

Dated 13 May 2019

**West Suffolk Council**

**Suffolk County Council**

**The Right Honourable Edward Richard William Earl of Derby  
DI**

**C.Hoare and Co.**

**Option Agreement and Deed of Variation of an  
agreement made under section 106 of the Town and  
Country Planning Act 1990**

Relating To

Hatchfield Farm Newmarket Suffolk



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THIS DEED is dated

13 May

201<sup>9</sup> §

## Parties

- (1) **WEST SUFFOLK COUNCIL** of District Offices, College Heath Road, Mildenhall, Suffolk, IP28 7EY ("the Council").
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council").
- (3) **THE RIGHT HONOURABLE EDWARD RICHARD WILLIAM EARL OF DERBY DL** of The Estate Office, Knowsley, Prescott, Merseyside, L34 4AG ("the Owner").
- (4) **C.HOARE AND CO.** (company registration number 240822) whose registered office is at 37 Fleet Street, London, EC4P 4DQ ("the Mortgagee").

## Background

- (A) The Owner owns the freehold interest in the Property.
- (B) The Owner proposes to grant options to the County Council to purchase those parts of the Property referred to in this Deed as the Principal School Site and the Additional School Site on the terms set out in this Deed.
- (C) In addition, this Deed is supplemental to and varies the Existing Agreement.
- (D) The Council, the County Council, the Owner and the Mortgagee have agreed to vary the Existing Agreement on the terms set out in this Deed.

## Operative Provisions

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in this Deed.

#### 1.1 Definitions:

**Additional Option:** the option granted by the Owner to the County Council by Clause 5.1(b) this Agreement;

**Additional Option Notice:** written notice exercising the Additional Option in accordance with the terms of this Agreement and which specifies the Additional Purchase Price;

**Additional Purchase Price:** £38,500 (thirty eight thousand five hundred pounds) (exclusive of VAT) plus a sum equal to the Additional Purchase Price Increase;

**Additional Purchase Price Increase:** the product of:

Additional Purchase Price x Current Month Index Figure ÷ Base Month Index Figure

save that if there is any change to the methods used to compile the Index, including any change to the items from which the Index is compiled, or if the reference base used to compile the Index changes, this calculation shall take account of the effect of this change;

**Additional School Site:** the land shown edged blue on the plan appended at Annex 1;

**Application:** as defined in the Existing Agreement;

**Base Month Index Figure:** the value for the Index for the month which is two months before the date of this Agreement;

**Charge:** the charge appearing at entries 5 and 6 of the charges register of title number SK262194 as at 24 April 2018 at 9:15:08;

**Completion Date:** the date which is specified in the Principal Option Notice and which is 6 months after receipt of the Principal Option Notice or such other date as both parties agree in writing;

**Contract Rate:** interest rate of 3% above Barclays Bank PLC Base Rate;

**Current Month Index Figure:** the value for the Index for the month which is two months before the date the Principal Option Notice is served;

**Deed of Covenant:** a deed of covenant in the form annexed to this Agreement at Annex 3;

**Deposit:** means 10% of the Purchase Price (exclusive of VAT);

**Disposal:** means a transfer of the freehold title of the whole or any part or parts of the Property;

**Dwelling:** as defined in the Existing Agreement and "Dwellings" shall be construed accordingly;

**Electronic Payment:** payment by electronic means in same day cleared funds from an account held in the name of the County Council's at a clearing bank to an account in the name of the Owner's Conveyancer;

**Existing Agreement:** the Town and Country Planning Act 1990 Section 106 Planning Obligation Agreement relating to Development at Hatchfield Farm, Newmarket, Suffolk dated 30 April 2015 between (1) Forest Heath District Council; (2) the County Council; (3) the Owner; and (4) the Mortgagee;

**Index:** Halifax House Price Index All Houses (All Buyers) Seasonally Adjusted Quarterly Data for East Anglia or if this index is abolished or in the opinion of the Owner it becomes impossible to calculate the Principal Purchase Price Increase or the Additional Purchase Price Increase using this index, then the reference to Index shall be to such index as the Owner specifies (acting reasonably);

**Land:** as defined in the Existing Agreement;

**Option Period:** the period of 60 days' from the date the County Council receive notice (pursuant to Clause 3) of a S106 Disposal of the 100th Dwelling;

**Option Sum:** £8,400 (inclusive of VAT (if any));

**Owner's Conveyancer:** Boodle Hatfield LLP, 240 Blackfriars Road, London, SE1 8NW (reference: SZH/AWS/54062/4) or such other conveyancer as may be notified from time to time in writing to the County Council;

**Part 1 Conditions:** Part 1 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision) and Condition means any one of them;

**Part 2 Conditions:** Part 2 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision);

**Planning Permission:** means the planning permission granted pursuant to the Application;

**Principal Option:** the option granted by the Owner to the County Council by Clause 5.1(a) this Agreement;

**Principal Option Notice:** written notice exercising the Principal Option in accordance with the terms of this Agreement and which specifies (a) the Completion Date and (b) the Principal Purchase Price;

**Principal Purchase Price:** £51,548 (fifty one thousand five hundred and forty eight pounds) (exclusive of VAT) plus a sum equal to the Principal Purchase Price Increase;

