

**Dated** 28 June **2022**

**Charnwood Borough Council**

**and**

**Sturdee Poultry Farms Limited**

**and**

**Leicestershire County Council**

**and**

**John Frederick Wheeler**

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**Deed**

pursuant to Section 106 of the Town and Country  
Planning Act 1990 relating to land at Sturdee Poultry  
Farm, Sowters Lane, Burton On The Wolds

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Planning Ref: P/21/0615/2

**This Deed** is made the 28 day of June 2022

**Between**

1. **CHARNWOOD BOROUGH COUNCIL** of Council Offices, Southfield Road, Loughborough LE11 2TX ("**the Council**"); and
2. **STURDEE POULTRY FARMS LIMITED** (Company Number **03359431**) of Round Hill, Aldeburgh, Suffolk IP15 5PG ("**the Owner**"); and
3. **LEICESTERSHIRE COUNTY COUNCIL** of County Hall, Leicester Road, Glenfield, Leicester LE3 8RA (the "**County Council**"); and
4. **JOHN FREDERICK WHEELER** of Round Hill, Aldeburgh, Suffolk IP15 5PG ("**the Mortgagee**")

**Whereas**

- A. The Council is the local planning authority for the purposes of the Act for the administrative area in which the Site is situated and is the authority by whom the obligations hereby created are enforceable.
- B. The County Council is the highway authority for the purposes of the Highways Act 1980 Act (as amended) and is also responsible for the provision of education and library facilities for the area within which the Site is located and is a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations owed to it pursuant to this Deed are enforceable.
- C. The Owner is the freehold owner of the Site registered at the Land Registry under Title Number **LT300306**.
- D. The Owner submitted the Application to the Council on 13 May 2021.
- E. The Council has resolved to grant planning permission for the Development subject to conditions and the prior completion of this Deed.
- F. The Owner, the Council, the County Council and the Mortgagee have agreed to enter into this Deed with the intention that the obligations contained in this Deed shall bind the Site and successors in title to the Owner and may be enforced by the Council and by the County Council (as relevant) against the Owner and its successors in title.
- G. The Mortgagee has agreed to enter into this Deed solely for the purposes of providing its consent to this Deed.
- H. The parties to this Deed have given due consideration to the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (to the extent relevant to the obligations in this Deed) and the advice set out at paragraph 57 of the National Planning Policy Framework July 2021 (or any successor policy or legislation) and agree that the planning obligations contained within this Deed are:
  - (i) necessary to make the Development acceptable in planning terms;
  - (ii) directly related to the Development; and

(iii) fairly and reasonably related in scale and kind to the Development

**Now this Deed witnesses as follows:**

1. **Definitions**

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

<b>"Act"</b>	means the Town and Country Planning Act 1990 (as amended);
<b>"Affordable Housing"</b>	means housing provided to eligible households whose needs are not met by the market in accordance with the definition in Annex 2 of the National Planning Policy Framework July 2021 (or any successor policy or legislation in respect of affordable housing);
<b>"Affordable Housing Notice"</b>	means a written notice to be served by the Owner upon the Council pursuant to paragraph 5 of the Second Schedule setting out (including providing evidence) of the efforts which have been undertaken by the Owner in an attempt to secure the transfer of the Affordable Rented Units and/or Shared Ownership Units to a Registered Provider;
<b>"Affordable Housing Plan"</b>	means the plan to be submitted as part of an application for approval of Reserved Matters which identifies the location, proportion and distribution of the Affordable Housing Units to be Provided as part of the Development unless otherwise agreed by the Council in writing;
<b>"Affordable Housing Mix"</b>	means the numbers, types, mix of size, and tenure of Affordable Housing Units (to be submitted to and approved by the Council as part of an application for approval of Reserved Matters) and Provided as part of the Development on the Site which will comprise (unless otherwise agreed in writing by the Council) a tenure split of 77% of Affordable Rented Units or Social Rented Units, and 23% of Shared Ownership Units in accordance with Policies CS2, CS3 and CS11 of the Council's Core Strategy 2011-2018 and Housing Supplementary Document (as updated in December 2017);
<b>"Affordable Housing Units"</b>	

means no less than forty per cent (40%) of the Dwellings to be constructed and Provided within the Development on the Site pursuant to the Planning Permission and Reserved Matters Approval as Affordable Housing Units, in accordance with the Affordable Housing Plan, the Affordable Housing Mix, the provisions of paragraph 4 of the Second Schedule and otherwise in accordance with the terms of this Deed or such other number or tenure of Affordable Housing which may be agreed by the Council pursuant to paragraph 1.1 of the Second Schedule;

**"Affordable Rent"**

means a rent which is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80% of the local market rent (inclusive of service charges) or such other rent that may be permitted by Homes England (or any successor body to which the function of regulation of registered providers is transferred) including target rents;

**"Affordable Rented Units"**

means the Affordable Housing Units within the Site which are to be let at an Affordable Rent to people in Housing Need and which shall be identified with an asterisk and marked "AR" on the Affordable Housing Plan;

**"Allotment Contribution"**

means the sum of **£6,775.00** (six thousand seven hundred and seventy five pounds) Index-Linked to be applied by the Council towards the creation of additional allotment plots in the vicinity of the Development;

**"Application"**

means the outline planning application for the Development reserving all matters other than access which was submitted to the Council on 13 May 2021 and allocated reference number P/21/0615/2;

**"Approval of Details Fee"**

means £292 (two hundred and ninety two pounds) Index Linked for each submission and payable to the Council for the costs of considering and approving any details, document or scheme required to be submitted to the Council under the terms of this Deed;

**"Bus Passes"**

means an adult bus pass (at a value of **£510.00** (five hundred and ten pounds) per Bus Pass) entitling the holder of the bus pass to travel free of charge on local bus services for a period of six

(6) months from issue to encourage new residents to use local bus services as an alternative to the private car to establish changes in travel behaviour

**“Business Days”**

means any day which is not a Saturday, a Sunday, a Bank Holiday or Public Holiday in England;

**“Chargee”**

means in relation to the Affordable Housing Units a mortgagee or chargee of a Registered Provider (or any receiver or manager (including an administrative receiver) appointed by such mortgagee or chargee pursuant to the Law of Property Act 1925 (or otherwise) and/or appointed under any relevant security documentation directly associated with a charge against the Registered Provider’s title in respect of the Affordable Housing Units to enable such mortgagee or chargee to realise its security in respect of the Affordable Housing Units or any persons or bodies or successors deriving title through such mortgagee or chargee or Receiver but subject to first complying with the Chargee’s Duty;

**“Chargee’s Duty”**

means the duties set out in paragraph 4.3 of the Second Schedule (Affordable Housing) with which the Chargee and any successors in title who have not taken free of the Affordable Housing provisions in Schedule 2 of this Deed must comply before they can be released from any of the obligations to Provide, occupy and use the Affordable Housing Units or any one of them as Affordable Housing in perpetuity in accordance with this Deed;

**“Commencement of Development”**

means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly;

**“Completion”**

means the issue of a certificate of practical completion of the Development (or such part as

may be specified) by the Developer's architect or other project consultant appointed by the Developer and "Complete" and "Completed" shall be construed accordingly;

