of Schedule 2 Part 1 above the Owner shall endeavour to agree with the District Council on the identity of the Registered Provider or other body to which the Affordable Housing Units are to be transferred such agreement not to be unreasonably withheld or delayed.
4. The Owner may Commence the Development whilst that process is ongoing but if no agreement has been reached at the expiration of the period of four (4) months following the Commencement of the Development the District Council shall be entitled to nominate a Registered Provider or other appropriate body for the purpose
5. The Owner shall construct the Affordable Housing Units in accordance with the Planning Permission and the Affordable Housing Scheme to a standard of



construction which meets the Nationally Described Space Standard in place at that time or such other standards as may be agreed between the District Council and the Owner.

- 5.1 Subject to paragraph 6 to 11 inclusive below the Owner shall not:
  - 5.1.1 Occupy or permit Occupation of more than 50% (fifty per cent) of the Market Housing Units until 50% (fifty per cent) of the Affordable Housing Units have been constructed and made ready for residential Occupation and have been transferred to the approved Registered Provider and written notification of such has been received by the District Council.
  - 5.1.2 Occupy or permit the Occupation of more than 80% (eighty per cent) of the Market Housing Units until all of the Affordable Housing Units have been constructed and made ready for residential Occupation and have been transferred to the approved Registered Provider and written notification of such has been received by the District Council
6. Any transfer to a Registered Provider of the land on which the Affordable Housing Units will be constructed shall be:
  - 6.1 With vacant possession;
  - 6.2 Free from any encumbrance other than those existing as set out in the title at the time of the disposition (save for any financial charge or the transfer of statutory apparatus by the Owner to any statutory undertaker);
  - 6.3 Subject to grant by the Owner to the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units;
  - 6.4 Subject to a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the purpose of the construction, operation, use, maintenance and management of the Development;
  - 6.5 To procure a covenant in the transfer(s) of the Affordable Housing Units that the Registered Provider will enter into a deed of nomination rights with the District Council substantially in the form contained in Schedule 6 and completed between the District Council and the Registered Provider within one (1) month of the date of the transfer(s) to it of the Affordable Housing Units and covenants from the Registered Provider substantially in the form set out in the remainder of this schedule. Those covenants bind the Registered Provider, not the Owner (save that Paragraph 1- 4 of this Part 2 Schedule 2 binds the Owner until they dispose of the Affordable Housing to the Registered Provider). The Affordable Housing Nomination Agreement shall be subject