**Principal Purchase Price Increase:** the product of:

Principal Purchase Price x Current Month Index Figure ÷ Base Month Index Figure

save that if there is any change to the methods used to compile the Index, including any change to the items from which the Index is compiled, or if the reference base used to compile the Index changes, this calculation shall take account of the effect of this change;

**Principal School Site:** the land shown edged red on the plan appended at Annex 1;

**Property:** means The Newmarket Estate, Newmarket, Suffolk as is registered with title absolute at the Land Registry under title number SK262194;

**Purchase Price:** means the Principal Purchase Price where only the Principal Option Notice has been served or means the Total Purchase Price where both the Principal Option Notice and the Additional Option Notice have been served;

**School Site:** means the Principal School Site where only the Principal Option Notice has been served or means the Principal School Site together with the

Additional School Site where both the Principal Option Notice and the Additional Option Notice have been served;

**Serviced:** means the provision of Utilities and vehicular access to the boundary of the School Site

**S106 Disposal:** has the same meaning as the definition for Disposal described under the Definitions clause of the Existing Agreement

**Total Purchase Price:** means the Principal Purchase Price and the Additional Purchase Price;

**Transfer:** the form of transfer annexed at Annex 2;

**Utilities:** means gas water electricity telephone foul drainage and surface water drainage and ducting for wires cables lasers optical fibres electronic data or impulse transmission communication or reception systems broadband and all other conducting media as may in the Council's or County Council's (as the case may be) reasonable view be appropriate and if necessary in the reasonable opinion of the Council or the County Council such legal rights as the Council or the County Council considers necessary for the discharge of surface water through land adjacent to and in the School Site;

**Value Added Tax:** value added tax or any equivalent tax chargeable in the UK (and "VAT" shall be construed accordingly).

**Working Day:** any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.

- 1.2 References to the Owner and the Mortgagee include references to their successors in title. References to the Council include any successor local planning authority exercising planning powers under the Town and Country Planning Act 1990. References to the County Council include any successor carrying out the functions presently carried out by the County Council.
- 1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.4 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 A "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 The expression "tenant covenant" has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to the "Property" is to the whole and any part of it.



- 1.9 Except where a contrary intention appears, references to clauses and Schedules are to the clauses and Schedules of this Deed and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 Clause, Schedule and paragraph headings shall not affect the interpretation of this Deed.
- 1.11 Except to the extent that they are inconsistent with the definitions and interpretations in *clause 1* of this Deed, the definitions and interpretations in the Definitions section of the Agreement shall apply to this Deed.
- 1.12 A reference to "writing" or "written" excludes fax and email.
- 1.13 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2. VARIATIONS TO THE EXISTING AGREEMENT**

- 2.1 From and including the date of this Agreement, the Existing Agreement shall be read and construed as varied by the provisions set out in Schedule 1.
- 2.2 The Existing Agreement shall remain fully effective as varied by this Agreement and the terms of the Existing Agreement shall have effect as though the provisions contained in this Agreement had been originally contained in the Existing Agreement.
- 2.3 This Agreement is made pursuant to the provisions of sections 106 and 106A of the Town and Country Planning Act 1990.

## **3. OWNER'S OBLIGATIONS**

The Owner shall give written notice to the County Council on a S106 Disposal of the 1st, 100th, 120th, 240th, and 300th Dwellings.

## **4. COUNTY COUNCIL'S OBLIGATIONS**

- 4.1 On the date of this Agreement, the County Council will pay the Option Sum to the Owner by Electronic Payment. The Option Sum does not form part of the Purchase Price.
- 4.2 Following service of a Principal Option Notice and/or an Additional Option Notice, the County Council will serve notice on the Council confirming the service of the relevant notice.
- 4.3 Prior to submitting its application for planning permission for the construction of a school and prior to submitting any amendments to its application the County Council will consult with the Owner in respect of the layout of the proposed school complex.
- 4.4 For the period from the date hereof to the date the school is practically complete, the County Council shall not transfer the freehold interest in the School Site unless the County Council first obtains a deed of covenant from

the transferee to observe and perform the obligations of the County Council contained in Clause 4.3 of this Agreement.

- 4.5 The County Council shall promptly following the Completion Date apply to enter the following restriction on the title to the School Site:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of Clause 4.4 of the Agreement dated 2018 made between (1) West Suffolk Council (2) Suffolk County Council (3) The Right Honourable Edward Richard William Earl of Derby DL and (4) C.Hoare and Co. have been complied with or do not apply."

## **5. OPTION**

- 5.1 In return for the Option Sum, the Owner grants the County Council an option during the Option Period to buy:
- (a) the Principal School Site at the Principal Purchase Price; and
  - (b) the Additional School Site at the Additional Purchase Price.
- 5.2 The grant of the Option is personal to the County Council. The County Council may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement or any part of it.
- 5.3 The Owner consents to the entry of an agreed notice against the Owner's title to the Property at HM Land Registry in order to protect this option agreement

## **6. EXERCISE OF PRINCIPAL OPTION**

- 6.1 Provided that Planning Permission has been granted, the County Council may exercise the Principal Option at any time during the Option Period by serving a Principal Option Notice on the Owner.
- 6.2 The Option may only be exercised in respect of the whole of the Principal School Site and not in respect of part only.