- "Condition"** means a condition imposed on the Planning Permission or any Reserved Matters Approval;
- "Contributions"** means the Sport Contribution, the Education Contribution, the Healthcare Contribution, the Allotment Contribution, the Library Contribution, the Travel Plan Monitoring Contribution, the County Council's Monitoring Contribution, Monitoring Fee and the Youth Contribution;
- "County Council's Monitoring Contribution"** means the sum of **£300** (three hundred pounds) per planning obligation owed to the County Council or 0.5% of the value of any contribution (whichever is greater) payable by the Owner to the County Council as a contribution towards the costs of the County Council in monitoring compliance with the obligations owed to it contained in this Deed
- "Development"** means the development of the Site for residential development for the erection of up to 60 residential Dwellings pursuant to the Planning Permission;
- "Dwelling"** means a unit of residential accommodation to be constructed on the Site pursuant to the Planning Permission and Reserved Matters Approval;
- "Education Contribution"** means together the Primary Education Contribution, the Secondary Education Contribution and the Post 16 Education Contribution;
- "Healthcare Contribution"** means the sum of **£30,378.74** (thirty thousand three hundred and seventy eight pounds and seventy four pence) Index-Linked to be paid by the Owner to the Council and to be applied by the Council towards increasing the capacity of Barrow Health Centre to allow for the accommodation of 145 additional patients generated by the scheme or if that is not feasible towards such other suitable medical centre, practice or facility within the vicinity of the Development;
- "Housing Need"** means such people as those who have been identified as being in housing need in accordance with the Council's policy or any such replacement

adopted Council policy, other than where an existing policy between the Council and the Registered Provider exists or is agreed from time to time;

**"Index"**

means the All in Tender Price Index of the Building Cost Information Services ("BCIS") as published by the Royal Institution of Chartered Surveyors ("RICS") or in the event that such index shall change or cease to be published the said index shall be such other index as the parties hereto shall agree or in default of agreement such index as shall be determined by an arbitrator appointed in accordance with the provisions of this Deed in all cases to ensure as nearly as possible that the sums of money involved shall fluctuate in accordance with the general level of building industry costs;

**"Index Linked"**

means the increase of any relevant Contribution(s) linked to the annual rate of inflation as measured with reference to the Index from the Date of this Deed save in the case of the Education Contribution for which it means from 1 July 2021 to the date of payment of the Contribution(s) in accordance with the following formula:

A divided by B multiplied by C

Where:

- (a) A is the final figure for the respective Index published for the last month preceding the date of payment of the relevant contribution
- (b) B is the final figure for the respective Index published for the month in which this Deed was completed
- (c) C is the relevant consideration

PROVIDED THAT any reduction in a relevant contribution as a result of the application of this formula shall be disregarded.

**"Library Contribution"**

means the sum per Dwelling which shall be calculated as follows:

- (i) 1 bedroom houses/apartments @ £15.09 (fifteen pounds and nine pence) (Index Linked) per house/apartment;
- (ii) 2+ bedroom houses/apartments @ £30.18 (thirty pounds and eighteen pence) (Index Linked) per house/apartment; and

(iii) 1 bedroom student dwelling @ £10.36 (ten pounds and thirty six pence) (Index Linked) per house/apartment

subject to a maximum sum of £1,820.00 (one thousand eight hundred and twenty pounds) (Index Linked) to be paid by the Owner to the County Council and to be applied by the Council towards the improvements to the library facilities at the Barrow Library;

**“Material Operation”**

means a material operation pursuant to the Planning Permission on the Site as defined in Section 56(4)(a)-(e) of the 1990 Act.

**“Management Entity”**

means the body or bodies that are nominated or established by the Owner for the long-term maintenance and management of the Open Space;

**“Monitoring Fee”**

means the sum of £1964 (one thousand nine hundred and sixty four pounds) Index Linked towards the Council's monitoring of this Deed and the Development;

**“Nomination Agreement”**

means an agreement between the Council and a Registered Provider establishing a process for nominating Qualifying Persons as tenants for a percentage of the Affordable Rented Units and the Shared Ownership Units;

**“Occupation” and “Occupied”**

means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" shall be construed accordingly;

**"Occupier"**

means the first person or persons who enter into the Occupation of a Dwelling;

**"Open Market Dwelling"**

means any Dwelling other than an Affordable Housing Unit and which is to be sold on the open market;

**“Open Space”**

means all of the open space including local equipped area for play (LEAP), to be provided within the Development on the Site and which shall include the following minimum amounts and typologies of open space: -

- (i) 0.29ha of natural or semi



- (ii) natural open space;  
ii. 0.12ha of multi-functional green space (parks 0.05ha, amenity open space 0.07ha), and
- (iii) one equipped LEAP facility for children's play (minimum activity zone area of 0.04ha)

and which shall be constructed, managed and permanently maintained throughout the life of the Development in accordance with the Open Space Strategy approved by the Council, the provisions of paragraph 6 of the Second Schedule as to the provision and maintenance of the Open Space and otherwise in accordance with this Deed;

**“Open Space Strategy”**

means the strategy relating to and making provision for open space (and which shall include timescales and specification for the construction and laying out of the Open Space and details and specification of the LEAP facility) to be provided at the Development which is to be submitted to and approved by the Council as part of the application for Reserved Matters Approval and once approved to be delivered, maintained and managed in accordance with paragraph 6 of the Second Schedule of this Deed and any relevant details approved pursuant to Conditions and any updated Open Space Strategy approved by the Council pursuant to paragraph 6.2 of the Second Schedule and this Deed

**“Plan 1”**

means the plan marked "Plan 1" attached to this Deed at the Seventh Schedule showing the Site comprising the Development;

**“Planning Permission”**

means the outline planning permission to be granted by the Council pursuant to the Application and any related planning permission subsequently granted pursuant to an application under section 73 of the Act and for the avoidance of doubt shall include amendments pursuant to Section 96A of the Act;

**“Post 16 Contribution”**

**Education**

means the sum of **£637.79** (six hundred and thirty seven pounds and seventy nine pence) (Index Linked) per Dwelling having two or more bedrooms subject to a maximum sum of **£38,267.46** (thirty eight thousand two hundred and sixty seven pounds and forty six pence) (Index Linked) to be paid by the Owner to the

County Council towards improving capacity for post 16 education at Rawlins Academy or any other education establishment providing post 16 education which shall comprise a catchment school for pupils living on the Development;

**"Practical Completion"**

means the date upon which a certificate of practical completion is issued by the Owner's architect or such other person who is monitoring the Development on behalf of the Owner and "Practically Completed" shall be construed accordingly;

**"Primary Contribution"**

**Education**

means the sum of **£5,506.80** (five thousand five hundred and six pounds and eighty pence) (Index Linked) per Dwelling having two or more bedrooms subject to a maximum sum of **£330,408** (three hundred and thirty thousand four hundred and eight pounds) (Index Linked) to be paid by the Owner to the County Council towards remodelling and improving capacity at Burton on the Wolds primary school or any other primary school which shall comprise a catchment school for pupils living on the Development;

**"Protected Tenant"**

means in respect of an Affordable Housing Unit 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; or
- (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 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 one hundred (100%) percent of the remaining equity so that the tenant owns the entire Affordable Housing Unit;

**“Provided”**

means when the Affordable Housing Units have been:

(a) constructed and completed on a prepared and Serviced site to the reasonable satisfaction of the Council to be confirmed in writing in accordance with paragraphs 1 and 2 of the Second Schedule of this Deed and in accordance with:

- (i) the Affordable Housing Plan; and
- (ii) the Affordable Housing Mix, and

(b) transferred as a freehold title to a Registered Provider pursuant to a contract for the purchase of the Affordable Housing Unit(s), such contract to procure that the Registered Provider has entered into a Nominations Agreement with the Council in respect of the Affordable Housing Units; and

(c) notification of the transfer to the Registered Provider has been given to the Council in writing in accordance with paragraph 2 of the Second Schedule of this Deed; and **“Provide”** shall carry the same meaning;

**“Qualifying Person”**

means a person or persons or households who prior to Occupation have been identified by the Council, or Registered Provider as in need of an Affordable Housing Unit and “Qualifying Persons” shall be construed accordingly;

**“Reasonable Endeavours”**

means that the party under such an obligation will not thereby be required to take proceedings (including any appeal) in any court public inquiry or other hearing (unless specified to the contrary) but subject thereto has diligently pursued the following matters to the standard required of the relevant party acting with all reasonable due care and skill over a reasonable period of time (which may either be specified in the relevant obligation or in the absence of this such period of time as is reasonable in all the circumstances) in order to achieve the desired result, purpose and / or objective and shall endeavour to take all methods commercially and reasonably prudent and likely to achieve the desired result

including the exploration of alternatives and further attempts; .

