



Registration of a Charge

Company name: **KIER LIVING LIMITED**

Company number: **00775505**

Received for Electronic Filing: **30/05/2018**



X771KXD4

Details of Charge

Date of creation: **24/05/2018**

Charge code: **0077 5505 0048**

Persons entitled: **THE GURLOQUE SETTLEMENT
NORWICH CONSOLIDATED CHARITIES
GREAT HOSPITAL
ANGUSH'S EDUCATIONAL FOUNDATION**

Brief description:
Contains floating charge(s) .

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **WE CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **BIRKETTS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 775505

Charge code: 0077 5505 0048

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th May 2018 and created by KIER LIVING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th May 2018 .

Given at Companies House, Cardiff on 1st June 2018

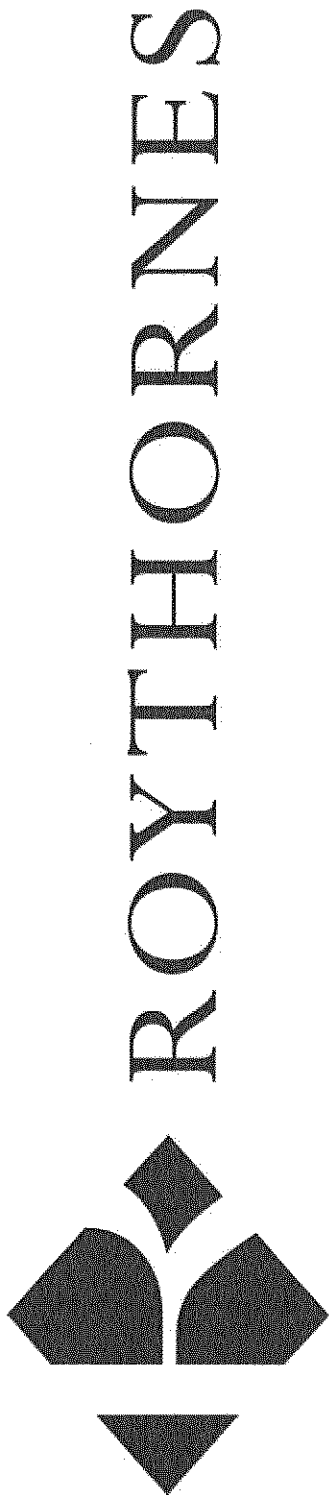
The above information was communicated by electronic means and authenticated
by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**



DATED 24 May 2018

THE GURLOQUE SETTLEMENT

- and -

NORWICH CONSOLIDATED CHARITIES

- and -

GREAT HOSPITAL

- and -

ANGUSH'S EDUCATIONAL FOUNDATION

- and -

KIER LIVING LIMITED

- and -

ROYTHORNES LIMITED

- and -

BIRKETTS TRUSTEES LIMITED and
BIRKETTS TRUSTEES TWO LIMITED

DEED OF AGREEMENT FOR CHARGE,
OVERAGE AND ESCROW

relating to

land known as
Parcel B, Lot 1 (Cringleford 2), Cringleford,
South Norfolk

THIS AGREEMENT is made the 24 day of May 2018

BETWEEN:

- (1) **THE GURLOQUE SETTLEMENT** c/o Mills & Reeve LLP of Whitefriars, 1 St. James Court, Norwich, NR3 1RU (whose details are set out in Part 1 of Schedule 1) ("**Gurloque**");
- (2) **NORWICH CONSOLIDATED CHARITIES** a registered charity (registered charity number 1094602) of 1 Woolgate Court, St Benedicts Street, Norwich, NR2 4AP acting by its trustees (whose details are set out in Part 2 of Schedule 1) ("**NCC**");
- (3) **GREAT HOSPITAL** a registered charity (registered charity number 211953) of Bishopgate, Norwich, Norfolk, NR1 4EL acting by its trustees (whose details are set out in Part 3 of Schedule 1) ("**GH**");
- (4) **ANGUISH'S EDUCATIONAL FOUNDATION** a registered charity (registered charity number 311288) also of 1 Woolgate Court aforesaid acting by its trustees (whose details are set out in Part 4 of Schedule 1) ("**AEF**");
- (5) **KIER LIVING LIMITED** (company number 00775505) whose registered office is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD (the "**Kier**");
- (6) **ROYTHORNES LIMITED** (Company Registration Number: 06611251) whose registered office is at Enterprise Way, Pinchbeck, Spalding, Lincolnshire, PE11 3YR (reference IH.KIE18-39) ("**Kier's Solicitors**"); and
- (7) **BIRKETTS TRUSTEES LIMITED** (company number 06122123) whose registered office is at Brierly Place, New London Road, Chelmsford, CM2 0AP and **BIRKETTS TRUSTEES TWO LIMITED** (company number 10879076) whose registered office is also at Brierly Place aforesaid (the "**Security Trustees**").

NOW IT IS HEREBY AGREED as follows:

1. **INTERPRETATION**

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

1.1 Definitions:

"Balancing Payment"	has same meaning as contained in the relevant School Site Overage Deed and Balancing Payments or Balancing Payment(s) shall be construed accordingly..
"Collaboration Agreement"	means the collaboration agreement dated with the same date as this Deed and made between (1) Kier Living Limited (2) Kier Cross Keys Dev LLP (3) Allison Homes Eastern Limited (4) Big Sky Developments Limited (5) BSDAO (Cringleford) Limited (6) Roythornes Limited and (7) Birketts Trustees Limited and Birketts Trustees Two Limited.
"Default Rate"	means 4% per annum above the Interest Rate.
"Escrow Account"	means an account established by Kier's Solicitors and to be used solely for the purpose of holding the Escrow Balance, such account to be a solicitors' client account held with a UK clearing bank and which account shall not be the same account as the escrow account established pursuant to the Collaboration Agreement.
"Escrow Balance"	means the Escrow (School) Balance or the Escrow (Retention) Balance as appropriate.
"Escrow (Retention) Balance"	means an amount equal to any Retention made pursuant to the relevant School Site Overage Deed plus an amount equal to VAT on that amount.
"Escrow (School) Balance"	means the sum of £850,000 less the total of all Balancing Payments previously made or in the process of being made plus an amount equal to VAT on that resulting amount.
"First Charge"	means the legal charge relating to Parcel B, Lot 1 Cringleford (including the School Site) made on the date of this Deed and made between (1) the Gurloque Settlement (2) Norwich

Consolidated Charities (3) Great Hospital (4) Anguish's Educational Foundation (5) Kier Living Limited and (6) Birketts Trustees Limited and Birketts Trustees Two Limited.

"First School Site Charge" means the First Charge insofar as it relates to the School Site.

First School Site Overage Deed means the overage agreement relating to the School Site made on the date of this Deed between (1) the Gurloque Settlement (2) Norwich Consolidated Charities (3) Great Hospital (4) Anguish's Educational Foundation (5) Kier Living Limited and (6) Birketts Trustees Limited and Birketts Trustees Two Limited.

"Interest Rate" means the base rate from time to time of HSBC Bank plc.

"Insolvency Event" shall have the same meaning as defined in the relevant School Site Charge.

Overage Payment (Commercial Condition) shall have the same meaning as defined in the relevant School Site Overage Deed.

Overage Payment (Planning Condition) means an Overage Payment (Commercial Condition) or an Overage Payment (Residential Condition) (as appropriate).

Overage Payment (Residential Condition) shall have the same meaning as defined in the relevant School Site Overage Deed.

Overage Payment (School Condition) shall have the same meaning as defined in the relevant School Site Overage Deed.

"Primary School Condition" means the discharge of the School Site from the School Site Obligations and (if appropriate) the return of the School Site from Norfolk County Council to Kier or (at Kier's direction) KCK and the ceasing of the School Site Obligations to be

	enforceable against the School Site in accordance with the proviso to Paragraphs 1.1 to 1.3 (inclusive) of Part 4 of Schedule 1 of the Section 106 Agreement.
"Reconciliation Payment"	means any payment required pursuant to clause 3.5 of the relevant School Site Overage Deed.
"Retention"	shall have the same meaning as that contained in the relevant School Site Overage Deed.
"Replacement School Site Charge"	means a legal charge deed substantially in the form annexed to this Deed at Appendix 2.
"Replacement School Site Overage Deed"	means an overage deed substantially in the form annexed to this Deed at Appendix 1.
"Roundhouse Infrastructure Agreement"	shall have the same meaning as that contained in the Collaboration Agreement.
"School Site"	Shall have the same meaning as defined in the Collaboration Agreement.
"School Site Charge"	means the First School Site Charge or the Replacement School Site Charge (as appropriate) and the relevant School Site Charge shall mean the School Site Charge that is in force against the School Site at the relevant time.
"School Site Obligations"	means the obligations on the part of the owners of the Property contained in Part 4 of Schedule 1 of the Section 106 Agreement
"School Site Overage Deeds"	means the First School Site Overage Deed or the Replacement School Site Overage Deed (as appropriate) and the relevant School Site Overage Deed shall mean which of the School Site Overage Deeds is in force at the relevant

time.

"Section 106 Agreement"

means the agreement made pursuant to Section 106 of the 1990 Act dated 6 July 2015 and made between (1) South Norfolk District Council (2) Norfolk County Council (3) William David Winslow Barr Kate Alice Paul and David Edward Brown (4) The Official Custodian for Charities on behalf of the Trustees of Norwich Consolidated Charities and the Trustees of the Great Hospital of Bishopgate (5) The Official Custodian for Charities on behalf of the Trustees of Anguish's Educational Foundation and (6) Land Fund Limited as varied by the Section 106 Deed of Variation) as varied by the deed of variation dated 10 January 2018 pursuant to Section 106A of the Town and Country Planning 1990 Act.

"Seller"

means collectively Gurloque, NCC, GH and AEF.

"Seller's Solicitors"

means Birketts LLP of Kingfisher House, 1 Gilders Way, Norwich, Norfolk, NR3 1UB (Ref: RVG/182468.0008).

"Termination Date"

means the earlier of the date on which:

- a. the sum of all Balancing Payments paid is equal to or more than £850,000;
- b. the Overage Payment (School Condition) and the Overage Payment (Planning Condition) are paid to the Seller in accordance with the relevant School Site Overage Deed; or
- c. the construction of a school on the School Site pursuant to Part 4 of Schedule 1 of the Section 106 Agreement is commenced.

"Thickthorn Infrastructure Agreement"

shall have the same meaning as that defined in the Collaboration Agreement.

"VAT" means value added tax or any equivalent tax chargeable in the UK or elsewhere.

"Withdrawal Notice" means a written notice requesting the withdrawal of a sum equal to the Balancing Payment (or part thereof where the withdrawal relates to a part payment) or the Overage Payment (School Condition) or the Reconciliation Payment (as appropriate) and the written notice shall:

- a. specify the reason for which the withdrawal is required;
- b. specify the amount of the withdrawal requested;
- c. (unless the amount requested is a commuted sum or other sum specified in the Thickthorn Infrastructure Agreement or the Roundhouse Infrastructure Agreement in which case a copy of the relevant agreement is to be provided together with the written notice) have annexed to it a copy of any relevant invoice(s) (being a valid VAT invoice if VAT is to be paid) receipt(s) or other documentation evidencing that the amount requested has fallen due or will fall due on or before the date for payment specified in the Withdrawal Notice;
- d. specify the payee, the required method of payment and (if applicable) the payee's account details; and
- e. specify the date by which payment is required.