## **7. EXERCISE OF ADDITIONAL OPTION**

- 7.1 Provided that:
- (a) the County Council simultaneously serves a valid Principal Option Notice on the Owner to exercise the Principal Option;
  - (b) Planning Permission has been granted; and
  - (c) either (i) the Land, Principal School Site and the Additional School Site have together been allocated for residential and employment uses together with a 2.2 hectare school site in the West Suffolk Council Site Allocations Local Plan; or (ii) the Principal School Site and the

Additional School Site together have planning permission for a 2.2 hectare school

the County Council may exercise the Additional Option at any time during the Option Period by serving an Additional Option Notice on the Owner.

- 7.2 The Option may only be exercised in respect of the whole of the Additional School Site and not in respect of part only.

## **8. ACKNOWLEDGEMENT OF CONDITION**

By exercising:

8.1 the Principal Option, the County Council will be acknowledging that the Owner has given the County Council, and others authorised by the County Council, permission and the opportunity to inspect, survey and carry out investigations as to the condition of the Principal School Site and that the County Council has formed its own view about the condition and suitability of the Principal School Site for the County Council's purpose; and

8.2 the Additional Option, the County Council will be acknowledging that the Owner has given the County Council, and others authorised by the County Council, permission and the opportunity to inspect, survey and carry out investigations as to the condition of the Additional School Site and that the County Council has formed its own view about the condition and suitability of the Additional School Site for the County Council's purpose.

## **9. DEPOSIT**

9.1 If completion does not take place on the Completion Date due to the default of the County Council, the County Council will immediately pay by Electronic Payment the Deposit (together with interest on it at the Contract Rate for the period from and including the Completion Date to and including the date of actual payment).

9.2 The Deposit will be held as stakeholder on terms that on completion the Deposit is paid to the Owner with accrued interest.

9.3 The provisions of this Clause 9 are without prejudice to any other rights or remedies of the Owner in relation to any delay in completion.

## **10. SALE AND PURCHASE**

10.1 The Owner will sell and the County Council will buy the School Site for the Purchase Price on the terms of this Agreement.

10.2 The County Council cannot require the Owner to:

- (a) transfer the School Site or any part of it to any person other than the County Council; or

- (b) transfer the School Site in more than one parcel or by more than one transfer; or
- (c) apportion the Purchase Price between different parts of the School Site.

## 11. CONDITIONS

- 11.1 Upon exercise of the Option, the Part 1 Conditions will be incorporated in this Agreement so far as they:
  - (a) apply to a sale by private treaty;
  - (b) relate to freehold property;
  - (c) are not inconsistent with the other clauses in this Agreement; and
  - (d) have not been modified or excluded by any of the other clauses in this Agreement.
- 11.2 The terms used in this Agreement have the same meaning when used in the Part 1 Conditions.
- 11.3 References in the Part 1 Conditions to:
  - (a) "seller" are references to the Owner;
  - (b) "buyer" are references to the County Council; and
  - (c) "property" are references to the School Site.
- 11.4 Upon exercise of the Option, the Part 2 Conditions will not be incorporated into this Agreement.
- 11.5 The following Conditions are amended:
  - (a) Condition 1.1.1(d) so that reference to completion date in Condition 1.1.1(d) is to the Completion Date as defined by this Agreement;
  - (b) Condition 1.1.1(e) so that reference to contract rate in Condition 1.1.1(e) is to the Contract Rate as defined by this Agreement;
  - (c) Condition 1.1.1(o) so that reference to VAT in Condition 1.1.1(o) is to VAT as defined by this Agreement;
  - (d) Condition 1.1.1(p) so that reference to working day in Condition 1.1.1(p) is to Working Day as defined in this Agreement;
  - (e) Condition 1.1.3(b), so as to read "in the case of the seller, even though a mortgage remains secured on the property, if the amount to be paid on completion enables the property to be transferred freed of all mortgages, (except those to which the sale is expressly subject) or if the seller produces reasonable evidence that this is the case.";

- (f) Condition 7.6.3 so that reference to condition 4.1.2 is reference to Clause 16;
- (g) Condition 9.1.1 by the deletion of the words "Completion date is twenty working days after the date of the contract";
- (h) Condition 9.4, so as to add "(d) any other sum which the parties agree under the terms of the contract should be paid or allowed on completion";
- (i) Condition 9.7 so as to read "The buyer is to pay the money due on completion by Electronic Payment and, if appropriate, by an unconditional release of a deposit held by a stakeholder"; and
- (j) Condition 10.1, is varied so that the words "the negotiations leading to it" are replaced with the words "Written Replies".

11.6 The following Conditions will not apply:

- (a) Condition 1.1.4(a);
- (b) Condition 1.2;
- (c) Condition 1.3;
- (d) Condition 1.5;
- (e) Conditions 2.1 and 2.2;
- (f) Conditions 3.2.1 and 3.2.2;
- (g) Conditions 4.1.1, 4.1.2 and 4.1.3;
- (h) Conditions 7.1, 7.2, 7.3.1, 7.4.2 and 7.6.2;
- (i) Condition 7.6.5(b);
- (j) Conditions 8.2.2, 8.2.3 and 8.2.4(b);
- (k) Condition 9.2.1; and
- (l) Condition 9.8.3.

## 12. RISK AND INSURANCE

- 12.1 With effect from exercise of the Option, the School Site will be at the County Council's risk and the Owner will be under no obligation to the County Council to insure it.
- 12.2 The County Council will not be entitled to refuse to complete or to delay completion due to any event occurring after exercise of the Option that results in:
  - (a) any damage to the School Site or any part of it; or

- (b) any deterioration in the condition of the School Site.