PROVIDED THAT this shall not require any party to sacrifice its own commercial interests, nor shall it require any party to continue with such endeavours to comply if it is reasonable to conclude in all the circumstances applicable that all further efforts would be futile (but for the avoidance of doubt these provisos are subject to any specific agreed steps or time periods set out in or agreed pursuant to the obligation in question anywhere in this Deed);

**"Revised Affordable Housing Scheme"**

means a written statement to be submitted in the event the cascade provisions set out in paragraph 5 of the Second Schedule are triggered by failure of the Owner to contract with a Registered Provider which sets out the Owner's proposals for the revised provision of Affordable Housing which may include:-

- (a) The numbers, type, size and location of the Affordable Housing Units save that nothing shall require the total number of Dwellings to be provided as Affordable Housing Units across the whole of the Site to be greater than 24 Dwellings;
- (b) Arrangements for the marketing of the Affordable Housing Units;
- (c) Details of arrangements the Council may reasonably require to ensure that the Affordable Housing Units remain as Affordable Housing to first and all subsequent Occupiers including (but not limited to) details of any restrictions on title to secure affordable housing provisions in perpetuity;
- (d) The basis on which any of the Affordable Housing Units may be occupied;

and in the following sequential order: -

- (e) In the first instance, an alternative tenure mix or reduction in the number of units to make the Affordable Housing package more attractive to a Registered Provider or the local housing authority;

- (f) A proposal for the gifting of the Affordable Housing Units or an agreed proportion of them to the Council;
- (g) A financial contribution for the provision of Affordable Housing in the Council's administrative area in lieu of Affordable Housing Units being provided on the Site;
- (h) As a last resort any proposal for the Affordable Housing Units to be sold on the open market to a person in housing need at 60% of their open market value with legal safeguards attached ensuring that the discount remains in perpetuity

and for the clarification of doubt more than one iteration of the Revised Affordable Housing Scheme may be produced and approved by the Council in writing to facilitate the sequential order at (e) to (h) above;

**“Registered Provider”**

means a registered provider as defined by the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act) and registered under the provisions of the Housing and Regeneration Act 2008 or any company or other body approved by the Homes and Communities Agency, or the Council or a company wholly owned by the Council;

**“Reserved Matters Approval”**

means a reserved matters approval pursuant to the Planning Permission for the Development;

**“Secondary Contribution”**

**Education**

means the sum of **£2985.29** (two thousand nine hundred and eighty five pounds and twenty nine pence (Index Linked) per Dwelling having two or more bedrooms subject to a maximum sum of **£179,117.52** (one hundred and seventy nine thousand one hundred and seventeen pounds and fifty two pence) (Index Linked) to be paid by the Owner to the County Council towards increasing the capacity at Humphrey Perkins School or any other secondary school which shall comprise a catchment school for pupils living on the Development;

**“Serviced”**

means having connections for mains water, sewerage, gas, electricity and telecommunications appropriate to the proposed use of the Site and adequate for the purposes of

the prospective users of the Site in accordance with the Planning Permission and either at the boundary of the Site of the relevant facility or reasonably proximate to it to enable connections to be lawfully and reasonably made thereto and sufficient vehicular and pedestrian access to the Site from a public highway;

**"Shared Ownership Lease"**

means the form of lease in respect of each of the Shared Ownership Units which shall be in accordance with the Homes England model form of shared ownership lease or such other successor bodies model form of lease as may be from time to time in place and on terms that permit part purchase of the open market value of the equity in a unit with an initial interest of 25% up to a maximum of 75% of market value together with rent payable for the open market rack rental value of the un-purchased percentage of the equity in the unit up to a value which does not exceed the rent set by HE from time to time (or such other rent or form of lease approved in writing by the Council) and to acquire an additional share from time to time so as to increase their ownership to 100% of the full market value Shared Ownership Unit;

**"Shared Ownership Units"**

means those Affordable Housing Units within the Site identified on the Affordable Housing Plan which are to be owned and managed by a Registered Provider such that they shall be occupied on the basis of a Shared Ownership Lease as identified with an asterisk and marked "SO" on the Affordable Housing Plan;

**"Site"**

means the land registered at the Land Registry under Title Number LT300306 against which the obligations within this Deed may be enforced as shown for identification purposes edged red on Plan 1 and identified in paragraph 1 of the First Schedule;

**"Site Inspection Fee"**

means £195 (one hundred and ninety-five pounds) Index Linked for each site inspection required by this Deed and payable to the Council towards its costs of preparing for attending such visit or site inspection

**"Sport Contribution"**

means the sum of **£19,762.00** (nineteen thousand, seven hundred and sixty two pounds) Index-Linked to be paid by the Owner to the

Council and to be applied by the Council towards the provision, enhancement or improvement of outdoor sports or recreation facilities in the first instance towards implementing the recommendations of the Council's Playing Pitch Strategy 2018;

**"Travel Packs"**

means a pack provided to new residents on first Occupation of each Dwelling giving details of sustainable travel choices available in the surrounding area to include bus timetables, cycle and walking routes within the locality of the Site and including two applications for Bus Passes;

means the sum of **£500.00** (five hundred pounds);

**"Travel Pack Administration Fee"**

means the sum of **£6000.00** (six thousand pounds) payable by the Owner to the County Council towards the costs of monitoring the implementation of the Travel Plan;

**"Travel Plan Monitoring Contribution"**

means the travel plan approved as part of the Planning Permission which will make provision for the sustainable use of public and private transport at the Development;

**"Travel Plan"**

**"Travel Plan Coordinator"**

means the person appointed to be responsible for the implementation of the measures identified in the Travel Plan from the Commencement of Development for a period of five (5) years from the date of first Occupation of the first Dwelling

**"Youth Contribution"**

means the sum of **£57,239.00** (fifty seven thousand two hundred and thirty nine pounds) Index-Linked to be paid by the Owner to the Council and applied by the Council towards the provision, improvement or enhancement of outdoor sport and recreation opportunities or facilities for young people in the vicinity of the Development.

**2. Construction of this Deed**

- 2.1. Where in this Deed reference is made to any clause, paragraph, schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph, schedule or recital in this Deed (unless the context otherwise requires).
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.3. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4. 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.
- 2.5. References to any party to this Deed shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Council and the County Council the successors to their respective statutory functions.
- 2.6. The headings are for reference only and shall not affect construction of this Deed.
- 2.7. Any covenant by the Owner or the Council or the County Council not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 2.8. 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.