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

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.3 Unless otherwise specified, 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 Unless the context otherwise requires, references to clauses are to the clauses of this Deed and references to schedules are to the schedules of this Deed.
- 1.6 Clause headings shall not affect the interpretation of this Deed.
- 1.7 In this Deed, a reference to Kier includes its successors in title to the School Site who have provided a deed of covenant to the Sellers in which those successors covenant to comply with Kier's obligations in this Deed.
2. **GOOD FAITH**
- 2.1 Kier and the Seller are to act in good faith towards each other in relation to matters which are the subject of this Deed.
3. **KIER'S AND SELLER'S COVENANTS**
- 3.1 Kier will supply a copy of any written notification received from Norfolk County Council confirming satisfaction of the Primary School Condition to the Seller within 5 (five) Working Days of receipt of the same (and which may be the same notice as served pursuant to clause 3.8 of the relevant School Site Overage Deed);
- 3.2 If the School Site is transferred to Norfolk County Council pursuant to the Section 106 Agreement and is later returned by Norfolk County Council to Kier, Kier will immediately upon completion of the transfer back of the School Site:
- 3.2.1 notify the Seller of the return of the School Site; and
- 3.2.2 enter into Replacement School Site Charge and Replacement School Site Overage Deed with the Seller.
- 3.3 If between the return of the School Site to Kier and the date on which the Replacement School Site Overage Deed is completed any payments would have become due and

payable under the Replacement School Site Overage Deed had the Replacement School Site Overage Deed completed, Kier shall be liable to make those payments on the same terms as though the Replacement School Site Overage Deed had completed.

- 3.4 The Seller acknowledges that Kier intends to transfer its interest in Parcel B, Lot 1 Cringleford to Kier Cross Keys Dev LLP ("KCK"). In the event of such transfer, the Seller covenants with Kier and KCK to release the First Charge and (if different) the relevant School Site Charge provided that KCK enters into a new charge or charges on the same terms upon completion of the release.

4. **ESCROW ACCOUNT**

- 4.1 On or before:

- 4.1.1 *24 May* 2019 (unless by that date the Overage Payment (School Condition) has become due and payable under the relevant School Site Overage Deed) Kier shall pay the Escrow (School) Balance into the Escrow Account; and

- 4.1.2 the date on which each Overage Payment (Planning Condition) becomes due and payable under the relevant School Site Overage Deed Kier shall pay the extent of the Escrow (Retention) Balance relating to that Overage Payment (Planning Condition) (if any) into the Escrow Account;

where the same shall be held in accordance with this Deed.

- 4.2 Any interest that accrues on the credit balance on the Escrow Account from time to time shall belong to Kier and may be withdrawn by Kier at any time.

- 4.3 The liability to taxation on any interest on any amount in the Escrow Account shall be borne by Kier.

- 4.4 No amount shall be released from the Escrow Account (other than interest) otherwise than in accordance with clause 5 or clause 6.

5. **WITHDRAWALS FROM THE ESCROW ACCOUNT**

- 5.1 By serving a Withdrawal Notice on the Seller and Kier's Solicitors, Kier shall:

- 5.1.1 subject to clauses 5.2 and 5.3, be entitled to request the withdrawal from the Escrow Account and payment to the specified payee of a sum equal to any Balancing Payment(s) that fall due; and
- 5.1.2 on or before the date on which the Overage Payment (School Condition) falls due, request the withdrawal and payment of the Overage Payment (School Condition) to the Seller which payment shall be in satisfaction of the Overage Payment (School Condition) pursuant to the relevant School Site Overage Deed; and
- 5.1.3 on or before the date on which the Reconciliation Payment falls due, request the withdrawal and payment of the Reconciliation Payment to the Seller which payment shall be in satisfaction of the reconciliation payment to be made pursuant to clause 3.5 the relevant School Site Overage Deed.
- 5.2 Kier shall serve the Withdrawal Notice at least 10 Working Days prior to the date that payment is required as specified in the Withdrawal Notice and unless (in relation to a request relating to a Balancing Payment) within that 10 Working Day period a reasonable and proper counter-notice is served by the Seller on Kier and Kier's Solicitors objecting to the withdrawal of the Balancing Payment (or relevant part) Kier's Solicitors are irrevocably authorised to pay the Balancing Payment (or relevant part) to the party specified in the Withdrawal Notice on the date specified in the Withdrawal Notice.
- 5.3 Should a counter-notice be served on Kier and Kier's Solicitors by the Seller pursuant to clause 5.2 Kier and the Seller shall act reasonably and in good faith and seek to agree the Withdrawal Notice or an amended Withdrawal Notice within 10 Working Days of the date of the counter-notice and in the event that the Withdrawal Notice or an amended Withdrawal Notice is not agreed within 10 Working Days of the date of the counter-notice a dispute shall be deemed to have arisen and shall be determined pursuant to clause 13.
- 5.4 It is acknowledged by the Seller that the Balancing Payment may fall due in stages and in such case more than one Withdrawal Notice may be served in accordance with clause 5.1.1 requesting a part payment of the Balancing Payment and the procedures set out in clauses 5.2 and 5.3 shall be repeated in respect of each withdrawal.

- 5.5 Any element of Balancing Payment which is properly incurred by Kier but is not included in one Withdrawal Notice may be included in a subsequent Withdrawal Notice but there shall be no duplicate payments.
- 5.6 Any Balancing Payment(s) withdrawn from the Escrow Account under this Deed shall be taken into account in the calculation of the payments due under the relevant School Site Overage Deed as a deduction in accordance with the terms of the relevant School Site Overage Deed but so that there shall be no double-deduction of the same Balancing Payment.
- 5.7 Where Kier does not pay the Overage Payment (School Condition) or the Reconciliation Payment to the Seller on or before the date on which the Overage Payment (School Condition) or the Reconciliation Payment (as appropriate) falls due the Seller shall be entitled to request the withdrawal and payment of such sum from the Escrow Balance to the Seller by serving a Withdrawal Notice on Kier and Kier's Solicitors and unless (in relation to a request relating to a Balancing Payment) within 10 Working Days from receipt of that Withdrawal Notice a reasonable and proper counter-notice is served by Kier on the Seller and Kier's Solicitors objecting to the withdrawal of the Overage Payment (School Condition) or Reconciliation Payment (as appropriate) Kier's Solicitors are irrevocably authorised to pay the Overage Payment (School Condition) or Reconciliation Payment (as appropriate) to the Seller on the date specified in the Withdrawal Notice. Such payment shall be in satisfaction of the Overage Payment (School Condition) or Reconciliation Payment (as appropriate).
- 5.8 Should a counter-notice be served on the Seller and Kier's Solicitors by Kier pursuant to clause 5.7 Kier and the Seller shall act reasonably and in good faith and seek to agree the Withdrawal Notice or an amended Withdrawal Notice within 10 Working Days of the date of the counter-notice and in the event that the Withdrawal Notice or an amended Withdrawal Notice is not agreed within 10 Working Days of the date of the counter-notice a dispute shall be deemed to have arisen and shall be determined pursuant to clause 13.
- 5.9 The Seller agrees not to enforce the relevant School Site Charge due to the non-payment of the Overage Payment (School Condition) or Reconciliation Payment (as appropriate) unless and until it has requested the satisfaction of such liability pursuant to clause 5.7

and such liability has not been settled within 10 Working Days of the date of notice of (in the event of a dispute pursuant to clause 5.8) the date on which that dispute is determined.

6. KIER'S SOLICITORS

6.1 Kier's Solicitors have agreed at the request of the Kier and the Seller to join in this Deed for the purpose only of:

6.1.1 acknowledging the instructions contained in it;

6.1.2 acknowledging that that they owe Kier and the Seller a duty of care in respect of carrying out such instructions;

6.1.3 confirming that they will receive the Escrow Balance and that they will hold them as stakeholder in the Escrow Account; and

6.1.4 giving the undertaking set out below in clause 6.4;

and it is accepted by Kier and the Seller that these acts are within the ordinary course of business of Kier's Solicitors and it is warranted that the director signing this Deed has authority to bind Kier's Solicitors.

6.2 Kier and the Seller hereby irrevocably instruct Kier's Solicitors to receive and retain as stakeholder the Escrow Balance or any part of them in accordance with this Deed.

6.3 Kier and the Seller hereby jointly and severally agree and irrevocably instruct Kier's Solicitors to deal with the Escrow Balance upon the terms set out in this Deed and in particular not to release any part of the Escrow Balance save in accordance with the terms hereof.

6.4 Kier's Solicitors hereby undertake with Kier and the Seller (jointly and severally) to hold as stakeholder in the Escrow Account any money received by them at any time constituting the Escrow Balance and any interest earned thereon from time to time and to deal with them as specified in this Deed.

6.5 Kier's Solicitors shall not withdraw or release any monies from the Escrow Account unless they are satisfied that:

- 6.5.1 a Withdrawal Notice has been served and Kier and the Seller have agreed to the withdrawal;
- 6.5.2 a Withdrawal Notice been properly served but has not been responded to within the relevant period;
- 6.5.3 a dispute has been finally determined and the withdrawal is in accordance with the determination; or
- 6.5.4 the Escrow Account is to be closed pursuant to clause 9.
- 6.6 If Kier's Solicitors reasonably believe that they have received conflicting notices, claims, demands or instructions or for any reason are unable to determine whether or not to make any withdrawal or release of the Escrow Balance or any part of it or the correct amount of such withdrawal, Kier's Solicitors may elect, by notice to Kier and the Seller, to refuse to make any payment from the Escrow Account until:
 - 6.6.1 Kier's Solicitors have received joint written instructions from Kier and the Seller; or
 - 6.6.2 Kier's Solicitors are directed by a final order or judgment from a court of competent jurisdiction;and Kier's Solicitors shall then deal with the Escrow Account in accordance with those instructions or that order.
- 6.7 Kier's Solicitors may be replaced by Kier by another reputable firm of solicitors in England and Wales approved by Kier and the Seller in writing (such approval not to be unreasonably withheld or delayed) provided that such firm has supplied an executed deed of covenant to Kier and the Seller to comply with the terms of this Deed and upon such appointment (and provided that the duly executed deed of covenant has been delivered to Kier and the Seller) Kier's Solicitors shall immediately be discharged from the undertaking contained in this Deed.
- 6.8 Kier's Solicitors shall perform only such duties as are specifically set out in this Deed and in connection with such duties, Kier's Solicitors shall not be liable for any mistake of fact, error of judgment or act or omission (other than resulting from their wilful misconduct or gross negligence) and shall be entitled to rely on any written notice, instrument or

signature believed by Kier's Solicitors to be genuine and believed to have been signed or presented by the proper party or parties duly authorised to do so.

6.9 Kier and the Seller agree to indemnify Kier's Solicitors and hold Kier's Solicitors harmless against any and all liabilities (including, without limitation, any charges reasonably and properly incurred in operating the Escrow Account) reasonably and properly incurred as a result of actions taken pursuant to this Deed (except for liabilities incurred by Kier's Solicitors resulting from their wilful misconduct or gross negligence or liabilities incurred as a result of the Seller default of Kier or the Seller for which Kier or the Seller (as appropriate) shall indemnify Kier's Solicitors) provided that Kier's Solicitors agree that they will seek to enforce the indemnity in this clause 6.9 against Kier and the Seller jointly.

6.10 Kier's Solicitors shall be entitled to be paid their reasonable and proper charges for operating the Escrow Account as they fall due PROVIDED THAT Kier's Solicitors shall provide a valid VAT invoice addressed to Kier and the Seller in respect of one equal share of these costs.

6.11 Kier's Solicitors shall from time to time upon reasonable request notify Kier and the Seller of the balance of the Escrow Account and provide details of all deposits and withdrawals therefrom.

7. MANAGEMENT OF ESCROW ACCOUNT

7.1 In no circumstances shall Kier's Solicitors be required to draw or pay to any party an amount exceeding the sum held on the Escrow Account from time to time

7.2 The Escrow Account is an interest bearing Escrow Account held by Kier's Solicitors on the terms of this Deed and all interest as it arises shall be credited to the Escrow Account and shall form part of the sums held and be subject to the terms applicable to the Escrow Account as set out in this Deed.