**13. DEDUCING TITLE**

- 13.1 The Owner's title to the School Site has been deduced to the County Council before the date of this Agreement.
- 13.2 The County Council is deemed to have full knowledge of the Owner's title to the School Site and is not entitled to raise any objection, enquiry, requisition or claim in relation to it.

**14. VACANT POSSESSION**

The School Site will be sold with vacant possession on completion.

**15. TITLE GUARANTEE**

The Owner will transfer the School Site with full title guarantee.

**16. MATTERS AFFECTING THE PROPERTY**

- 16.1 The Owner will sell the School Site free from incumbrances other than:
  - (a) any matters, other than the Charge, contained or referred to in the entries or records made in registers maintained by HM Land Registry as at 2018 at under title number SK262194;
  - (b) any matters discoverable by inspection of the School Site before the date of exercise of the Option;
  - (c) any matters which the Owner does not and could not reasonably know about;
  - (d) any matters, other than the Charge, disclosed or which would have been disclosed by the searches and enquiries which a prudent buyer would have made before exercise of the Option;
  - (e) public requirements; and
  - (f) any matters which are unregistered interests which override registered dispositions under Schedule 3 to the Land Registration Act 2002.
- 16.2 The County Council is deemed to have full knowledge of the matters referred to in Clause 16.1 and will not raise any enquiry, objection, requisition or claim in respect of any of them.

**17. TRANSFER**

- 17.1 The transfer to the County Council will be in the agreed form annexed to this Agreement.
- 17.2 The Owner and the County Council will execute the transfer in original and counterpart.

**18. COMPLETION**

- 18.1 Completion will take place on the Completion Date.
- 18.2 The Owner shall ensure that prior to the Completion Date there is vehicular access to the boundary of the School Site from the public highway over and along such route as the Owner designates in its absolute discretion and provided that the vehicular access need only be constructed to such a standard as to enable construction traffic (and no other traffic) to access the School Site.
- 18.3 The Owner shall ensure that at the date twelve months after the Completion Date the School Site is Serviced, level and decontaminated.

**19. DISPOSALS AND RESTRICTION**

- 19.1 The Owner covenants with the County Council not to make a Disposal without first procuring that the person to whom the transfer is being made has executed a Deed of Covenant.
- 19.2 The Owner consents to the entry of the following restriction against the Owner's title to the Property at HM Land Registry and will provide the County Council with all necessary assistance and/or documentation to permit entry of the restriction:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of Clause 19.1 of the Option Agreement and Deed of Variation of an agreement under section 106 of the Town and Country Planning Act 1990 dated \_\_\_\_\_ have been complied with or do not apply."

**20. POST-COMPLETION OBLIGATIONS**

- 20.1
  - (a) If on the fifth anniversary of the Completion Date (the Fifth Anniversary), the County Council has not entered into a legally binding contract for the construction of a school on the School Site, then the County Council shall transfer the School Site to the Owner with vacant possession for the Purchase Price within six months of the fifth anniversary of the Completion Date unless the Owner notifies the County Council in writing that it does not wish to receive a transfer of the School Site.
  - (b) If the School Site has not previously been transferred to the Owner pursuant to the provisions of Clause 20.1(a) and on the seventh anniversary of the Completion Date (the Seventh Anniversary), the County Council has not practically completed on the construction of a school on the School Site, then the County Council shall transfer the School Site to the Owner with vacant possession for the Purchase Price within six months of the seventh anniversary of the Completion

Date unless the Owner notifies the County Council in writing that it does not wish to receive a transfer of the School Site

- (c) The transfer from the County Council to the Owner shall contain a declaration that the School Site is made with full title guarantee and no covenants, rights or provisions shall be included in boxes 10 or 11 of the transfer.

20.2 Following the Completion Date until the date the County Council practically completes the construction of a school on the School Site, the County Council shall not transfer the freehold interest in the School Site unless the County Council first obtains a deed of covenant from the transferee to observe and perform the obligations of the County Council contained in Clause 20.1 of this Agreement.

20.3 If the County Council ceases to use the School Site as a primary school (which includes a pre-school provision for Newmarket and any ancillary community uses), then the County Council subject to obtaining any necessary statutory consents from the Secretary of State for Education (the County Council covenanting to use all reasonable endeavours to obtain all such necessary statutory consents and to keep the Owner informed of which statutory consents are required together with providing regular updates as to the progress of obtaining the same) shall transfer the School Site to the Owner with vacant possession for the Purchase Price within six months of the date the School Site has ceased to be used as a primary school unless the Owner notifies the County Council in writing that it does not wish to receive a transfer of the School Site or the Owner does not take a transfer of the site within 6 months when offered with vacant possession at the Purchase Price. The transfer from the County Council to the Owner shall contain a declaration that the School Site is made with full title guarantee and no covenants, rights or provisions shall be included in boxes 10 or 11 of the transfer.

20.4 The County Council shall not transfer the freehold interest in the School Site unless the County Council first obtains a deed of covenant from the transferee to observe and perform the obligations of the County Council contained in Clause 20.3 of this Agreement.