### 3. **Legal Basis**

- 3.1. This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 (as amended) and Section 1 of the Localism Act 2011 (as amended) and all powers so enabling.
- 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 Council or the County Council as local planning authorities against the Owner and the Owner's successors in title.

### 4. **Conditionality**

This Deed takes effect immediately with the exception of clauses 5.1 and 5.2 which are conditional on the grant of the Planning Permission and the carrying out of a Material Operation (save for the obligations in paragraph 6.1 of the Second Schedule which take effect immediately).

### 5. **The Owner's Covenants**

- 5.1. The Owner covenants with the Council (so as to bind the Site and its successors in title and assigns) to fully observe and perform the obligations in this Deed including those obligations set out in the Second Schedule and hereby agrees that the Site shall be subject to the obligations, restrictions and covenants in this Deed, such obligations being planning obligations for the purposes of section 106 of the Act as set out in the Second Schedule and which will also be obligations, where applicable, made pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), s.1 of the Localism Act 2011 and all other powers so enabling
- 5.2. The Owner covenants with the County Council (so as to bind the Site and its successors in title and assigns) to fully observe and perform the obligations in this



Deed including those obligations set out in the Third Schedule and hereby agrees that the Site shall be subject to the obligations, restrictions and covenants herein, such obligations being planning obligations for the purposes of section 106 of the Act as set out in the Third Schedule and which will also be obligations, where applicable, made pursuant to section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), section 1 of the Localism Act 2011 and all other powers so enabling

6. **The Council's and the County Council's Covenants**

- 6.1. The Council covenants with the Owner to observe and perform the obligations on its part in this Deed including those obligations set out in the Fourth Schedule.
- 6.2. The County Council covenants with the Owner to observe and perform the obligations on its part in this Deed including those obligations set out in the Fifth Schedule.

7. **Local Land Charge**

- 7.1. This Deed shall be registered as a local land charge by the Council.

8. **Communication and Council's Consent or Approval**

- 8.1. Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given in writing on behalf of the Council by the Head of Planning Services (unless otherwise confirmed by the Council in writing).

9. **Notices**

- 9.1. Any notice to be given under or in connection with this Deed shall be in writing and shall either be delivered personally or sent by post and shall be addressed as provided in Clause 9.3.
- 9.2. Where sent by post the notice or communication shall be sent by registered post or such other form of postage which requires a signature upon delivery and any other form of postage shall not be effective for the purposes of this Deed.
- 9.3. Any such notice or communication, if so addressed, shall be deemed to have been received as follows: -
  - 9.3.1. if delivered by hand upon delivery at the relevant address except that where any such notice or other communication is delivered by hand after 4:00 p.m. such notice or other communication shall be deemed to be received at 9:00 a.m. on the following Business Day; and
  - 9.3.2. if sent by post, at 9:00 a.m. on the second Business Day after the date of posting PROVIDED THAT if clear evidence is produced by the recipient that the notice or communication was delivered after the second Business Day following its posting, then the date of delivery shall be the actual date of delivery. The address, relevant addressee and the reference of each party are as follows:

*For the Council:*

Address: Charnwood Borough Council of Southfield Road, Loughborough, Leicestershire, LE11 2TN or the relevant Head Office from time to time where the Borough Council no longer occupies this address

Relevant addressee: Head of Planning & Regeneration and Head of Strategic Support

Reference: P/21/0615/2

*For the Owner:*

Address: To the addresses stated at the start of this Deed, or such other addresses as may have been updated at HM Land Registry in the Proprietorship Register of the registered titles to the Site

Relevant addressee: The individuals named at the start of this Deed

Reference: P/21/0615/2

*For the County Council*

Address: To the address stated at the start of this Deed, or such other address as may be notified to the parties in accordance with clause 9.4 below

Relevant addressee: Planning Obligations Manager, Planning and Historic and Natural Environment Department

Reference: P/21/0615/2

- 9.4. A party may give notice of the change to its name, address, or relevant addressee for the purposes of this Clause 9 provided that such notification shall only be effective on:
- 9.4.1. the date specified in the notification as the date on which the changes to take place; or
  - 9.4.2 If no date is specified or the date specified is less than 5 (five) clear Business Days after the date on which notice is received or deemed to be received, the 5<sup>th</sup> (fifth) Business Day after notice of any such changes given

**Termination of this Deed**

- 9.5. 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 by any statutory procedure or expires prior to the implementation of the Planning Permission by carrying out a Material Operation on Site but without prejudice to liability for any subsisting breaches prior to termination.

10. **The Contracts (Rights of Third Parties) Act 1999**

- 10.1. Save as provided in respect of successors in title to the Site or any successor to the relevant statutory function of the Council and/or the County Council this Deed shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 (as amended) and no third party shall acquire any benefit, rights or claims whatsoever thereto.

11. **Liabilities**

- 11.1. No person shall be liable for any breach, non-performance and non-observance of any covenant, obligation or restriction or other provision of this Deed after it shall have parted with the whole of its interest in the Site or that part in respect of which such breach occurred but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 11.2. 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 after the date of this Deed.

12. **Councils' Powers**

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

13. **Waiver**

- 13.1. No waiver (whether expressed or implied) by the Council or the County Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or County Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

14. **Change in Ownership**

- 14.1. The Owner agrees with the Council and the County Council to give the Council and the County Council immediate written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan (save that there shall be no obligation to give such notice on the sale of an individual Dwelling(s)).

15. **Exemptions**

- 15.1. The obligations under this Deed shall not be enforceable against:
- 15.1.1. any statutory undertaker or public authority which acquires any part of the Site or an interest in it for the purposes of its statutory undertaking or functions other than housing functions and including provision of electricity, gas, water, drainage, telecommunications, public transport to, within or from the Site.

- 15.1.2. any Protected Tenant (their mortgagees or person claiming title from such tenant or mortgagee) of any of the Affordable Housing Units.
  - 15.1.3. A Chargee which has first complied with the requirements of paragraph 4.3 of the Second Schedule of this Deed.
  - 15.1.4. The successors in title to all of the foregoing including any mortgagee, lender or chargee to any such successors in title.
- 15.2. The provisions of the Third Schedule to the Fifth Schedule (inclusive) of this Deed shall not be binding on any occupier tenant or lessee of any Affordable Housing Unit or any mortgagee or successor in title of the foregoing.

16. **Dispute Provisions**

- 16.1. Where the parties are in dispute or disagreement or have any differences relating to any matter which is the subject of or connected with this Deed or its meaning or construction (a "**Dispute**") then (without prejudice to any other provision in this Deed which specifies a particular timescale for the resolution or determination of any matter) the parties shall each use their Reasonable Endeavours to resolve the same within 20 (twenty) Business Days of the Dispute arising.
- 16.2. The parties each having each used Reasonable Endeavours to resolve the dispute and failed to find resolution to any such Dispute within the said 20 (twenty) Business Days or within such other period as may be specified in this Deed in relation to the resolution or determination of the matter in question, the Dispute shall be referred for determination in accordance with the provisions of this Clause 16 on the reference of any of the parties to the Dispute.
- 16.3. The Dispute shall be referred to the decision of an independent expert who shall be an independent person of at least ten (10) years' standing in the area of expertise relevant to the Dispute (the "**Expert**") and in the event that the parties are unable to agree whom should be appointed within a period of ten (10) Business Days following a failure of the parties to resolve the Dispute within the period set out in Clause 16.2, then any party may request:
- 16.3.1. if such Dispute shall relate to matters concerning the construction, interpretation and/or application of this Deed, the Chairman of the Bar Council to nominate the Expert;
  - 16.3.2. if such Dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institution of Chartered Surveyors to nominate the Expert;
  - 16.3.3. if such Dispute shall relate to matters requiring a specialist chartered civil engineer, the President of the Institution of Civil Engineers to nominate the Expert;
  - 16.3.4. if such Dispute shall relate to matters requiring a specialist chartered account, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert; and
  - 16.3.5. in all other cases, the President of the Law Society to nominate the Expert.