8. OWNERSHIP OF ESCROW BALANCE

8.1 For the avoidance of doubt it is confirmed that the Escrow Balance paid in by Kier shall remain the property of Kier until such time as a withdrawal is made pursuant to the

terms of this Deed but subject to the charge contained in clause 8.2 below the Escrow Balance shall not be released to Kier otherwise than in accordance with the terms of this Deed.

- 8.2 Kier charges to the Seller Kier's interest in the Escrow Balance as security against an Insolvency Event occurring in respect of Kier and shall at its own cost execute any document or take any action which the Seller may reasonably require in order to perfect such charge, including the registration of the charge pursuant to the Companies Act 2006 section 860.

9. CLOSURE OF THE ESCROW ACCOUNT

- 9.1 As soon as reasonably possible after the Termination Date the Escrow Account shall be closed.

- 9.2 In the event that a dispute has not been finally determined the Escrow Account shall remain open and no payments shall be made until the dispute has been finally determined.

10. VAT

- 10.1 Each amount stated to be payable by Kier to the Seller under or pursuant to this Deed is exclusive of VAT (if any).

- 10.2 If any VAT is chargeable on any supply made by the Seller under or pursuant to this Deed, Kier covenants with the Seller that on receipt of a valid VAT invoice, it will pay the Seller an amount equal to that VAT.

11. THIRD PARTY RIGHTS

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

12. JOINT AND SEVERAL LIABILITY

Save where clause 14 applies, where the Seller comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Seller arising under this Deed and Kier may take action against, or release or compromise the

liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

13. **DISPUTES**

13.1 Any dispute arising between Kier and the Seller will first be referred to a director or managing director of Kier and the duly elected representative of the Seller for resolution. If those individuals cannot resolve any dispute within 20 Working Days the Kier and the Seller shall be in dispute and the remaining provisions of this clause 13 shall apply.

13.2 In the event of a dispute arising in respect of any matter under this Deed Kier or the Seller may refer the matter in dispute to a Surveyor

13.3 ^{or Kier's solicitors (sup of seller).} The Surveyor shall (in default of agreement between Kier and the Seller as to his appointment within 10 Working Days of Kier or the Seller first proposing an appointment) be appointed on the application of Kier and the Seller by the President (or should he not be available the next senior officer available) of the Royal Institution of Chartered Surveyors to act as an expert to determine the matter

13.4 The Surveyor shall be a practising member of the Royal Institution of Chartered Surveyors and both of recognised standing and with current relevant experience. He shall be instructed that on his appointment he shall forthwith notify Kier and the Seller in writing of his appointment and that he should make his determination within six weeks of the date of his appointment

13.5 If the Surveyor shall fail to determine the matter referred to him and inform Kier and the Seller of his determination within a reasonable time (and in any event within 8 weeks of being appointed) or if he shall relinquish his appointment or die or should it become apparent that for any reason he will be unable to complete his duties Kier or the Seller may apply to the President of the Royal Institution of Chartered Surveyors (or other officer as before) for a substitute to be appointed in his place and this procedure may be repeated as many times as necessary and the provisions of this clause shall operate in relation to that application as in relation to any earlier application

- 13.6 In determining the matter referred to him the Surveyor shall have regard to the terms of this Deed.
- 13.7 The Surveyor (despite the fact that he is appointed as an expert) shall nevertheless permit Kier and the Seller or their professional advisors to make written representations to him and in the event that written representations are made the Surveyor shall pass details to the other inviting written cross representations such cross representations to contain solely comments in reply to matters raised in the other party's initial representations and to be forwarded to the Surveyor within 10 Working Days of receipt by the respective Party in dispute of details of the other party's initial representations provided always that the parties shall not submit without prejudice correspondence or records of without prejudice negotiations and representations
- 13.8 The Surveyor shall publish his determination within six weeks of the date of his appointment
- 13.9 The determination of the Surveyor shall be final and binding upon Kier and the Seller (except in the case of manifest error)
- 13.10 Kier and the Seller shall bear the fees and expenses of the Surveyor in such proportions as the Surveyor shall determine and failing determination shall bear them equally between them but shall be responsible for their own costs and if Kier or the Seller shall fail to pay to the Surveyor the proportion of fees and expenses so payable within 15 Working Days of the same being demanded by the Surveyor the other shall be entitled to pay such fees and expenses to the Surveyor and at that stage all such fees and expenses and all incidental expenses shall be repayable by the party in default to the other party with interest at the Default Rate calculated on a day to day basis from the date of payment to the Surveyor to the date on which the party paid receives reimbursement from the party in default.
- 13.11 Any reference to the Surveyor under the provisions of clause 13 shall not prevent Kier and the Seller from agreeing the matter in dispute and withdrawing such reference subject to payment of the Surveyor's fees.

14. **LIABILITY OF THE SELLER**

- 14.1 The liability of the Seller under this Deed is joint and Kier may not take any action against or release or compromise the liability of, grant time or other indulgence to any one of the Seller without doing so with all of the persons who are the herein named Seller.
- 14.2 The expression "net value of the assets" in this clause shall mean the net value for the time being of the assets of the relevant trust less the value of any liability to taxation or any other liability arising from the administration of the relevant trust and properly payable from trust assets.
- 14.3 The aggregate liability of NCC and its trustees in respect of any claim (including the costs relating to any such claim) under this Deed shall not exceed the net value of the assets of NCC and nothing in this Deed shall entitle Kier or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of the NCC or against any assets for the time being vested in them or any of them which are not assets of NCC.
- 14.4 The obligations which the trustees of NCC undertake can only be enforced against them jointly and not individually and then only as trustees of NCC and a trustee who retires from being a trustee of NCC will after his/her retirement no longer be liable for any breach of an obligation under this Deed regardless of whether the breach occurred before or after the retirement.
- 14.5 Clauses 14.3 and 14.4 in relation to the liability of a trustee of NCC will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.
- 14.6 The aggregate liability of the trustees of GH in respect of any claim (including the costs relating to any such claim) under this Deed shall not exceed the net value of the assets of GH and nothing in this Deed shall entitle Kier or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of the GH or against any assets for the time being vested in them or any of them which are not assets of GH.

- 14.7 The obligations which the trustees of GH undertake can only be enforced against them jointly and not individually and then only as trustees of GH and a trustee who retires from being a trustee of GH will after his/her retirement no longer be liable for any breach of an obligation under this Deed regardless of whether the breach occurred before or after the retirement.
- 14.8 Clauses 14.6 and 14.7 in relation to the liability of a trustee of GH will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.
- 14.9 The aggregate liability of the trustees of AEF in respect of any claim (including the costs relating to any such claim) under this Deed shall not exceed the net value of the assets of AEF and nothing in this Deed shall entitle Kier or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of AEF or against any assets for the time being vested in them or any of them which are not assets of AEF.
- 14.10 The obligations which the trustees of AEF undertake can only be enforced against them jointly and not individually and then only as trustees of AEF and a trustee who retires from being a trustee of AEF will after his/her retirement no longer be liable for any breach of an obligation under this Deed regardless of whether the breach occurred before or after the retirement.
- 14.11 Clauses 14.9 and 14.10 in relation to the liability of a trustee of AEF will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.
- 14.12 The aggregate liability of the trustees of Gurloque in respect of any claim (including the costs relating to any such claim) under this Deed shall not exceed the net value of the assets of Gurloque and nothing in this Deed shall entitle Kier or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of Gurloque or against any assets for the time being vested in them or any of them which are not assets of Gurloque.
- 14.13 The obligations which the trustees of Gurloque undertake can only be enforced against them jointly and not individually and then only as trustees of Gurloque and a trustee who retires from being a trustee of Gurloque will after his/her retirement no longer be

liable for any breach of an obligation under this Deed regardless of whether the breach occurred before or after the retirement.

- 14.14 Clauses 14.12 and 14.13 in relation to the liability of a trustee of Gurloque will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.

15. SECURITY TRUSTEES

- 15.1 The Seller the Security Trustees and Kier acknowledge that the Seller has appointed the Security Trustees to act on the Seller's behalf in relation to all matters arising out of this Deed and until otherwise advised by the Seller to Kier in writing:

- 15.1.1 a reference to the Seller in this Deed shall be deemed to be a reference to the Seller or the Security Trustees;

- 15.1.2 in the event of notices served or representations made by both the Seller and the Security Trustees to Kier relating to the same subject matter Kier shall only be obliged to consider the notice(s) or representations made by the Security Trustees;

- 15.1.3 unless otherwise requested in writing by either the Security Trustees or the Seller, any payment to be made by Kier to the Seller shall be made to the Security Trustees; and

- 15.1.4 a payment to the Seller's Solicitors shall be deemed to be a payment to the Seller or the Security Trustees as appropriate.

- 15.2 The Security Trustees have joined into this Deed to confirm their acknowledgment of and agreement to the matters contained in clause 15.1.

16. EXECUTION

- 16.1 This Deed has been executed by the Seller, Kier, Kier's Solicitors and the Security Trustees and is completed on the date referred to on the first page of it.

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

16.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart

SCHEDULE 1

Part 1 (THE TRUSTEES OF THE GURLOQUE SETTLEMENT)

1.	William David Winslow Barr	c/o Mills & Reeve LLP, Whitefriars, 1 St. James Court, Norwich, NR3 1RU
2.	Kate Alice Paul	c/o Mills & Reeve LLP, Whitefriars, 1 St. James Court, Norwich, NR3 1RU
3.	David Edward Brown	c/o Mills & Reeve LLP, Whitefriars, 1 St. James Court, Norwich, NR3 1RU

Part 2 (THE TRUSTEES OF NORWICH CONSOLIDATED CHARITIES)

	Name of Trustee	Address of Trustee
1.	Philip Blanchflower	1 Broadmead Green, Thorpe End, Norwich, NR13 5DE
2.	Brenda Ferris	7 Valentine Street, Norwich, NR2 4BA
3.	David Fullman	115 Somerleyton Gardens, Norwich, NR2 2BP
4.	Christine Herries	21 Oak Street, Norwich, NR3 3AE
5.	Geoffrey Loades	Upland House, Main Road, Swardeston, Norwich, NR14 8AD
6.	Iain Brooksby	Swainsthorpe Hall, Swainsthorpe, Norwich, NR14 8QA
7.	Jeanne Southgate	11 Lime Tree Road, Norwich, NR2 2NQ
8.	Marion Maxwell	Flat 4, 37 St. Benedicts Street, Norwich, NR2 4PQ
9.	Karen Davis	61 Pettus Road, Norwich, NR4 7BY
10.	Heather Tyrrell	29 Hardley Street, Hardley, Norwich, NR14 6BY
11.	Beth Jones	59 Stafford Street, Norwich, NR2 3BD
12.	Peter Shields	54 Thunder Lane, Norwich, NR7 0PZ
13.	Michael Flynn	190 Wroxham Road, Sprowston, Norwich NR7 8DE

14.	Lesley Grahame	7 Railway Cottages, Hardy Road, Norwich, NR1 1JW
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Part 3 (THE TRUSTEES OF GREAT HOSPITAL)

	Name of Trustees	Address of Trustee
1.	William John Walker	18 Indigo Yard, Norwich, NR3 3QZ
2.	Elizabeth Ann Crocker	36 Eaton Road, Norwich, NR4 6PZ
3.	Michael John Brookes	32 Eaton Road, Norwich, NR4 6PZ
4.	Alexandra de Bunsen	Old Rectory, Kirby Bedon, Norwich, NR14 7DX
5.	Jon Stanley	2, Meadway, Norwich, NR4 6XS
6.	James Shanklin Powell	Ivy Farmhouse, Anchor Street, Tunstead, Norwich, NR12 8HW
7.	David Howard Buck	2 Riverside, Reedham, Norwich, NR13 3TQ
8.	Julie Anne James	Bishops House, Norwich, NR3 1SB
9.	David Marris	55 Mount Pleasant, Norwich, NR2 2DQ
10.	Catherine Jeffries	9 Judges Drive, Norwich, NR4 7QQ
11.	James Banham	Breydon House, 13 High Street, Loddon, NR14 6ET
12.	Clare Singh	Chandlers Ford, 4 Dian Road, Brundall, Norfolk, NR13 5PD