20.5 The County Council shall promptly following the Completion Date apply to enter the following restriction on the title to the School Site:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of Clauses 20.2 and 20.4 of the Agreement dated [ ] 2018 made between (1) West Suffolk Council (2) Suffolk County Council (3) The Right Honourable Edward Richard William Earl of Derby DI and (4) C.Hoare and Co. have been complied with or do not apply."



## **21. TERMINATION OF THIS AGREEMENT**

- 21.1 If the Existing Agreement comes to an end pursuant to Clause 5.1 of the Existing Agreement, then this Agreement shall determine with immediate effect.

## **22. CONSENT OF MORTGAGEE**

The Mortgagee confirms and consents to:

- 22.1 the variation of the Existing Agreement; and
- 22.2 the grant of the Principal Option and Additional Option to the County Council.

## **23. REGISTRATION OF THIS DEED**

- 23.1 Promptly following the completion of this Deed, the Owner shall apply to register this Deed at HM Land Registry against the Owner's registered title to the Property.
- 23.2 If the Option is not exercised in accordance with the terms of this Agreement then within ten Working Days after the expiry of the Option Period, the County Council will remove all entries relating to the Option registered against the Owner's title to the Property.

## **24. DISPUTES**

If any dispute arises relating to or arising out of the terms of this Agreement, the provisions of Clause 8 of the Existing Agreement shall apply and either party may give to the other written notice requiring the dispute to be determined under Clause 8 of the Existing Agreement.

## **25. COSTS**

On completion of this Deed the County Council shall pay:

- 25.1 the legal costs and disbursements of the Owner of £5,000 (exclusive of VAT) in connection with this Deed;
- 25.2 the Owner's agents' reasonable costs and disbursements in connection with this Deed;
- 25.3 the Council's legal and professional costs and disbursements in connection with this Deed; and
- 25.4 the Mortgagee's legal and professional costs and disbursements in connection with this Deed.

## **26. VALUE ADDED TAX**

- 26.1 Each amount stated to be payable by the County Council to the Owner under or pursuant to this Agreement is exclusive of VAT (if any) (except where the amount is expressly stated to be inclusive of VAT).

26.2 If VAT is chargeable on any supply made by the County Council under or pursuant to this Agreement (except where the sum is expressly stated to be inclusive of VAT), the County Council will pay the Owner an amount equal to that VAT as additional consideration on the date that the supply is made.

## **27. ENTIRE AGREEMENT**

27.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

27.2 The County Council acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) other than those:

- (a) set out in this Agreement; or
- (b) contained in any written replies that the Owner's Conveyancer has given to any written enquiries raised by the County Council before the date of this Agreement or to written enquiries given by the Owner's Conveyancer to the County Council before the date of this Agreement.

27.3 Nothing in this clause 27 will, however, operate to limit or exclude any liability for fraud.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE 1**  
**VARIATIONS TO THE EXISTING AGREEMENT**

1. In the section entitled "Definitions" in the Existing Agreement, the definition of "Reduced Education Contribution" at page 9 and 10 of the Existing Agreement shall be deleted from the Agreement.
2. In the section entitled "Definitions" in the Existing Agreement, the definition of "Serviced" at page 10 of the Existing Agreement shall be deleted from the Agreement.
3. In the section entitled "Definitions" in the Existing Agreement, the definition of "School Site" at page 10 of the Existing Agreement shall be deleted from the Agreement.
4. In the section entitled "Definitions" in the Existing Agreement, the definition of "Utilities" at page 11 of the Existing Agreement shall be deleted from the Agreement.
5. The words "(or the remaining amount that will be required to reach the total required under the Reduced Education Contribution in accordance with the confirmation if received under 2.1 of this Schedule)" of paragraph 1.4 of Schedule 2 of the Existing Agreement shall be deleted.
6. Paragraphs 1.5 to 1.7 of Schedule 2 of the Existing Agreement shall be deleted.
7. Paragraph 2 (including sub-paragraphs 2.1 to 2.4) of Schedule 2 of the Existing Agreement shall be deleted.
8. The Ninth Schedule and the Tenth Schedule of the Existing Agreement shall be deleted.

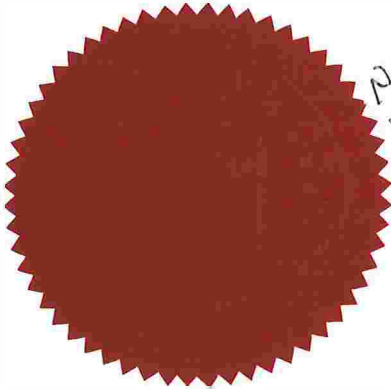
EXECUTED AS A DEED BY THE COMMON SEAL of WEST SUFFOLK COUNCIL being affixed in the presence of:



[Redacted signature area]

Authorised Officer

EXECUTED AS A DEED BY THE COMMON SEAL of SUFFOLK COUNTY COUNCIL being affixed in the presence of:



[Redacted signature area]

Authorised Officer

SIGNED and DELIVERED as a Deed by the said THE RIGHT HONOURABLE EDWARD RICHARD WILLIAM EARL OF DERBY DL in the presence of the undersigned witness:

[Redacted signature area]

Witness (Signature): ...