- 16.4. If the Dispute shall relate to matters falling within two or more of Clauses 16.3.1 to 16.3.5 (inclusive), the parties may agree to appoint joint Expert/s and in the event that the parties are unable to agree whom should be appointed as joint Expert/s, the parties may request the President of the Law Society to nominate such person or persons falling within the descriptions of Clauses 16.3.1 to 16.3.5 (inclusive) to act as joint Experts.
- 16.5. The Expert shall act as an expert and not as an arbitrator and the determination of the Expert (including any determination as to the responsibility for payment of his own costs and those of the parties) shall be final and binding upon the parties subject to manifest error.
- 16.6. The Expert shall be appointed (through an agreed request statement setting out exactly the questions that he is to determine, submitted jointly by the parties to the Dispute) subject to an express requirement that he reaches his decision and communicates it to the parties to the Dispute within the minimum practical timescale allowing for the nature and complexity of the Dispute and in any event no later than thirty (30) Business Days from the date of his appointment to act and that he is to have particular regard to the Act in reaching his decision.
- 16.7. The terms of reference of any Expert appointed to determine a Dispute shall include the following:
- 16.7.1. he or she shall call for representations from all parties with ten (10) Business Days of a reference to him or her under this Deed and shall require the parties to exchange representations within this period;
  - 16.7.2. he or she shall allow the parties ten (10) Business Days from the expiry of the ten (10) Business Days period referred to in Clause 16.7.1 to make counter-representations;
  - 16.7.3. any representations or counter-representations received out of time shall be disregarded by the Expert;
  - 16.7.4. he or she shall provide the parties with a written decision (including his reasons) within ten (10) Business Days of the last date for receipt of counter-representations;
  - 16.7.5. he or she shall be entitled to call for such independent expert advice as he or she shall think fit; and
  - 16.7.6. his or her costs and the costs of any independent expert advice called for by the Expert shall be included in his award.
- 16.8. Unless the Expert shall decide otherwise the costs of any reference to the Expert shall be borne equally by the parties to the Dispute.
17. **Jurisdiction**
- 17.1 This Deed is governed by and interpreted in accordance with the law of England and subject to the non-exclusive jurisdiction of the English Courts.

**18     Delivery**

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

**19     Future / Amended Planning Permission(s)**

- 19.1    Subject to clause 19.3, in the event that a condition or conditions to the Planning Permission is or are varied or added pursuant to Section 96A of the Act this Deed shall continue in full force in respect of the Planning Permission with the relevant condition or conditions so varied or added.

- 19.2    Subject to clause 19.3, in the event that an application is made pursuant to Section 73 of the Act for an amendment to the Planning Permission and planning permission is granted in respect of that application references to Planning Permission in this Deed shall include the new planning permission granted pursuant to Section 73 of the Act and this Deed shall apply to and remain in full force in respect of that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act.

- 19.3    Clause 19.1 and 19.2 above shall not fetter the discretion of the Council, when determining any application of the Act in relation to the Planning Permission, to require a further Deed to be executed under sections 106 or 106A of the Act before granting such new permission

**20.    Fees**

- 20.1    The Owner covenants to pay the Council's and the County Council's reasonable legal fees in connection with the preparation of this Deed no later than the date of completion of this Deed.

- 20.2    The Owner covenants to pay the Monitoring Fee to the Council prior to the carrying out of a Material Operation and not to carry out a Material Operation until the total Monitoring Fee has been paid to the Council in full.

- 20.3    The Owner covenants to pay the Approval of Details Fee to the Council with each submission of details for the Council's approval pursuant this Deed.

- 20.4    The Owner covenants to pay the Site Inspection Fee to the Council on booking any site visit or inspection required by the Council pursuant this Deed.

**21.    Interest**

- 21.1    Without prejudice to any other right remedy or power herein contained or otherwise available to the Council if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding thirty (30) days the parties shall pay on demand to the Council where the sum due was payable to the Council or to the County Council where the sum due was payable to the County Council interest thereon at the interest rate of five per centum (5%) per centum per annum above the Bank of England Base Rate from the date when the same became due until payment thereof.

**22. Mortgagee's Consent**

22.1 The Mortgagee has entered into this Deed for the purposes of providing his consent to the Deed and for no other purpose. No obligation in this Deed shall be enforceable against the Mortgagee unless and until he exercises any right to take possession of the Site pursuant to the terms of his charge.

**23. Notice of Commencement of Development and Occupation**

23.1 The Owner shall give the Council seven (7) days' notice in advance of Commencement of Development and shall send a copy of such notice to the Planning Obligations Team Manager, Planning and Historic and Natural Environment Department at the County Council and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owner and the Council PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring.

23.2 The Owner covenants with the Council to serve written notice upon the Council at least seven (7) days in advance of the triggers listed in the Second Schedule.

23.3 The Owner covenants with the County Council to serve written notice upon the County Council at least seven (7) days in advance of the triggers listed in the Third Schedule.

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



**First Schedule**

**Details of Title and description of the Site**

1. The land known as Sturdee Poultry Farm, Sowters Lane, Burton On The Wolds, Leicestershire, LE12 5AL as shown for identification purposes only edged red on Plan 1 being the Site comprising the Development.

## Second Schedule

### Owner's covenants to the Council

The Owner covenants with the Council so as to bind the Site and successors in title to and / or assigns of the Owner as follows: -

#### **1. Affordable Housing**

1.1. In accordance with the provisions of this Schedule, the Owner shall Provide the Affordable Housing Units on the Site in accordance with:

1.1.1. The Planning Permission, the Affordable Housing Plan and the Affordable Housing Mix;

1.1.2. a standard of design and construction equivalent to the Market Dwellings;

1.1.3. the further provisions of paragraph of this Schedule; and/or

1.1.4. any non-material amendment to the Affordable Housing Plan or Affordable Housing Mix as may be approved in writing by the Council.

1.2. Prior to Occupation of no more than fifty per cent (50%) of the Open Market Dwellings the Owner shall:-

1.2.1. construct and complete fifty per cent (50%) of the Affordable Housing Units ready to be Provided on a Serviced site to the satisfaction of the Council in accordance with paragraph 1.4 of this Schedule; and

1.2.2. complete the transfer of the initial fifty per cent (50%) Affordable Housing Units to a Registered Provider in accordance with the provisions of this Schedule and Deed; and

1.2.3. shall, within 10 Business Days of any transfer under paragraph 1.2.2 above, provide the Council with written evidence of the completion of a transfer of the initial 12 Affordable Housing Units to a Registered Provider in accordance with paragraph 2 of this Schedule and as otherwise as set out in this Deed.