Part 4 (THE TRUSTEES OF ANGUISH'S EDUCATIONAL FOUNDATION)

	Name of Trustee	Address of Trustee
1.	Philip Blanchflower	1 Broadmead Green, Thorpe End, Norwich, NR13 5DE
2.	Brenda Ferris	7 Valentine Street, Norwich, NR2 4BA
3.	David Fullman	115 Somerleyton Gardens, Norwich, NR2 2BP
4.	Christine Herries	21 Oak Street, Norwich, NR3 3AE

5.	Geoffrey Loades	Upland House, Main Road, Swardeston, Norwich, NR14 8AD
6.	Iain Brooksby	Swainsthorpe Hall, Swainsthorpe, Norwich, NR14 8QA
7.	Jeanne Southgate	11 Lime Tree Road, Norwich, NR2 2NQ
8.	Marion Maxwell	Flat 4, 37 St. Benedicts Street, Norwich, NR2 4PQ
9.	Karen Davis	61 Pettus Road, Norwich, NR4 7BY
10.	Heather Tyrrell	29 Hardley Street, Hardley, Norwich, NR14 6BY
11.	Beth Jones	59 Stafford Street, Norwich, NR2 3BD
12.	Peter Shields	54 Thunder Lane, Norwich, NR7 0PZ
13.	Michael Flynn	190 Wroxham Road, Sprowston, Norwich NR7 8DE
14.	Lesley Grahame	7 Railway Cottages, Hardy Road, Norwich, NR1 1JW

Signed as a deed by WILLIAM DAVID WINSLOW
BARR in the presence of:

W D W Barr

Witness:

Signature: B Clarke

Name: BEN CLARKE

Birketts LLP (Norwich)

Address: Kingfisher House

1 Gilders Way

Norwich NR3 1UB

Signed as a deed by LAUREN PARKER as
attorney for Kate Alice Paul in the presence of:

Laure M

Witness:

Signature: B Clarke

Name: BEN CLARKE

Birketts LLP (Norwich)

Address: Kingfisher House

1 Gilders Way

Norwich NR3 1UB

Signed as a deed by LAUREN PARKER as
attorney for DAVID EDWARD BROWN in the
presence of:

Laure M

Witness:

Signature: B Clarke

Name: BEN CLARKE

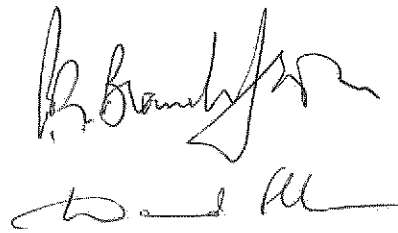
Address: Birketts LLP (Norwich)

Kingfisher House

1 Gilders Way

Norwich NR3 1UB

Signed as a deed on behalf of the trustees of
NORWICH CONSOLIDATED CHARITIES by
Philip Ronald Blanchflower and
David Fullman
two of their number under an authority
conferred pursuant to Section 333 of the
Charities Act 2011 in the presence of:



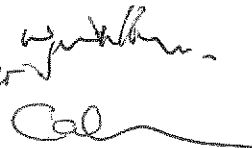
Witness:

Signature: 


Name: Jenamy Worner

Address: Birketts LLP (Norwich)
Kingfisher House
1 Gilders Way
Norwich NR3 1UB

Signed as a deed on behalf of the trustees of
GREAT HOSPITAL by William John Walker
and Catherine Jeffries two
of their number under an authority conferred
pursuant to Section 333 of the Charities Act
2011 in the presence of:



Witness:

Signature: 

Name: BEN CLARKE

Address: Birketts LLP (Norwich)
Kingfisher House
1 Gilders Way
Norwich NR3 1UB

Signed as a deed on behalf of the trustees of
ANGUSH'S EDUCATIONAL FOUNDATION by

Philip Ronald Blanchflower and
David Fullman

two of their number under an authority
conferred pursuant to Section 333 of the
Charities Act 2011 in the presence of:



Witness:

Signature: 

Name: *Jeremy Warren*

Address: *Birketts LLP (Norwich)*
Kingfisher House
1 Gilders Way
Norwich NR3 1UB

Executed as a deed by KIER LIVING
LIMITED acting by a director in the
presence of:

Witness:

.....
Director

Signature:

Name:

Address:

.....

Executed as a deed by
ROYTHORNES LIMITED
acting by a director

)
)
)

.....
Director of **ROYTHORNES LIMITED**

In the presence of

Witness signature:

Name:

Address:

Executed as a deed by **BIRKETTS**
TRUSTEES LIMITED acting by a director

)

In the presence of

.....
Director of **BIRKETTS TRUSTEES LIMITED**

Witness signature:

Name:

Address:

Executed as a deed by **BIRKETTS**
TRUSTEES TWO LIMITED acting by a
director

)

In the presence of

.....
Director of **BIRKETTS TRUSTEES TWO LIMITED**

Witness signature:

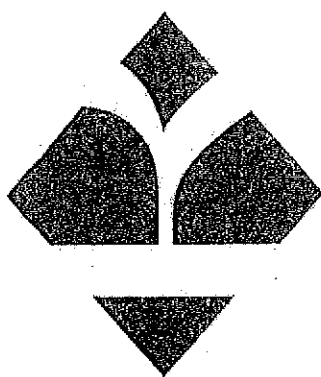
Name:

Address:

APPENDIX 1

REPLACEMENT SCHOOL SITE OVERAGE DEED

ROYTHORNES



DATED

2018

THE GURLOQUE SETTLEMENT

- and -

NORWICH CONSOLIDATED CHARITIES

- and -

GREAT HOSPITAL

- and -

ANGUSH'S EDUCATIONAL FOUNDATION

- and -

KIER LIVING LIMITED

- and -

**BIRKETTS TRUSTEES LIMITED and
BIRKETTS TRUSTEES TWO LIMITED**

[replacement] OVERAGE DEED

relating to

**Primary School Site at Cringleford, South
Norfolk**

**being part of the land known as
Parcel B, Lot 1 (Cringleford 2)**

THIS AGREEMENT is made the

day of

2018

BETWEEN:

- (1) **THE GURLOQUE SETTLEMENT** c/o Mills & Reeve LLP Whitefriars, 1 St. James Court, Norwich, NR3 1RU acting by its trustees (whose details are set out in Part 1 of Schedule 1) ("**Gurloque**");
- (2) **NORWICH CONSOLIDATED CHARITIES** a registered charity (registered charity number 1094602) of 1 Woolgate Court, St Benedicts Street, Norwich, NR2 4AP acting by its trustees (whose details are set out in Part 2 of Schedule 1) ("**NCC**");
- (3) **GREAT HOSPITAL** a registered charity (registered charity number 211953) of Bishopgate, Norwich, Norfolk, NR1 4EL acting by its trustees (whose details are set out in Part 3 of Schedule 1) ("**GH**");
- (4) **ANGUISH'S EDUCATIONAL FOUNDATION** a registered charity (registered charity number 311288) also of 1 Woolgate Court aforesaid acting by its trustees (whose details are set out in Part 4 of Schedule 1) ("**AEF**");
- (5) **KIER LIVING LIMITED** (company number 00775505) whose registered office is at Tempsford Hall, Sandy, Bedfordshire, SG19 2BD (the "**Buyer**"); and
- (6) **BIRKETTS TRUSTEES LIMITED** (company number 06122123) whose registered office is at Brierly Place, New London Road, Chelmsford, CM2 0AP and **BIRKETTS TRUSTEES TWO LIMITED** (company number 10879076) whose registered office is also at Brierly Place aforesaid (the "**Security Trustees**").

BACKGROUND:

- (A) By a transfer dated [] 2018, the Seller transferred the Property together with other property to the Buyer subject to the First Overage Agreement.
- (B) On [] the Buyer transferred the Property to Norfolk County Council pursuant to a planning obligation for use as the site of a primary school in accordance with the Section 106 Agreement free from the First Overage Agreement. On the date of

this Deed the Property has been returned to the Buyer by Norfolk County Council in accordance with the Section 106 Agreement.

(C) The Buyer has agreed to enter into this Deed as a replacement for the First Overage Agreement.

(D) On the terms of this Deed, the Buyer agrees that an overage payment(s) will become due to the Seller if the Property is or has been released from the planning obligation to be used as the site of a primary school and further overage payment(s) will become due as set out herein.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

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

1.1 Definitions:

"Affordable Housing" means housing of a kind that falls within the definition set out in Annex 2 of the National Planning Policy Framework or other definition specified by South Norfolk District Council or the relevant Determining Authority otherwise is housing of a kind which (having regard to its rent or other consideration) is suitable for occupation by people who are in need of such housing because of their limited means.

"Affordable Housing Unit" means a house, flat or any other structure (whether or not construction of that house, flat or other structure has been commenced or completed) which is required by any Planning Permission or any Planning Obligation to be used for Affordable Housing.

"Aggregate Percentages" means:
for Gurloque 53.395%

for NCC: 15.000%

for GH: 30.010%

for AEF: 1.595%

"Balancing Payment" means the sum calculated in accordance with the following formula:

A + B

where:

A = the total and final Offsite Foul Drainage Works Cost;

B = the total and final Thickthorn and Roundhouse Excess Costs

Provided That the Balancing Payment shall never exceed £850,000.

"Base Value"

means:

1. in relation to the first calculation of Overage Payment (Commercial Condition) relating to that Development Land, £1; or
2. in relation to any subsequent calculation of Overage Payment (Commercial Condition) relating to that Development Land, the Market Value of the Development Land:
 - i. at the Trigger Date (Commercial Condition);
 - ii. disregarding any effect on value of the relevant Commercial Planning Permission; and
 - iii. assuming that there is no expectation of the grant of any Commercial Planning Permission and this Deed.

"Buyer's Solicitors" means Roythornes Limited of Enterprise Way, Pinchbeck, Spalding, Lincolnshire, PE11 3YR (Ref: NJH/KIE18-39)

"Collaboration Agreement" means the collaboration agreement dated with the same date as this Deed and made between (1) Kier Living Limited (2) Kier Cross Keys Dev LLP (3) Allison Homes Eastern Limited (4) Big Sky Developments Limited (5) BSDAO (Cringleford) Limited (6) Roythornes Limited and (7) Birketts Trustees Limited and Birketts Trustees Two Limited.

"Commercial Development" means use of the whole or any part or parts of the Property, with or without other land, for any one or more uses comprised in Part A, Part B, Part C (other than Class C3) or Part D of the Town and Country Planning (Use Classes) Order 1987 (SI 1987/764) at the date of the First Overage Agreement together with ancillary uses but excluding any such use which is ancillary to or facilitates a development pursuant to a Planning Permission.

"Commercial Development Costs" means the aggregate calculated up to and including the relevant Trigger Date (Commercial Condition) of the costs reasonably and properly incurred by the Buyer in connection with:

- i. procuring the Commercial Planning Permission;
- ii. constructing the commercial plots consented by the Commercial Planning Permission to Serviced Plot Level; and
- iii. in connection with considering or pursuing any prior application for a Commercial Planning Permission or a Residential Planning Permission;

but excluding any Buyer's internal management costs where external consultants have been engaged to advise the Buyer in relation to the same element of cost so there shall be no double-counting of costs relating to the same element.