[Redacted witness signature and name]

Witness name (Print name)

Address

[Redacted address and occupation information]

Occupation

EXECUTED AS A DEED by C.HOARE AND CO.  
acting by \_\_\_\_\_ and \_\_\_\_\_

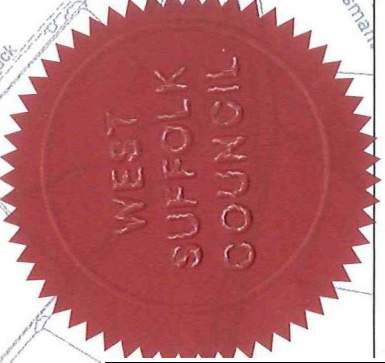
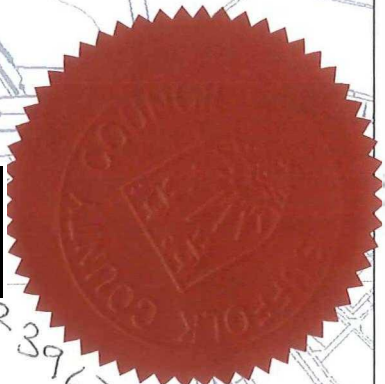
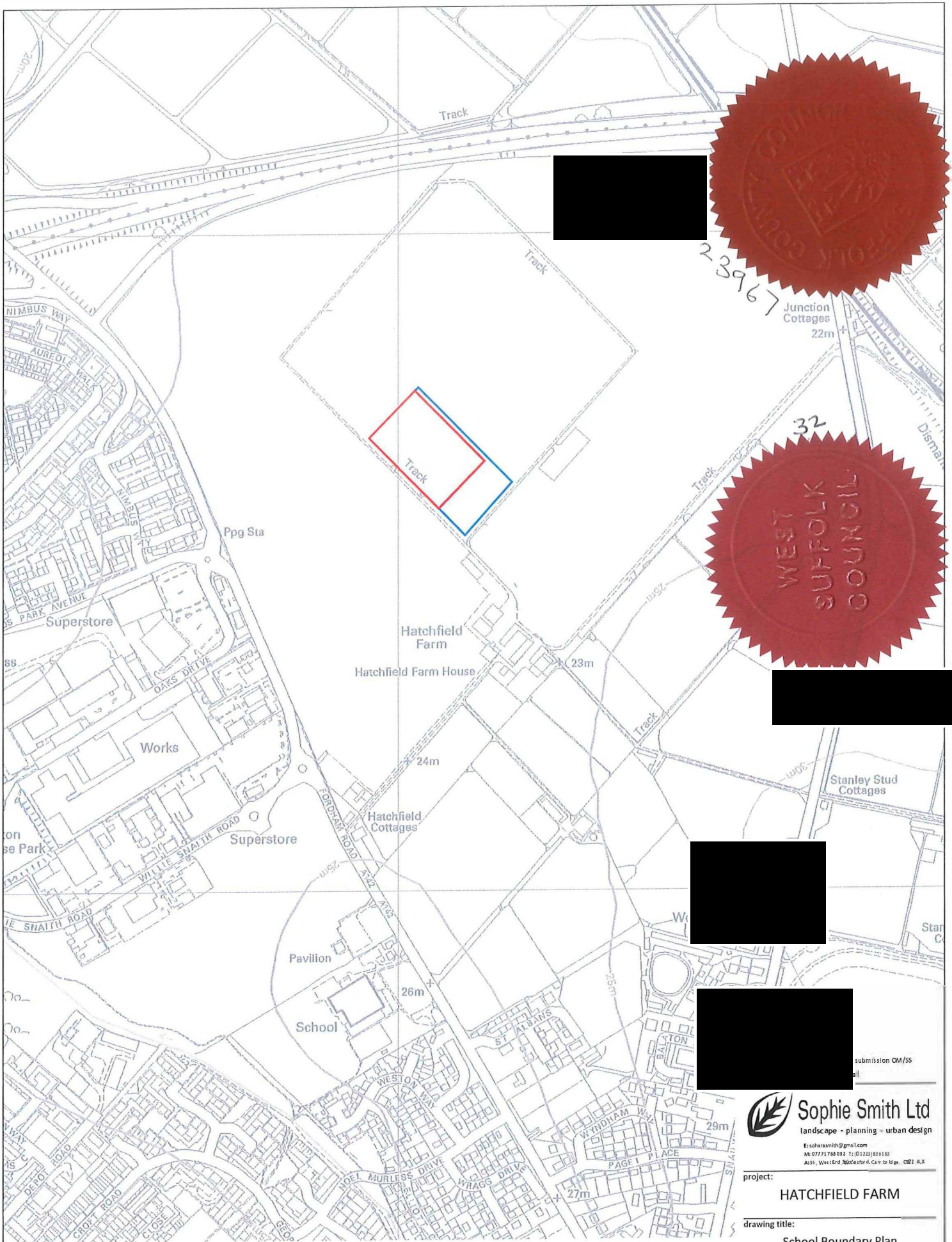




**ANNEX 1**  
**School Site Plan**








**Sophie Smith Ltd**  
 landscape - planning - urban design  
Essexsmith@gmail.com  
 01773 748082 T: (01223) 85153  
 A01, West End, 2006 Stratford, Cam. br. Idge. CID2 4LX

project: **HATCHFIELD FARM**

drawing title: **School Boundary Plan**

scale: 1:5,000 @ A3 drawn by: O.M.  
 date: 09.05.18 chkd by: S.S.  
 drawing number: SS060854 34 revision:





**ANNEX 2**

**Transfer**



# Land Registry

## Transfer of part of registered title(s)

# TP1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.	1	Title number(s) out of which the property is transferred: SK262194
When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.	2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any:
Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.	3	Property: Part of the Newmarket Estate, Newmarket, Suffolk
Place 'X' in the appropriate box and complete the statement.  For example 'edged red'.		The property is identified <input checked="" type="checkbox"/> on the attached plan and shown edged red <input type="checkbox"/> on the title plan(s) of the above titles and shown:
For example 'edged and numbered 1 in blue'.		
Any plan lodged must be signed by the transferor.		
	4	Date:
Give full name(s).	5	Transferor:  The Right Honourable Edward Richard William Earl of Derby DL  <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:  <u>For overseas companies</u> (a) Territory of incorporation:  (b) Registered number in the United Kingdom including any prefix:
Complete as appropriate where the transferor is a company.		
Give full name(s).	6	Transferee for entry in the register: Suffolk County Council  <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:  <u>For overseas companies</u> (a) Territory of incorporation:  (b) Registered number in the United Kingdom including any prefix:
Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.		

<p>Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.</p>	7	<p>Transferee's intended address(es) for service for entry in the register:</p>
		<p>Endeavour House, 8 Russell Road, Ipswich, Suffolk IP121SZ</p>
<p>Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.</p>	8	<p>The transferor transfers the property to the transferee</p>
	9	<p>Consideration</p>
		<p><input checked="" type="checkbox"/> The transferor has received from the transferee for the property the following sum (in words and figures):</p>
		<p><input type="checkbox"/> The transfer is not for money or anything that has a monetary value</p>
		<p><input type="checkbox"/> Insert other receipt as appropriate:</p>
<p>Place 'X' in any box that applies.</p>	10	<p>The transferor transfers with</p>
<p>Add any modifications.</p>		<p><input checked="" type="checkbox"/> full title guarantee</p>
		<p><input type="checkbox"/> limited title guarantee</p>
<p>Where the transferee is more than one person, place 'X' in the appropriate box.</p>	11	<p>Declaration of trust. The transferee is more than one person and</p>
		<p><input type="checkbox"/> they are to hold the property on trust for themselves as joint tenants</p>
		<p><input type="checkbox"/> they are to hold the property on trust for themselves as tenants in common in equal shares</p>
<p>Complete as necessary.</p>		<p><input type="checkbox"/> they are to hold the property on trust:</p>
<p>Use this panel for:        – definitions of terms not defined above        – rights granted or reserved        – restrictive covenants        – other covenants        – agreements and declarations        – any required or permitted statements        – other agreed provisions.</p>	12	<p>Additional provisions</p>
	12.1	<p><b>Definitions</b></p>
<p>The prescribed subheadings may be added to, amended, repositioned or omitted.</p>		<p><b>Conditions for Entry:</b> the conditions to which any right to enter granted or excepted and reserved by the relevant clauses in this agreement is subject, namely that the right shall be subject to the person exercising the right:</p>
<p>Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.</p>		<p>(i) effecting entry at a reasonable time (or at any time in an emergency);        (ii) giving reasonable notice to the person whose premises are being entered (but no notice need be given in an emergency);        (iii) causing as little damage as possible to the premises being entered and promptly making good any damage caused to the reasonable satisfaction of the person whose premises are being entered; and        (iv) complying with any reasonable requirements of the person whose premises are being entered in relation to the exercise of the right of entry.</p>

**the Retained Land** means the land comprised within title number SK262194 (but excluding the Property) retained by the Transferor at the date of this transfer

**School Development** means the construction of a primary school and pre-school facility.

**Serviced:** means the provision of Service Media and pedestrian and vehicular access to the boundary of the Property

**Service Media:** means gas, water, electricity, telephone, foul drainage and surface water drainage, ducting for wires, cables, lasers, optical fibres, electronic data or impulse transmission communication or reception systems and broadband.

## 12.2

### Agreements and Declarations

- (i) The Transferee and its successors in title shall not be entitled to any right of access of light and air or any other easement or right other than those specifically granted under this Transfer which would restrict or interfere with the free use of the Retained Land or any part of it for building development or any other purpose. It is expressly agreed that the owners for the time being of the Property will not be entitled to claim the benefit of any rights of light or air over the Retained Land. This constitutes a consent for the purposes of section 3 Prescription Act 1832.
  - (ii) The Transferee shall not be entitled to the continuance of nor shall it by virtue of this Transfer or of the Law of Property Act 1925 Section 62 acquire any easement or right or privilege over or in respect of the Retained Land or be entitled to the benefit (which benefit is hereby exclusively reserved to the Transferor) of or to enforce or have enforced or to prevent the release or modification of any covenant agreement or condition entered into by any person with the Transferor or its predecessors in title to the Retained Land save in so far as is specifically granted in this Transfer. It is expressly agreed that section 62 of the Law of Property Act 1925 and the rule in Wheeldon v. Burrows do not apply to this Transfer such that there are not included any liberties; privileges; rights; or advantages over the Retained Land except as expressly mentioned or created by this Transfer.
  - (iii) Section 33 Local Government Act (Miscellaneous Provisions) Act 1982 (1982 Act) apply in respect of the covenants referred to in this Transfer and the Transferor may enforce these covenants as a local authority under the 1982 Act but that this shall not prejudice enforcement of the covenants pursuant to any other Act
  - (iv) The Property is sold subject to and (where appropriate) with the benefit of the matters contained or referred to in the property proprietorship and charges registers of title number SK insofar as they relate to the Property and are capable of taking effect.
-