1.3. Prior to Occupation of no more than sixty five per cent of the Open Market Dwelling the Owner Shall:-

1.3.1. complete the transfer of the final fifty per cent (50%) of the Affordable Housing Units to a Registered Provider in accordance with the provisions of this Schedule and Deed; and

1.3.2. shall within 10 Business Days provide the Council with written evidence of the completion of the transfer of the final 12 Affordable Housing Units to a Registered Provider in accordance with paragraph 2 of this Schedule and as otherwise as set out in this Deed

1.4. The Owner shall give the Council not less than 20 Business Days prior notice of the anticipated date of completion of the Affordable Housing Units pursuant to

paragraphs 1.2.1 and 1.3.1 of this Schedule and shall give the Council a reasonable opportunity to inspect the Affordable Housing Units to satisfy itself that they are ready to be Provided on a Serviced site in accordance with the provisions of paragraph 2 of this Schedule and otherwise in accordance with this Deed

## **2. Transfer of the Affordable Housing Units**

- 2.1 Prior to Occupation of no more than twenty five per cent (25%) of the Open Market Dwellings within the Development the Owner shall provide the Council with details of the intended Registered Provider, shall enter into a sale and purchase agreement with a Registered Provider, and shall procure that any such contract (transfer or grant of a leasehold interest) as a minimum makes provision for the following: -
- 2.1.1 that the Registered Provider has entered into an acceptable Nomination Agreement with the Council setting appropriate rent levels for the Affordable Rent Dwellings in accordance with the terms of this Deed and granting the Council the ability to nominate Occupiers for 100% of all first lettings and 75% of all subsequent lettings of the Affordable Rent Dwellings;
  - 2.1.2 the sale, transfer and/or grant of a lease by the Registered Provider to tenants and occupiers in respect of the Affordable Housing Units shall be in accordance with the Affordable Housing Mix and otherwise in accordance with the terms of this Deed; and
  - 2.1.3 that the transfer of each Affordable Housing Unit shall be of a freehold estate and, as far as possible, with full title guarantee SAVE FOR the Shared Ownership Units; and
  - 2.1.4 that the Shared Ownership Units should be sold through the Registered Provider by way of Shared Ownership Lease; and
  - 2.1.5 that any transfer or grant of a Shared Ownership Lease in respect of an Affordable Housing Unit shall include the further rights, reservations or restrictions stipulated in paragraph 3 of this Schedule; and
  - 2.1.6 that the Affordable Housing Units shall only be Occupied by a Qualifying Person as Affordable Housing Units; and
  - 2.1.7 the grant by the Owners of all rights of access and passage of services and other rights reasonable and necessary for the beneficial enjoyment of the Affordable Housing Dwellings to be constructed on the Site; and
  - 2.1.8 a reservation of all rights of access and passage of services and rights of entry reasonably necessary for the benefit of the remainder of the Open Market Dwellings on the Site, and
  - 2.1.9 the grant by the Owners of all rights of access and passage of services and other rights reasonable and necessary to the beneficial enjoyment of the Affordable Housing Dwellings to be constructed on the Site; and

2.1.10 that the Registered Provider will have the right to challenge the reasonableness of any management charges being charged by a Management Entity in relation to the maintenance of the Open Space including any shared car parking areas.

### **3 Form of transfer**

3.1 In relation to the transfer of Shared Ownership Lease of all or any of the Affordable Housing Units the Owners shall procure that:

3.1.1 the first freehold transfer of each Affordable Housing Unit shall be with full title guarantee and free from financial encumbrances and any other encumbrances save as referred to in the further provisions of this paragraph:

3.1.2 the transfer of each Affordable Housing Unit shall be of a freehold estate and, as far as possible, with full title guarantee;

3.1.3 procure that the transfer of or grant of a Shared Ownership Lease in respect of each of the Affordable Housing Unit/s shall contain the following: -

3.1.3.1 exceptions and reservations of such easements and rights and privileges to the transferor or lessee and their successor in title and assigns as may reasonably be required for the satisfactory development or redevelopment of the Site and as is reasonably necessary for the benefit of the remainder of the Dwellings on the Site;

3.1.3.2 a grant of such rights of access, easements, other rights and privileges to the transferee or lessee or their successor in title and assigns as may reasonably be required for the satisfactory use and development or redevelopment of the Affordable Housing Units and for the beneficial enjoyment of the Affordable Housing Units;

3.1.3.3 provide access and foul and surface water sewers, and water, gas, electricity and telecommunications service systems for each Affordable Housing Unit linking in each case to the estate roads and service systems to be constructed and laid as part of the remainder of the Development and connected ultimately to highways and sewers maintainable at the public expense;

3.1.3.4 a covenant which is binding on the property by the transferee with the transferor and the Council not to use the Affordable Housing Units for any purpose other than use as an Affordable Housing Units in accordance with the terms of this Deed (such covenant to be subject always to the exclusions in clause 15 of this Deed and on the disposal or assignment of the Affordable Housing Unit (subject to the provisions of clause 15 of this Deed where applicable) to obtain an identical covenant from the

dispose or assignee.

#### **4 Restrictions on Occupation**

- 4.1 The Owner shall not Occupy or permit Occupation of: -
- 4.1.1 more than fifty per cent (50%) of the Open Market Dwellings until the initial fifty per cent (50%) of the Affordable Housing Units have been transferred to a Registered Provider;
  - 4.1.2 more than the fifty per cent (50%) of the Open Market Dwellings until the initial fifty per cent (50%) of the Affordable Housing Units have been completed and Provided in accordance with the terms of this Schedule and Deed;
  - 4.1.3 more than the sixty five per cent (65%) of the Open Market Dwellings until the final fifty per cent (50%) of the Affordable Housing Units have been transferred to a Registered Provider;
  - 4.1.4 more than the sixty five per cent (65%) of the Open Market Dwellings until the final fifty per cent (50%) of the Affordable Housing Units have been completed and Provided in accordance with the terms of this Schedule and Deed;
- 4.2. From the date of Completion of the Development the Affordable Housing Units shall not be used or Occupied other than as Affordable Housing Units in perpetuity in accordance with the terms of this Schedule and Deed subject only to exemptions in Clause 15 of this Deed and paragraph 4.3 of this Schedule.

#### **Chargee's Duty**

- 4.3. The restriction at paragraph 4.2 above, shall not be applicable to any Chargee of the Affordable Housing Units or exempted persons in Clause 15 of this Deed PROVIDED THAT the following requirements have been met to the satisfaction of the Council which is to be confirmed in writing: -
- 4.3.1 such Chargee shall first give written notice to the Head of Legal Services at the Council of its intention to dispose of the Affordable Housing Units and shall have used Reasonable Endeavours over a period of three months from the date of the written notice to complete a disposal of its Affordable Housing Unit(s) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

- 4.3.2 if despite the parties using Reasonable Endeavours such disposal has not been agreed within the three month period, or completed within a four month period (unless otherwise agreed in writing by the Parties) of the notice served pursuant to paragraph 4.3.1 of this Schedule, the Chargee shall be entitled to dispose of its Affordable Housing Unit(s) free from the affordable housing provisions in this Deed, which provisions shall determine absolutely.
- 4.3 in respect of any disposal or assignment to a Protected Tenant, the Council and any relevant Registered Provider shall, unless the legislation otherwise requires, use or procure the use of the net proceeds of sale as defined in section 24(3) of the Housing Act 1996 (and any amendment, re-enactment or successor provision) to fund the provision of further Affordable Housing and use all Reasonable Endeavours to make such provision in the district of the Council.