"Commercial Planning Permission" means an outline or detailed planning permission for Commercial Development pursuant to a planning application submitted by or on behalf of the Buyer and granted during the Overage Period by a Determining Authority including a planning permission issued pursuant to an application under section 73 of the Town and Country Planning Act 1990 and for the avoidance of doubt does not include any Residential Planning Permission.

"Commercial Unit" means a unit on the Property which is permitted by a Commercial Planning Permission constructed to Serviced-Plot Level including any ancillary land and facilities for use in connection with that unit including (but not limited to) any parking space.

"Court Confirmatory Decision" means either:

- i. a judgment of the High Court or Court of Appeal confirming the grant of Planning Permission by the Determining Authority or by the Secretary of State following a Planning Appeal, and the period for an appeal against such a decision has expired without a further Third Party Application being made; or
- ii. a judgment of the Supreme Court confirming the grant of Planning Permission by the Determining Authority or by the Secretary of State following a Planning Appeal.

"Deed of Covenant" means a deed of covenant with the Seller containing covenants in the same terms as those given by the Buyer in this Deed with such minor modifications as the Seller may agree.

"Default Rate" means 4% per annum above the Interest Rate.

"Determining" means the local planning authority or other appropriate

Authority"	determining body or person.
"Development Land"	means the whole or any part or parts of the Property which has the benefit of the Relevant Planning Permission.
"Disposal"	means the transfer of the freehold or the grant of a lease for a term of not less than 99 years of the whole or any part or parts of the Property other than a Permitted Disposal.
"Enhanced Value"	means the Market Value of the Development Land at the Trigger Date (Commercial Condition) with the benefit of the relevant Commercial Planning Permission.
"Existing Planning Permission"	means the outline planning permission granted on appeal by the Secretary of State on 7 January 2016 under reference APP/L2630/A/14/2227526 and in accordance with planning application reference 2013/1494/0 for the Development as amended or modified by: <ul style="list-style-type: none"> (a) the planning consent for removal/variation of conditions granted by South Norfolk Council on 28 April 2017 under reference 2017/0196; and (b) the planning consent for removal/variation of conditions granted by South Norfolk Council on 10 January 2018 under reference 2017/2120.
"Final Determination Date"	means the earliest date on which: <ul style="list-style-type: none"> i. any Third Party Application is Finally Determined; or ii. a Planning Permission is granted or finally upheld (whether after a reference back to the Secretary of State or the local planning authority or any other relevant authority (as the case may be)); or iii. the next Working Day after the expiry of the Review Period (provided that no Third Party Application is

commenced by such date);

so that the Relevant Planning Permission remains extant and is no longer open to challenge in any way by the issue of further Third Party Applications.

"Finally Determined" means where a Third Party Application has been made, the first of the following events to occur:

- i. permission to bring a Third Party Application (where required) has not been granted and the period within which an application for permission to appeal against such refusal has expired without a further Third Party Application being made;
- ii. all Third Party Applications have been withdrawn;
- iii. a Court Confirmatory Decision has been issued; or
- iv. a Quashing Order has been issued and the Determining Authority has issued a further Planning Permission and the Review Period in respect of that further Planning Permission has expired.

"First Overage Agreement" means the overage agreement relating to the Property dated [] 2018 and made between (1) The Gurloque Settlement (2) Norwich Consolidated Charities (3) Great Hospital (4) Anguish's Educational Foundation (5) Kler Living Limited and (6) Birketts Trustees Limited and Birketts Trustees Two Limited.

"First Overage Agreement Payment" means any "Overage Payment" paid pursuant to the First Overage Agreement.

"Implementation" means the implementation of a Relevant Residential Planning Permission by the carrying out of a Material Operation by or on behalf of the Buyer provided that, for the purposes of this Deed, implementation of a Relevant Residential Planning Permission shall be deemed to have occurred

notwithstanding any breach of a condition to that Relevant Residential Planning Permission.

"Independent Surveyor"

means a member or a Fellow of the Royal Institution of Chartered Surveyors with at least ten years' experience in valuing properties similar to the Property, for uses similar to the Residential Development, and whose usual place of practice is within a 50 mile radius of the Property.

"Index"

means the Nationwide House Price Index for East Anglia.

"Interest Rate"

means the base rate from time to time of HSBC Bank plc.

"Market Value"

means the estimated amount for which the Development Land should exchange between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

"Material Operation"

means has the same meaning as in section 56 of the Town and Country Planning Act 1990 but disregarding for the purposes of this Deed and for no other purpose, the following operations:

- i. demolition works;
- ii. site clearance;
- iii. ground investigations;
- iv. site survey works;
- v. temporary access construction works;
- vi. archaeological investigation; and
- vii. erection of any fences and hoardings.

"Offsite Foul Drainage Works Cost"

means (a) the cost of providing a pumped foul drainage system linking Site A Parcel 2 (as defined in the Collaboration Agreement) to Site A Parcel 1 (as defined in the Collaboration Agreement) in excess of the cost of providing a gravity

discharge foul drainage system to Round House Way and (b) the cost of providing off-site off-line storage as reasonably required by Anglian Water for the purpose of the development of Site A Parcel 1 and Site A Parcel 2

"Overage Cap"

means an amount equal £2,150,000 less

- i. where the Balancing Payment is calculable, the **Balancing Payment**; or
- ii. where the Balancing Payment is not calculable, the **Retention**.

"Overage Disposal"

means the sale of the Property or any part with the benefit of a Commercial Planning Permission and constructed to Serviced Plot Level.

"Overage Payment"

means the Overage Payment (School Condition) or any Overage Payment (Commercial Condition) or any Overage Payment (Residential Condition) as appropriate.

"Overage Payment (Commercial Condition)"

means a sum calculated in accordance with the following formula to two decimal places and rounded to the nearest second decimal place:

$$A - (B + C + D + E)$$

Where:

A = the sale price actually achieved for the sale of the Property as serviced commercial units;

B = the costs reasonably and properly incurred by the Buyer in procuring the sale of the Property as serviced commercial units including (but not limited to) legal, surveyor's and other professional costs and

disbursements and estate agent's commission.

C = Commercial Development Costs

D = the total of all parts of the **Balancing Payment** known and certain at the relevant **Trigger Date** (**Commercial Condition**) and which were not deducted from any previous **Overage Payment** or from any **First Overage Agreement Payment**; and

E = the **Retention** less the total of the **Balancing Payment** deducted from any previous **Overage Payment** or deducted from any **First Overage Agreement Payment** and the total of the **Balancing Payment** deducted from this calculation under **D** above and less any element of **Retention** deducted from any prior **Overage Payment**.

"Overage Payment (Residential Condition)" means a sum calculated in accordance with the following formula to two decimal places and rounded to the nearest second decimal place:

$$(A \times B) - (C + D)$$

Where:

A = £65,000 (per Residential Unit);

B = either:

- i. where the **Trigger Date (Residential Condition)** is on or before *[5th anniversary of the First Overage Agreement]* 2023, 1 (one); or
- ii. where the **Trigger Date (Residential Condition)** is after *[5th anniversary of the First Overage Agreement]* 2023, the higher of the Index figure last

published before the Trigger Date and 438.8 (being the Index figure last published before the date of the First Overage Agreement), **divided by** 438.8 (being the Index figure last published before the date of the First Overage Agreement);

C = the total of all parts of the Balancing Payment known and certain at the relevant Trigger Date (Residential Condition) and which were not deducted from any previous Overage Payment or from any First Overage Agreement Payment; and

D = the **Retention** less the total of the Balancing Payment deducted from any previous Overage Payment or from any First Overage Agreement Payment and the total of the Balancing Payment deducted from this calculation under **C** above and less any element of Retention deducted from any prior Overage Payment.

Provided That where the total of the Balancing Payment cannot be deducted in full from any one Overage Payment the outstanding parts of the Balancing Payment shall be deducted from each subsequent Overage Payment until the Balancing Payment has been deducted in full

Provided Further That where the total of the Retention cannot be deducted in full from any one Overage Payment the outstanding parts of the Retention shall be deducted from each subsequent Overage Payment until the Retention has been deducted in full.

"Overage Payment means a sum calculated in accordance with the following **(School Condition)"** formula to two decimal places and rounded to the nearest

second decimal place:

$(A \times B) - C$

Where:

A = £850,000;

B = either

i. where the Trigger Date (School Condition) is on or before *[5th anniversary of the First Overage Agreement]* 2023, 1 (one); or

ii. where the Trigger Date (School Condition) is after *[5th anniversary of the First Overage Agreement]* 2023, the higher of the Index figure last published before the Trigger Date (School Condition) and 438.8 (being the Index figure last published before the date of the First Overage Agreement), **divided by** 438.8 (being the Index figure last published before the date of the First Overage Agreement); and

C = the total of all parts of the Balancing Payment known and certain at the Trigger Date (School Condition) and which were not deducted from any previous Overage Payment or from any First Overage Agreement Payment.

"Overage Period"

means (subject to clause 2.3) a period of years starting on the date of this Deed and ending at midnight on *[25 years from the date of the First Overage Agreement]* 2043.

"Payment Date"

means the date on which an Overage Payment is to be made in accordance with clause 3.3.

"Permitted Disposal"

means any of the following:

- i. the grant of easements or rights, transfer, lease or dedication of any part of the Property to a local or other public authority pursuant to a requirement in an agreement or unilateral undertaking under section 106 of the Town and Country Planning Act 1990;
- ii. the grant of easements or rights, transfer, lease or dedication of any part of the Property to a highways authority to comply with highways requirements or in connection with the adoption or dedication of public highway;
- iii. the grant of easements or rights, transfer, lease or dedication of any part of the Property to a utilities company for an electricity substation, gas governor, sewage or water pumping station, drainage balancing device or other similar matters for the provision of Services;
- iv. any other grant of easements or rights relating to the Property or any part thereof;
- v. a transfer or a lease of an Affordable Housing Unit to a local authority, private registered provider (which has the same meaning as in section 80 of the Housing and Regeneration Act 2008) or other similar person or body providing Affordable Housing as agreed with the local authority or with the Homes and Communities Agency;
- vi. the first occasion on which a Residential Unit is disposed of at arm's length in the open market by

way of:

- a. a sale of the freehold interest in that Residential Unit; or
- b. the grant of a long leasehold interest in that Residential Unit at a premium for a term of not less than 99 years;

Provided that the Overage Payment (or where the Overage Payment is not yet agreed or determined pursuant to clause 4, the sum equal to the Buyer's reasonable calculation of the Overage Payment provided pursuant to clause 3.3.4) relating to such Residential Unit has been received in full and cleared funds by the Seller.

vii. the transfer, lease or dedication of any part of the Property to a management company or other service provider for the purpose of the maintenance of any part of the Property to be used in common by more than one Residential Unit or by more than one Affordable Housing Unit;

viii. the transfer, lease or dedication of any part of the Property for use as (and limited to) a residential care home school academy college or other body entity foundation or charity for the provision of services to the local community;

ix. the transfer of the Property or any part to Norfolk County Council pursuant to the Section 106 Agreement;

x. the grant of a lease of or a licence to occupy the

Property or any part thereof for a term of not more than 10 years; and

- xi. an Overage Disposal Provided that the Overage Payment (or where the Overage Payment is not yet agreed or determined pursuant to clause 4, the sum equal to the Buyer's reasonable calculation of the Overage Payment provided pursuant to clause 3.3.4) relating to such Overage Disposal has been received in full and cleared funds by the Seller.

"Plan" means the plan annexed hereto.

"Planning Appeal" means an appeal by the Buyer against:

- i. the refusal of the Determining Authority to grant Planning Permission;
- ii. the non-determination of a Planning Application; or
- iii. any one or more conditions attached to a Planning Permission.