- (v) Where any party comprises more than one person the obligations and liabilities of that party under this deed shall be joint and several obligations and liabilities of those persons
- (vi) Words importing the singular shall be construed as importing the plural and vice versa and words importing one gender shall include all other genders
- (vii) Words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa.
- (viii) Any reference in this Transfer to a specific statute includes any statutory extension or modification, amendment or re-enactment of that statute and any regulations or orders made under that statute, and any general reference to a statute includes any regulations or orders made under that statute.
- (ix) In this Transfer references to "the Transferor" and "the Transferee" shall be deemed to include their respective successors in title.

### 12.3 **Rights Granted**

The Transferor grants to the Transferee for the benefit of the Property:

- a. Until the access routes to and from the boundaries of the Property are publicly adopted the right for the Transferee and its successors in title and those authorised by it or them to pass with or without vehicles over and along the access routes on the Retained Land to and from the highway maintainable at public expense at all times for all purposes connected with the construction of the School Development and the use of the Property.
- b. The right to use and to connect into the Service Media installed to the boundaries of the Property by the Transferor.
- c. Subject to compliance with the Conditions of Entry the right to enter the Retained Land (excluding any part of the Retained Land comprising or intended to comprise a house, flat or other structure intended for residential use and its curtilage) with or without workmen and equipment so far as is reasonably necessary to:
  - (i) inspect or carry out works to the Property; or
  - (ii) to inspect, repair, maintain or replace any Service Media serving the Property

### 12.4 **Rights Reserved**

- a. The Transferor reserves the Reservations to the Transferor its successors in title of all or any parts of the Retained Land and their respective tenants and servants and invitees in common with all others so entitled:
  - b. the right to use any part of the Retained Land as the Transferor thinks fit or to build on or develop any part of the Retained Land; and
  - c. a right to connect into and use the Service Media laid under the Property before the date hereof together with the rights to enter (subject to compliance with the
-



Conditions of Entry) upon the Property but only so far as is strictly necessary for the purpose of connecting into the Service Media and for the purpose of testing, cleaning, maintaining, renewing and repairing such Service Media.

- d. Subject to compliance with the Conditions of Entry the Reservations hereby reserve a right of entry onto the Property (excluding any part of the Property comprising a structure intended for occupation) with or without agents professional advisors workmen plant and equipment so far as is reasonably necessary to:
- (i) inspect or carry out works to the Retained Land; or
  - (ii) to inspect, repair, maintain or replace any Service Media serving the Retained Land

#### 12.5 **Positive Covenants by the Transferor**

The Transferor covenants with the Transferor within twelve months from the date of this deed ensure that the Property is Serviced, level and decontaminated.

#### 12.6 **Restrictive Covenants by the Transferee**

The Transferee covenants with the Transferor for the benefit of that part of the Retained Land being used as a stud farm not to cause or permit to be done in or upon the Property or any part thereof any act or thing which may be or become a nuisance annoyance or disturbance to the owners or occupiers for the time being of that part of the Retained Land being used as a stud farm and this restrictive covenant will terminate on cessation of use as a stud farm save for temporary discontinuance in the use as a stud farm

The Transferee covenants with the Transferor for the benefit of the Retained Land not to use the Property otherwise than as a primary school (which may include pre-school provision for Newmarket and may permit ancillary community uses);

#### 12.7 **Other**

The Transferor and the Transferee covenant to apply to the Land Registrar for the benefit and burden of the easements and rights set out in this Transfer to be noted on the title to the Retained Land and to the Property.

A person who is not a party to this transfer shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from under that Act.

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

---

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

13

Execution

The COMMON SEAL of  
SUFFOLK COUNTY COUNCIL  
was hereunto affixed in the  
presence of:-

Duly authorised Officer

SIGNED as a DEED by  
THE RIGHT HONOURABLE  
EDWARD RICHARD WILLIAM  
EARL OF DERBY DL  
in the presence of:

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

Name in Capitals: \_\_\_\_\_

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

**WARNING**

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

## ANNEX 3

### (Form of Deed of Covenant)

#### BETWEEN:

- (1) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("the County Council").
- (2) • (incorporated and registered in  
• under company registration number • ),  
the registered office of which is • ("the  
Owner").

#### NOW THIS DEED WITNESSES as follows:

##### 1. DEFINITIONS

In this deed and in the recitals to it, unless the context otherwise requires, the following words and phrases have the following meanings.

"**Option Agreement**" the Option Agreement and Deed of Variation of an agreement made under section 106 of the Town and Country Planning Act 1990 dated • between (1) West Suffolk Council (2) The County Council (3) The Right Honourable Edward Richard William Earl of Derby DI and (4) C.Hoare Co

##### 2. COVENANT

The Owner covenants with the County Council to observe and perform the covenants contained on the part of the Owner in the Option Agreement (to the extent that they have not already been complied with).

##### 3. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

Unless otherwise expressly stated, nothing in this deed will create any rights in favour of any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

##### 4. GOVERNING LAW AND JURISDICTION

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

Delivered as a deed on the date of this deed