## **5 Affordable Housing Cascade**

- 5.1 Where despite having used Reasonable Endeavours to transfer the Affordable Rented Units and/or Shared Ownership Units to a Registered Provider as provided for by paragraph 2 and 3 of this Schedule on terms which include the provisions and restrictions set out in paragraph 4 above (as relevant) and otherwise on terms acceptable to the Owner (acting reasonably) the Owner has been unable to dispose of all or any number of the Affordable Rented Units and/or Shared Ownership Units to a Registered Provider 18 months after the Commencement of Development then the Owner shall be entitled to serve the Affordable Housing Notice upon the Council and shall provide the Council with written evidence of the use of such Reasonable Endeavours to enter into a sale and purchase agreement.
- 5.2 Following service of the Affordable Housing Notice upon the Council, the Owner must use all Reasonable Endeavours to co-operate with the Council in an attempt to secure the transfer of the Affordable Rented Units and/or Shared Ownership Units to a Registered Provider (or the local housing authority) proposed by the Council on terms which include the provisions and restrictions set out in paragraph 2, 3 and 4 above (as relevant) and

otherwise on terms acceptable to the Owner (acting reasonably).

- 5.3 Following the service of the Affordable Housing Notice and having cooperated with the Council to secure a Registered Provider but failed to do so pursuant to paragraph 5.2 above, the Owners shall submit a Revised Affordable Housing Scheme for the approval of the Council (which subject to the provisions below at paragraphs 5.4 to 5.5 shall not be unreasonably withheld or delayed).
- 5.4 The Owner and the Council shall as a first solution seek to agree a Revised Affordable Housing Scheme with an alternative tenure mix or reduction in units to make the Affordable Housing package more attractive to a Registered Provider or the local housing authority. Following the Council's approval of the Revised Affordable Housing Scheme with an alternative tenure scheme, the Owner shall for a further period of three (3) months use all Reasonable Endeavours to enter into a sale and purchase agreement with a Registered Provider (or the local housing authority) for the Affordable Housing Dwellings.
- 5.5 In the event that at the end of the three (3) month period referred to under paragraph 5.4 above, the Owner remains unable to enter into a sale and purchase agreement with a Registered Provider (or the local housing authority) in accordance with the terms of this Schedule and Deed, the Owner will then enter discussions with the Council to negotiate an agreed solution in the following sequential order and the agreed outcomes shall be confirmed in a further Revised Affordable Housing Scheme (or such other arrangement as the Council may reasonably require): -
- 5.5.1 the gifting of a reasonable proportion of the Affordable Housing Units to the Council; or
  - 5.5.2 the provision of a commuted sum to the Council in lieu of the number of Affordable Housing Units forfeited; or
  - 5.5.3 as a last resort disposal or assignment of an agreed proportion of the Affordable Housing Units on the open market to a person

in housing need at 60% of their open market value with all appropriate surveying and legal safeguards necessary to ensure that the discount remains in perpetuity.

### **Open Space**

- 6.1 As part of the application for Reserved Matters Approval, to prepare and submit for the approval of the Council the Open Space Strategy which shall include specifications and details of the appearance, scale, design, location, materials and timescales for delivery of the Open Space;
- 6.2 Not to Commence or permit Commencement of the Development until the Council has approved in writing the Open Space Strategy under this Deed.
- 6.3 Prior to Occupation no more than 25 % of Dwellings comprised in the Development, to:
  - a) layout construct and provide for the use of any occupiers of the Development (but without exclusion of others) the Open Space in accordance with the approved Open Space Strategy and any relevant Conditions; and
  - b) thereafter to permanently manage and maintain the Open Space to a good standard and repair throughout the life of the completed Development, and upon completion of the Open Space to give the Council written notice of not less than 15 Business Days to inspect the Open Space and to confirm that it has been laid out to its reasonable satisfaction which shall be confirmed by promptly issuing a certificate ("Confirmation Certificate") PROVIDED ALWAYS that the Open Space shall have been laid out and completed prior to Occupation of no more than 25% of Dwellings and the Owner will not Occupy or permit Occupation of more than 25% of Dwellings until the Council has issued the Confirmation Certificate.

### **Management and Maintenance of the Open Space**

- 6.4 The Open Space Strategy to be submitted by the Owner and approved by the Council pursuant to paragraph 6.1 of this Schedule, shall make provision for the management and maintenance of the Open Space in perpetuity as set out in this



paragraph 6.4 of this Second Schedule and shall be given full effect before Occupation of the first Dwelling as follows: -

- 6.4.1 to provide details of the identity of the proposed Management Entity that is to be responsible for managing and maintaining the Open Space with monies received by the Management Entity; and
- 6.4.2 the timetable for setting up of the proposed Management Entity prior to first Occupation of the first Dwelling, and
- 6.4.3 details of the permanent funding of the proposed Management Entity or other responsible body which may include one or more of the following arrangements: -
  - 6.4.4 Commuted sums for investment for the benefit of the Management Entity; and / or
  - 6.4.5 The creation of an estate rent charge or other service charge arrangements, including details of the covenants to be entered into by buyers of individual Dwellings to pay that Dwelling's proportion of the costs and expenses of the Management Entity and to ensure the incoming buyer on a subsequent sale of such Dwelling will enter into like covenants; and / or
  - 6.4.6 Endowing the relevant Management Entity with income generating assets; and
  - 6.4.7 to make appropriate arrangements for the provision of security for funding the Management Entity; and
  - 6.4.8 to provide for ongoing review and monitoring arrangements by the Owner (including their successors in title) to demonstrate that the Management Entity is being adequately funded in accordance with the approved arrangements as per the Open Space Strategy and will be adequately funded

throughout the life of the Development, the outcomes of such a review to be reported to the Council at appropriate intervals as approved in the Open Space Strategy or otherwise agreed in writing or upon reasonable request from the Council; and

6.4.9 in the event that the Council notifies the Owner in writing that monitoring reports received reveal the Management Entity has inadequate funding to meet its obligations under this Schedule, to increase or top up the funds of the Management Entity through a reasonable and proportionate adjustment of its estate rent charges or other service charge arrangements or any other arrangements agreed with the Council in writing; and

6.4.10 the management and maintenance standards in this Schedule and Deed are to be implemented on or before first Occupation and retained in perpetuity; and

6.4.11 public access arrangements are to be made in perpetuity and are to include ongoing community engagement and liaison via the Management Entity; and

6.4.12 details of step in rights for the Council in the event of default by the Owners and / or the Management Entity in carrying out the maintenance or management requirements in the agreed Open Space Strategy and this Deed; and

6.4.13 in the event the Management Entity becomes insolvent or is otherwise substantially unable to perform its duties to manage and maintain the Open Space and no alternative arrangements for effectively doing so are promptly put in place to the reasonable satisfaction of the Council, the Owners shall make provision for detailed arrangements such that the Council may itself receive all payments that would or should have otherwise been paid to the Management Entity (which may include an assignment of the rights to receive

service contributions from occupiers) subject to the Council using all such monies for the purposes of meeting the said management and maintenance obligations in respect of the Open Space including appointing its own Management Entity to do so PROVIDED THAT this arrangement shall not be deemed to amount to adoption of the Open Space or any part of it by the Council except by way of an express agreement to dedicate and adopt the Open Space (or any part thereof) together with financial arrangements for commuted sums for its future maintenance.