"Planning Appeal Decision" means the written decision of the Secretary of State on the Planning Appeal.

"Planning Obligation" means a statutory obligation that is necessary for or assists in the carrying out of the Residential Development including (without limitation) an obligation under section 106 of the Town and Country Planning Act 1990, section 38 or 278 of the Highways Act 1980 or section 104 of the Water Industry Act 1991.

"Planning Permission" means a Commercial Planning Permission or a Residential Planning Permission (as appropriate).

"Practical" means the date of practical completion of the construction of

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Tel: 01603 629871 Email: norwich@brown-co.com

Land at Cringleford

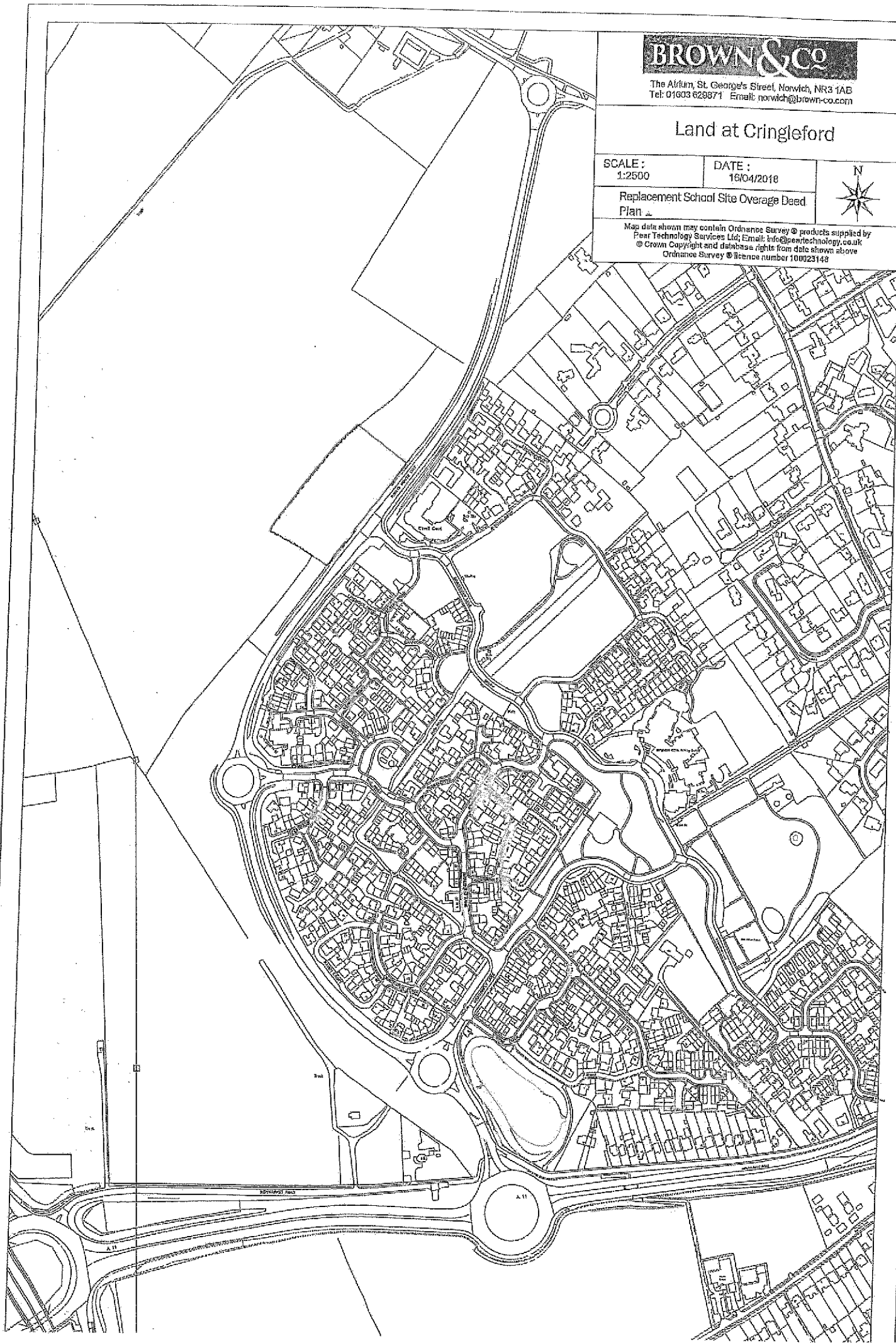
SCALE :
1:2500

DATE :
16/04/2018

Replacement School Site Overage Deed
Plan



Map data shown may contain Ordnance Survey © products supplied by
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Completion" a Residential Unit so that the Residential Unit is capable of beneficial occupation and use save for minor defects and "Practically Completed" shall be construed accordingly.

"Primary School Condition" means the discharge of the Primary School Site Obligations from the Property and the ceasing of the Primary School Site Obligations to be enforceable against the Property in accordance with the proviso to Paragraphs 1.1 to 1.3 (inclusive) of Part 4 of Schedule 1 of the Section 106 Agreement.

"Primary School Site Obligations" means the obligations on the part of the owners of the Property contained in Part 4 of Schedule 1 of the Section 106 Agreement

"Property" means the land at Cringleford edged in red on the Plan being part of the land registered at the date of the initial transfer of the Property to the Buyer as mentioned in Recital A in the name of the trustees of Gurloque at the Land Registry under Title Number NK263125 [*drafting note – this is the School Site per Plan 5 to the Collaboration Agreement*] or (if different) the part of the Property offered to Norfolk County Council pursuant to the Buyer's obligations under Part 4 of Schedule 1 of the Section 106 Agreement

"Quashing Order" means the decision of the court to nullify a Planning Permission granted by either:

- i. the Determining Authority; or
- ii. the Secretary of State following a Planning Appeal.

"Relevant Planning Permission" means a Planning Permission in respect of which an Overage Payment has not previously become due under the terms of this Deed.

"Relevant Residential" means a Residential Planning Permission in respect of which

Planning Permission" an Overage Payment has not previously become due under the terms of this Deed.

"Relevant Date" shall have the same meaning as is defined in the Section 106 Agreement

"Residential Development" means the construction on the Property of residential dwellings pursuant to a Planning Permission.

"Residential Planning Permission" means an outline or detailed planning permission for Residential Development granted during the Overage Period by a Determining Authority including a planning permission issued pursuant to an application under section 73 of the Town and Country Planning Act 1990 and for the avoidance of doubt does not include any Commercial Planning Permission.

"Residential Unit" means a Practically Completed house, flat or any other structure on the Property which is permitted by the Residential Planning Permission and intended for residential use:

- i. including any ancillary land and facilities for use in connection with that house, flat or other structure including (but not limited to) any parking space and garage; but
- ii. excluding any Affordable Housing Unit.

"Retention" means £850,000.

"Review Period" means either:

- i. six weeks and ten Working Days following the date of issue of a Planning Permission by the Determining Authority; or

- ii. six weeks following the date of issue of a Planning Appeal Decision.

"Satisfaction Date"

means either:

- i. If the Primary School Condition has been satisfied before the date of this Deed, the date of this Deed; or
- ii. If the Primary School Condition has not been satisfied before the date of this Deed, the date on which the Primary School Condition is satisfied.

"Secretary of State"

means the Secretary of State for Communities and Local Government or other appropriate Minister including (where relevant) any inspector appointed to determine any Planning Appeal.

"Section 106 Agreement"

means the agreement made pursuant to Section 106 of the 1990 Act dated 6 July 2015 and made between (1) South Norfolk District Council (2) Norfolk County Council (3) William David Winslow Barr Kate Alice Paul and David Edward Brown (4) The Official Custodian for Charities on behalf of the Trustees of Norwich Consolidated Charities and the Trustees of the Great Hospital of Bishopgate (5) The Official Custodian for Charities on behalf of the Trustees of Angulsh's Educational Foundation and (6) Land Fund Limited as varied by the Section 106 Deed of Variation) as varied by the deed of variation dated 10 January 2018 pursuant to Section 106A of the Town and Country Planning 1990 Act.

"Seller"

means collectively Gurloque, NCC, GH and AEF.

"Seller's Solicitors"

means Birketts LLP of Kingfisher House, 1 Gilders Way, Norwich, Norfolk, NR3 1UB (Ref: RVG/182468.0008).

"Serviced Plot Level"

means the construction of such infrastructure, accessway(s) and services that the Buyer and the Seller agree (each party

acting reasonably).

"Services"

the supply of water, electricity, gas, data, telecommunication services and/or the disposal of foul or surface water and any other services and utilities reasonably required for the development and use of the Property or any adjoining property which is or was subject to the Collaboration Agreement.

"Thickthorn and Roundhouse Excess Costs" shall have the same meaning as that defined in the Collaboration Agreement.

"Third Party"

means a person other than:

- i. the Seller;
- ii. the Buyer; or
- iii. anyone acting on the Buyer's or Seller's behalf.

"Third Party Application"

means either of the following:

- i. a Third Party's application for judicial review of a decision by the Determining Authority to grant Planning Permission; or
- ii. a Third Party's application under section 288 of the Town and Country Planning Act 1990 in respect of a decision by the Secretary of State to grant Planning Permission following a Planning Appeal; or
- iii. an application to a higher court appealing against a judgment in respect of an application made under (i) or (ii) above, given in a lower court.

"Trigger Date"

means either a Trigger Date (Commercial Condition) or a Trigger Date (Residential Condition) or the Trigger Date (School Condition) as appropriate.

"Trigger Date (Commercial Condition)"	means (subject to clause 2.3) the date on which the Overage Disposal is completed.
"Trigger Date (Residential Condition)"	means (subject to clause 2.3) Practical Completion of each Residential Unit;
"Trigger Date (School Condition)"	means (subject to clause 2.3) the Satisfaction Date.
"VAT"	means value added tax or any equivalent tax chargeable in the UK or elsewhere.
"Working Day"	means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory Bank Holiday.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.2 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.3 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.4 Unless the context otherwise requires, references to clauses are to the clauses of this Deed and references to schedules are to the schedules of this Deed.
- 1.5 Clause headings shall not affect the interpretation of this Deed.
- 1.6 In this Deed, a reference to:
 - 1.6.1 the Seller does not include its successors in title but includes the assignees of the Seller and subsequent assignees who have provided a deed of covenant pursuant to clause 5.3; and

1.6.2 the Buyer includes its successors in title who have provided a Deed of Covenant pursuant to clause 5.1.

2. CONDITION PRECEDENT

2.1 Subject to clause 2.2, this Deed comes into force on the date of this Deed.

2.2 Clauses 3 and 4 are conditional on the satisfaction of the Primary School Condition and shall come into force on the Satisfaction Date.

2.3 If the total sums exclusive of VAT paid by the Buyer to the Seller pursuant to this Deed amount to the Overage Cap this Deed shall automatically terminate and cease to take effect and the Buyer's Solicitors shall be permitted to remove from the Buyer's title to the Property any notice of this Deed registered against the Buyer's title to the Property and the restriction as referred to in clause 5.2.

3. OVERAGE PAYMENTS

3.1 Subject to clause 2.3, on the date that the Trigger Date (School Condition) occurs during the Overage Period, the Overage Payment (School Condition) shall immediately become due from the Buyer to the Seller.

3.2 Subject to clause 2.3, on each occasion that:

3.2.1 a Trigger Date (Commercial Condition) occurs during the Overage Period, an Overage Payment (Commercial Condition) shall immediately become due from the Buyer to the Seller; and

3.2.2 a Trigger Date (Residential Condition) occurs during the Overage Period, an Overage Payment (Residential Condition) shall immediately become due from the Buyer to the Seller in respect of each Practical Completion (if more than one) occurring on that Trigger Date (Residential Condition).

3.3 The Buyer covenants that it shall pay each Overage Payment to the Seller on the later of:

3.3.1 the date which is 15 Working Days from and including the relevant Trigger Date for that Overage Payment; and

- 3.3.2 the date which is 15 Working Days from and including the date on which the amount of that Overage Payment is agreed or determined in accordance with the terms of this Deed
- and shall on or before that payment provide to the Seller:
- 3.3.3 evidence of any Offsite Foul Drainage Works Cost or Thickthorn and Roundhouse Excess Costs being deducted from that Overage Payment (if any); and
- 3.3.4 the Buyer's reasonable calculation of any Overage Payment payable as a result of that Trigger Date.
- 3.4 An Overage Payment shall be due in respect of each and every Trigger Date that occurs during the Overage Period notwithstanding that a Trigger Date may have previously occurred for the Property or any part or parts of it Provided That the total of all sums exclusive of VAT payable by the Buyer to the Seller pursuant to this deed shall not exceed the Overage Cap.
- 3.5 Where any Overage Payment was calculated with reference to the whole or any part of the Retention, the Buyer will within 15 Working Days after the total and final amount of Thickthorn and Roundhouse Excess Costs and the Offsite Foul Drainage Works Cost can be calculated pay to the Seller an amount equal to the total amount of the Retention actually deducted from any Overage Payment less any additional Balancing Payment not deducted from an Overage Payment.
- 3.6 The Buyer covenants with the Seller that it shall pay interest at the Default Rate to the Seller on any Overage Payment that is not paid on its Payment Date. Such interest shall accrue on a daily basis for the period from and including the relevant Payment Date to and including the date of payment (whether before or after any judgment) and shall not affect any other remedy the Seller may have.
- 3.7 The Buyer covenants with the Seller that it shall pay interest at the Default Rate to the Seller on any additional sums due under clause 3.5 if not paid on the due date as determined under that clause. Such interest shall accrue on a daily basis for the period from and including the due date to and including the date of payment (whether before or after any judgment) and shall not affect any other remedy the Seller may have.

- 3.8 The Buyer covenants with the Seller that it shall:
- 3.8.1 supply a copy of any written notification received from Norfolk County Council confirming satisfaction of the Primary School Condition to the Seller's Solicitors within 15 Working Days of receipt of the same;
 - 3.8.2 not submit or allow to be submitted on its behalf an application for a Commercial Planning Permission without having first used reasonable endeavours to procure a Residential Planning Permission for all of the Property Provided That the Buyer shall not be obliged to pursue a Residential Planning Permission where:
 - 3.8.2.1 an independent planning consultant appointed by the Buyer and the Seller (agreement to the consultant not to be unreasonably withheld or delayed) advises that an application for a Residential Planning Permission is not likely to be successful; or
 - 3.8.2.2 a previous application for a Residential Planning Permission has been refused.
 - 3.8.3 supply a copy of any application for Planning Permission in relation to the Property submitted by or on behalf of the Buyer during the Overage Period to the Seller's Solicitors within 15 Working Days of its submission to the local planning authority or other appropriate determining body or person;
 - 3.8.4 supply the Seller's Solicitors with a copy of any Planning Permission granted during the Overage Period within 15 Working Days of the date of grant;
 - 3.8.5 allow the Seller and its surveyor access to the Property at all reasonable times and on not less than 15 Working Days' prior written notice to inspect whether Implementation of any Relevant Residential Planning Permission has occurred;
 - 3.8.6 supply the Seller's Solicitors with a copy of any agreement for a Disposal of the whole or any part or parts of the Property that is entered into by the Buyer during the Overage Period within 15 Working Days of that agreement being entered into;
 - 3.8.7 notify the Seller in writing within 15 Working Days of completion of any Disposal of the whole or any part or parts of the Property during the Overage Period completed during the Overage Period and at the same time supply the Seller with a copy of the instrument

effecting that Disposal and the original of the completed associated Deed of Covenant;
and

3.8.8 notify the Seller in writing of the occurrence of any Trigger Date during the Overage Period within 10 Working Days of that Trigger Date occurring and at the same time supply the Seller with:

3.8.8.1 a statement of the amount of the Overage Payment that the Buyer considers is due; and

3.8.8.2 appropriate evidence that is satisfactory to the Seller (acting reasonably) of how the Overage Payment was calculated; and

3.8.8.3 appropriate evidence of the Offsite Foul Drainage Works Costs.

3.9

3.9.1 The parties comprising the Seller are entitled to each Overage Payment in the Aggregate Percentages.

3.9.2 Notwithstanding clause 3.9.1 the Buyer shall pay each Overage Payment to the Seller's Solicitors by way of one aggregate payment (without any requirement to split such payment in its Aggregate Percentages).

4. AMOUNT OF OVERAGE PAYMENT

4.1 If the Seller reasonably disputes the Buyer's calculation of the Overage Payment, the Seller must within 15 Working Days after receipt of the Buyer's notice referred to in clause 3.8.7 (time being of the essence) serve a written counter-notice on the Buyer of the Seller's calculation of the Overage Payment.

4.2 If the Seller fails to serve a counter-notice within the period referred to in clause 4.1 the Seller will be deemed to have accepted the Buyer's calculation of the Overage Payment.

4.3 If the Seller serves a counter-notice within the period referred to in clause 4.1 but the Seller and the Buyer have not agreed the amount of the Overage Payment within 15 Working Days after service of the counter-notice either party may require the amount of the Overage Payment to be referred to the Independent Surveyor for determination under this clause 4.

- 4.4 No later than the date 15 Working Days after:
- 4.4.1 where the Seller agrees the Overage Payment notified by the Buyer, the Trigger Date; or
- 4.4.2 where the Seller disputes the Overage Payment notified by the Buyer, the earlier of the date on which:
- 4.4.2.1 the Buyer and the Seller agree the Overage Payment; or
- 4.4.2.2 the Independent Surveyor's determination has been made;
- the Buyer must pay the Overage Payment to the Seller.
- 4.5 If the parties agree the amount of an Overage Payment at any time after the relevant Trigger Date for that Overage Payment, the Buyer and the Seller shall immediately sign and date a memorandum recording the amount of that Overage Payment and the date of the memorandum shall be the date of agreement for the purposes of clause 4.4.2.1.
- 4.6 The parties shall agree on the appointment of the Independent Surveyor and shall agree with the Independent Surveyor the terms of the appointment.
- 4.7 If the parties are unable to agree on an Independent Surveyor or the terms of the appointment within 15 Working Days from and including the date on which the matter was referred for determination under this clause 4, either party shall then be entitled to request the President for the time being of the Royal Institution of Chartered Surveyors to appoint the Independent Surveyor and to agree with the Independent Surveyor the terms of the appointment.
- 4.8 The Independent Surveyor is required to prepare a written decision and give notice (including a written copy) of the decision on the amount of the Overage Payment to the parties within 15 Working Days from and including the date of the Independent Surveyor's appointment.
- 4.9 If the Independent Surveyor dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

- 4.9.1 either party may apply to the President of the Royal Institution of Chartered Surveyors to discharge the Independent Surveyor and to appoint a replacement Independent Surveyor; and
- 4.9.2 this clause shall apply to the new Independent Surveyor as if they were the first Independent Surveyor appointed.
- 4.10 The parties are entitled to make submissions and counter-submissions to the Independent Surveyor and will provide (or procure that others provide) the Independent Surveyor with such assistance and documents as the Independent Surveyor reasonably requires for the purpose of reaching a decision.
- 4.11 The Independent Surveyor shall act as an expert and not as an arbitrator. The Independent Surveyor's written decision shall be final and binding on the parties in the absence of manifest error or fraud.
- 4.12 The Buyer and the Seller agree to pay the Independent Surveyor's costs in the proportions determined by the Independent Surveyor within 15 Working Days from and including a demand for payment. If they are not so paid, the party against whom the costs were not awarded shall be entitled to pay the Independent Surveyor the sums due and recover the amount from the other party on demand.
- 4.13 In default of agreement pursuant to this clause 4, the Overage Payment shall be the amount determined by the Independent Surveyor and the date of issue of the Independent Surveyor's written decision shall be taken as the date of determination for the purposes of clause 4.4.2.2.
5. **DISPOSALS AND RESTRICTION**
- 5.1 The Buyer covenants with the Seller:
- 5.1.1 not to make any Disposal (except a Permitted Disposal) at any time during the Overage Period without first procuring that the person to whom that Disposal is being made has executed a Deed of Covenant; and
- 5.1.2 to deliver such duly executed Deed of Covenant to the Seller within 5 Working Days after the relevant Disposal.

- 5.2 The Buyer covenants with the Seller that it shall apply for the entry of the following restriction against the Buyer's title to the Property at HM Land Registry simultaneously with the registration of the transfer of the Property to the Buyer and shall procure that the restriction has priority to any mortgage or charge entered into by the Buyer other than a mortgage or charge entered into by the Buyer with the Seller in which case the restriction shall not have priority to such mortgage or charge:

"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a certificate signed by a conveyancer that the provisions of clause 5.1 of the deed dated 2018 and made between (1) The Gurloque Settlement (2) Norwich Consolidated Charities (3) Great Hospital (4) Anguish's Educational Foundation (5) Kier Living Limited and (6) Birketts Trustees Limited and Birketts Trustees Two Limited have been complied with or that they do not apply."

- 5.3 The Seller covenants with the Buyer not to assign the benefit of this Deed at any time without first procuring that the assignee has executed a deed of covenant with the Buyer and (if appropriate) the Security Trustees containing covenants in the same terms as those given by the Seller in this Deed with such minor modifications as the Buyer and (if appropriate) the Security Trustees may agree.

6. SELLER'S OBLIGATIONS

- 6.1 The Seller covenants with the Buyer that following:

- 6.1.1 a Permitted Disposal (except any Permitted Disposal that falls within sub-paragraphs iv or x of that definition, in relation to which property the freehold interest shall remain bound by this Deed), if reasonably required by the Buyer in order to ensure that the same restriction (or a new restriction in the same terms) as the restriction referred to in clause 5.2 is not entered against the registered title to the Property (or relevant part of the Property in the case of the Permitted Disposal of part of the Property) once the disponee under that Permitted Disposal is registered as the registered proprietor of that title; or

- 6.1.2 the termination of this Deed pursuant to clause 2.3;

the Seller shall:

- 6.1.3 not object to an application by the Buyer or that disponee to cancel that restriction in relation to the Property (or part of the Property) disposed of under that Permitted Disposal (except as aforesaid and except where the Permitted Disposal triggers an Overage Payment and the Buyer's reasonable estimate of that Overage Payment as stated in accordance with clause 3.3.4 has not been paid in full in cleared funds to the Seller); or
 - 6.1.4 In relation to any application by the Buyer or that disponee to withdraw that restriction, provide immediately on receipt of a written request from the Buyer or that disponee a consent to that withdrawal in accordance with the requirements of HM Land Registry from time to time; and
 - 6.1.5 apply for the withdrawal of the restriction entered against the title to the Property within 10 Working Days from and including the end of the Overage Period provided all Overage Payments then due have been paid or (if earlier) the date on which this Deed terminates in accordance with clause 2.3.
- 6.2 The Seller irrevocably appoints the Buyer's Solicitors to complete and submit to the Land Registry such forms as are properly required pursuant to clause 6.1 in order to comply with the Seller's obligations.

7. ENDORSEMENT

Promptly following the occurrence of a Trigger Date which will result in an Overage Payment the calculation of which will include the deduction of the Balancing Payment or the Retention, both the Seller and the Buyer shall each endorse a memorandum upon this Deed and any counterparts in the following terms:

"The [Retention or (as appropriate) Balancing Payment] has been deducted by a Trigger Date occurring on []"

8. VAT

- 8.1 Each amount stated to be payable by the Buyer to the Seller under or pursuant to this Deed is exclusive of VAT (if any).