6.5 To ensure that any subsequent sale, transfer or assignment of the Site or any part thereof comprising the Open Space (or any part thereof) contains all of the following covenants in respect of the Open Space and for the benefit of any retained land and / or part disposed of or assigned: -

- 6.5.1 restriction preventing use for any purpose other than as public open space;
- 6.5.2 not to be used for a trade or business;
- 6.5.3 not to be used for residential purposes;
- 6.5.4 to keep the land in good repair and condition;
- 6.5.5 not to obstruct the public highway;
- 6.5.6 to keep and properly maintain the boundaries in good repair and condition;
- 6.5.7 to properly keep and maintain landscaping;
- 6.5.8 to keep and maintain the land in a clean and tidy condition;  
and
- 6.5.9 not to cause or knowingly permit any nuisance on the land.

- 6.6 On any transfer or part thereof of the Open Space to procure that any transferee shall simultaneously enter into a direct covenant with the owner for the whole or relevant parts of the retained land to observe and perform these covenants, and
- 6.7 Not to erect any buildings or other erections on the Open Space except equipment ancillary to the purpose for which the land is transferred and which does not compromise the use of the Open Space provided that this restriction shall not prevent the grant of any necessary easements for the purpose of providing services to the Site in under or over the Open Space.

## **7 Financial Contributions**

### **Healthcare Contribution**

- 7.1 To pay the Healthcare Contribution in full to the Council prior to the Occupation of the Development; and
- 7.2 Not to Occupy or permit Occupation of any of the Dwellings unless and until the Healthcare Contribution has been paid in full.

### **Sport Contribution**

- 7.3 To pay the Sport Contribution to the Council in full on or prior to the Occupation of twenty five per cent (25%) of the Dwellings; and
- 7.4 Not to Occupy or to permit Occupation of more than twenty five per cent (25%) of the Dwellings unless and until the Sport Contribution has been paid in full to the Council

### **Allotment Contribution**

- 7.5 To pay the Allotment Contribution to the Council in full prior to the Occupation of more than fifty per cent (50%) of the Dwellings; and
- 7.6 Not to Occupy or to permit Occupation of more than fifty per cent (50%) of the Dwellings unless and until the Allotment Contribution has been paid in full.

### **Youth Contribution**

- 7.7 To pay the Youth Contribution to the Council in full prior to the Occupation of twenty five per cent (25%) of the Dwellings; and
- 7.8 Not to Occupy or to permit Occupation of more than twenty five per cent (25%) of the Dwellings unless and until the Youth Contribution has been paid in full

### Third Schedule

#### Owner's covenants to the County Council

The Owner covenants with the County Council so as to bind the Site and successors in title to and / or assigns of the Owner as follows: -

##### **County Council's Monitoring Contribution**

- 1.1 To pay the County Council's Monitoring Contribution to the County Council prior to Occupation of the first Dwelling; and
- 1.2 Not to Occupy any Dwelling until the County Council's Monitoring Contribution has been paid in full.

##### **Education Contribution**

- 1.3 To pay 50% of the Education Contribution to the County Council prior to Occupation of the first Dwelling; and
- 1.4 Not to Occupy any Dwelling until 50% of the Education Contribution has been paid.
- 1.5 To pay the remaining 50% of the Education Contribution to the County Council prior to Occupation of the 30<sup>th</sup> Dwelling; and
- 1.6 Not to Occupy more than 29 Dwellings until the remaining 50% of the Education Contribution has been paid.

##### **Library Contribution**

- 1.7 To pay the Library Contribution in full to the County Council prior to the Occupation of the first Dwelling and
- 1.8 Not to Occupy any Dwelling unless and until the Library Contribution has been paid in full.

##### **Highways - Travel Packs, Bus Passes, Travel Plan Co-Ordinator and Travel Plan Monitoring Contribution**

- 2.1 Not less than one (1) month before first Occupation of the first Dwelling to provide a draft Travel Pack to the County Council for review and approval together with the Travel Pack Administration Fee.
- 2.2 To provide a Travel Pack to the Occupiers on first Occupation of each Dwelling.
- 2.3 Commencing six (6) months from the first Occupation of the first Dwelling the Owner shall provide the County Council with details of the Travel Packs supplied to the Occupiers within the preceding six (6) month period until six (6) months after first Occupation of the final Dwelling.

- 2.4 The Owner covenants with the County Council to provide up to two (2) Bus Passes for each Dwelling who complete and return the application forms provided in the Travel Pack within six (6) months of first Occupation of such Dwelling.
- 2.5 Commencing six (6) months from the first Occupation of the first Dwelling the Owner shall provide the County Council with details of the Bus Passes supplied to the Occupiers within the preceding six (6) month period until six (6) months after first Occupation of the final Dwelling.
- 2.6 To pay the Travel Plan Monitoring Contribution to the County Council in full prior to the Occupation of the first Dwelling.
- 2.7 Not to Occupy or permit Occupation of any of the Dwellings unless and until the Travel Plan Monitoring Contribution has been paid to the County Council in full.
- 2.8 To appoint a Travel Plan Co-Ordinator prior to the Commencement of Development such appointment to continue until the date which is five (5) years from the first Occupation of the first Dwelling.

**Fourth Schedule**

**The Council's Covenants with the Owner**

The Council covenants with the Owner as follows:

1. At the written request of the Owner the Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed
2. Unless otherwise agreed between the Council and the Owner in writing, to use (or procure the use of) all sums received under the terms of this Deed for the purposes specified in this Deed for which they have been paid.
3. Unless otherwise agreed between the Council and the Owner in writing, in the event that all or part of the Contributions payable to the Council remain unexpended or have not been committed for expenditure by the Council at the end of the period of 5 years from the date when the last Contribution payable to the Council was received in full by the Council then the Council shall within 28 days of a written request to do so repay any unexpended sums to the person who made the payment.
4. At the reasonable written request of the Owner the Council shall provide written confirmation of whether and how the Contributions payable to the Council have been spent and shall provide such evidence of expenditure as reasonably requested.
5. To issue the Planning Permission on the date hereof or as soon as reasonably practicable thereafter.

## Fifth Schedule

### The County Council's Covenants with the Owner

The County Council covenants with the Owner as follows:

1. At the written request of the Owner the County Council shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed.
2. Unless otherwise agreed between the County Council and the Owner in writing, to use (or procure the use of) all sums received under the terms of this Deed for the purposes specified in this Deed for which they have been paid.
3. Unless otherwise agreed between the County Council and the Owner in writing, in the event that all or part of the Contributions payable to the County Council remain unexpended or have not been committed for expenditure by the County Council at the end of the period of ten (10) years from the date when the last Contribution payable to the County Council was received in full by the County Council then the County Council shall within twenty eight (28) days of a written request to do so repay any unexpended sums to the person who made the payment.
4. At the reasonable written request of the Owner the County Council shall provide written confirmation of whether and how the Contributions payable to the County Council have been spent and shall provide such evidence of expenditure as reasonably requested.



**Seventh Schedule**

**Plan 1**



**Executed as a Deed by affixing**  
**The Common Seal of**  
**CHARNWOOD BOROUGH COUNCIL**



**in the presence of**  
.....  
**Authorised Signatory**

2022/23-33

**Executed as a deed**  
**(but not delivered until the date hereof) by**  
**STURDEE POULTRY FARMS LIMITED**

acting by:

Director .....

Director/Secretary .....

Or acting by:

Director .....

In the presence of:

Witness Signature:

Name of Witness:

Address:



**Executed as a Deed by affixing  
The Common Seal of  
LEICESTERSHIRE COUNTY COUNCIL  
in the**



.....

**Authorised Signatory**

**Executed as a Deed by**

in the presence of

)  
)

*Name of Witness*

*Signature of Witness*

*Occupation of Witness*

*Address of Witness*