8.2 If any VAT is chargeable on any supply made by the Seller under or pursuant to this Deed, the Buyer covenants with the Seller that on receipt of a valid VAT invoice, it will pay the Seller an amount equal to that VAT.

9. **THIRD PARTY RIGHTS**

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

10. **ENTIRE AGREEMENT**

10.1 This Deed 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.

10.2 Each party acknowledges that in entering into this Deed it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made negligently or innocently) other than those set out in this Deed.

10.3 Nothing in this clause shall limit or exclude any liability for fraud.

11. **JOINT AND SEVERAL LIABILITY**

Where the Buyer comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Buyer arising under this Deed and the Seller may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

12. **GOVERNING LAW**

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 and construed in accordance with the law of England and Wales.

13. **JURISDICTION**

Subject to clause 4.6 to clause 4.14 (inclusive), each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

14. **GOOD FAITH**

The Seller, the Security Trustees and the Buyer are to act in good faith towards each other in relation to matters which are the subject of this Deed.

15. **INDEX**

15.1 Subject to clause 15.2 if the reference base used to compile the Index changes or if the method of calculating the Index changes substantially after the date of this Deed, the Index last published before the Payment Date is to be adjusted to give the figure which would have been shown by the Index if the method for calculating the Index current at the date of this Deed had not been changed.

15.2 The Seller and the Buyer shall use reasonable endeavours to agree an alternative index reflecting changes in house prices in East Anglia for the purposes of calculating the Index where required under this Deed if:

15.2.1 the Buyer or the Seller reasonably believes that any change referred to in clause 15.1 would fundamentally alter the calculation of the Overage Payment and has given notice to the other party of this belief; or

15.2.2 the Index ceases to be published.

15.3 In default of agreement between the Buyer and the Seller on an alternative index, either party may require the matter to be referred to the Independent Surveyor for determination under clause 4.

16. **LIABILITY OF THE SELLER**

16.1 The liability of the Seller under this Deed is joint and the Buyer may not take any action against or release or compromise the liability of, grant time or other indulgence to any

one of the Seller without doing so with all of the persons who are the herein named Seller.

- 16.2 The expression "net value of the assets" in this clause shall mean the net value for the time being of the assets of the relevant trust less the value of any liability to taxation or any other liability arising from the administration of the relevant trust and properly payable from trust assets.
- 16.3 The aggregate liability of NCC and its trustees in respect of any claim (including the costs relating to any such claim) under this Deed shall not exceed the net value of the assets of NCC and nothing in this Deed shall entitle the Buyer or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of the NCC or against any assets for the time being vested in them or any of them which are not assets of NCC.
- 16.4 The obligations which the trustees of NCC undertake can only be enforced against them jointly and not individually and then only as trustees of NCC and a trustee who retires from being a trustee of NCC will after his/her retirement no longer be liable for any breach of an obligation under this Deed regardless of whether the breach occurred before or after the retirement.
- 16.5 Clauses 16.3 and 16.4 in relation to the liability of a trustee of NCC will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.
- 16.6 The aggregate liability of the trustees of GH in respect of any claim (including the costs relating to any such claim) under this Deed shall not exceed the net value of the assets of GH and nothing in this Deed shall entitle the Buyer or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of the GH or against any assets for the time being vested in them or any of them which are not assets of GH.
- 16.7 The obligations which the trustees of GH undertake can only be enforced against them jointly and not individually and then only as trustees of GH and a trustee who retires from being a trustee of GH will after his/her retirement no longer be liable for any breach of an obligation under this Deed regardless of whether the breach occurred before or after the retirement.

- 16.8 Clauses 16.6 and 16.7 in relation to the liability of a trustee of GH will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.
- 16.9 The aggregate liability of the trustees of AEF in respect of any claim (including the costs relating to any such claim) under this Deed shall not exceed the net value of the assets of AEF and nothing in this Deed shall entitle the Buyer or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of AEF or against any assets for the time being vested in them or any of them which are not assets of AEF.
- 16.10 The obligations which the trustees of AEF undertake can only be enforced against them jointly and not individually and then only as trustees of AEF and a trustee who retires from being a trustee of AEF will after his/her retirement no longer be liable for any breach of an obligation under this Deed regardless of whether the breach occurred before or after the retirement.
- 16.11 Clauses 16.9 and 16.10 in relation to the liability of a trustee of AEF will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.
- 16.12 The aggregate liability of the trustees of Gurloque in respect of any claim (including the costs relating to any such claim) under this Deed shall not exceed the net value of the assets of Gurloque and nothing in this Deed shall entitle the Buyer or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of Gurloque or against any assets for the time being vested in them or any of them which are not assets of Gurloque.
- 16.13 The obligations which the trustees of Gurloque undertake can only be enforced against them jointly and not individually and then only as trustees of Gurloque and a trustee who retires from being a trustee of Gurloque will after his/her retirement no longer be liable for any breach of an obligation under this Deed regardless of whether the breach occurred before or after the retirement.
- 16.14 Clauses 16.12 and 16.13 in relation to the liability of a trustee of Gurloque will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.

17. SECURITY TRUSTEES

17.1 The Seller the Security Trustees and the Buyer acknowledge that the Seller has appointed the Security Trustees to act on the Seller's behalf in relation to all matters arising out of this Deed and until otherwise advised by the Seller to the Buyer in writing:

17.1.1 a reference to the Seller in this Deed shall be deemed to be a reference to the Seller or the Security Trustees;

17.1.2 in the event of notices served or representations made by both the Seller and the Security Trustees to the Buyer relating to the same subject matter the Buyer shall only be obliged to consider the notice(s) or representations made by the Security Trustees;

17.1.3 unless otherwise requested in writing by either the Security Trustees or the Seller, any payment to be made by the Buyer to the Seller shall be made to the Security Trustees; and

17.1.4 a payment to the Seller's Solicitors shall be deemed to be a payment to the Seller or the Security Trustees as appropriate.

17.2 The Security Trustees have joined into this Deed to confirm their acknowledgment of and agreement to the matters contained in clause 17.1.

18. EXECUTION

18.1 This Deed has been executed by the Seller, the Buyer and the Security Trustees and is completed on the date referred to on the first page of it.

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

18.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart

SCHEDULE 1

Part 1 (THE TRUSTEES OF THE GURLOQUE SETTLEMENT)

1.	William David Winslow Barr	c/o Mills & Reeve LLP, Whitefriars, 1 St. James Court, Norwich, NR3 1RU
2.	Kate Alice Paul	c/o Mills & Reeve LLP, Whitefriars, 1 St. James Court, Norwich, NR3 1RU
3.	David Edward Brown	c/o Mills & Reeve LLP, Whitefriars, 1 St. James Court, Norwich, NR3 1RU

Part 2 (THE TRUSTEES OF NORWICH CONSOLIDATED CHARITIES)

	Name of Trustee	Address of Trustee
1.	Philip Blanchflower	1 Broadmead Green, Thorpe End, Norwich, NR13 5DE
2.	Brenda Ferris	7 Valentine Street, Norwich, NR2 4BA
3.	David Fullman	115 Somerleyton Gardens, Norwich, NR2 2BP
4.	Christine Herries	21 Oak Street, Norwich, NR3 3AE
5.	Geoffrey Loades	Upland House, Main Road, Swardeston, Norwich, NR14 8AD
6.	Iain Brooksby	Swainsthorpe Hall, Swainsthorpe, Norwich, NR14 8QA
7.	Jeanne Southgate	11 Lime Tree Road, Norwich, NR2 2NQ
8.	Marion Maxwell	Flat 4, 37 St. Benedicts Street, Norwich, NR2 4PQ
9.	Karen Davis	61 Pettus Road, Norwich, NR4 7BY
10.	Heather Tyrrell	29 Hardley Street, Hardley, Norwich, NR14 6BY
11.	Beth Jones	59 Stafford Street, Norwich, NR2 3BD
12.	Peter Shields	54 Thunder Lane, Norwich, NR7 0PZ
13.	Michael Flynn	190 Wroxham Road, Sprowston, Norwich NR7 8DE

14.	Lesley Grahame	7 Railway Cottages, Hardy Road, Norwich, NR1 1JW
-----	----------------	--

Part 3 (THE TRUSTEES OF GREAT HOSPITAL)

	Name of Trustees	Address of Trustee
1.	William John Walker	18 Indigo Yard, Norwich, NR3 3QZ
2.	Elizabeth Ann Crocker	36 Eaton Road, Norwich, NR4 6PZ
3.	Michael John Brookes	32 Eaton Road, Norwich, NR4 6PZ
4.	Alexandra de Bunsen	Old Rectory, Kirby Bedon, Norwich, NR14 7DX
5.	Jon Stanley	2, Meadway, Norwich, NR4 6XS
6.	James Shanklin Powell	Ivy Farmhouse, Anchor Street, Tunstead, Norwich, NR12 8HW
7.	David Howard Buck	2 Riverside, Reedham, Norwich, NR13 3TQ
8.	Julie Anne James	Bishops House, Norwich, NR3 1SB
9.	David Marris	55 Mount Pleasant, Norwich, NR2 2DQ
10.	Catherine Jeffries	9 Judges Drive, Norwich, NR4 7QQ
11.	James Banham	Breydon House, 13 High Street, Loddon, NR14 6ET
12.	Clare Singh	Chandlers Ford, 4 Dian Road, Brundall, Norfolk, NR13 5PD

Part 4 (THE TRUSTEES OF ANGUISH'S EDUCATIONAL FOUNDATION)

	Name of Trustee	Address of Trustee
1.	Philip Blanchflower	1 Broadmead Green, Thorpe End, Norwich, NR13 5DE
2.	Brenda Ferris	7 Valentine Street, Norwich, NR2 4BA

3.	David Fullman	115 Somerleyton Gardens, Norwich, NR2 2BP
4.	Christine Herries	21 Oak Street, Norwich, NR3 3AE
5.	Geoffrey Loades	Upland House, Main Road, Swardeston, Norwich, NR14 8AD
6.	Iain Brooksby	Swainsthorpe Hall, Swainsthorpe, Norwich, NR14 8QA
7.	Jeanne Southgate	11 Lime Tree Road, Norwich, NR2 2NQ
8.	Marion Maxwell	Flat 4, 37 St. Benedicts Street, Norwich, NR2 4PQ
9.	Karen Davis	61 Pettus Road, Norwich, NR4 7BY
10.	Heather Tyrrell	29 Hardley Street, Hardley, Norwich, NR14 6BY
11.	Beth Jones	59 Stafford Street, Norwich, NR2 3BD
12.	Peter Shields	54 Thunder Lane, Norwich, NR7 0PZ
13.	Michael Flynn	190 Wroxham Road, Sprowston, Norwich NR7 8DE
14.	Lesley Grahame	7 Railway Cottages, Hardy Road, Norwich, NR1 1JW

Signed as a deed by WILLIAM DAVID WINSLOW
BARR in the presence of:

Witness:

Signature:

Name:

Address:
.....

Signed as a deed by KATE ALICE PAUL in the
presence of:

Witness:

Signature:

Name:

Address:
.....

Signed as a deed by DAVID EDWARD BROWN in
the presence of:

Witness:

Signature:

Name:

Address:
.....

Signed as a deed on behalf of the trustees of
NORWICH CONSOLIDATED CHARITIES by [] and

[] two of their number
under an authority conferred pursuant to
Section 333 of the Charities Act 2011 in the
presence of:

Witness:

Signature:

Name:

Address:

.....

Signed as a deed on behalf of the trustees of
GREAT HOSPITAL by [] and []
[] two of their number
under an authority conferred pursuant to
Section 333 of the Charities Act 2011 in the
presence of:

Witness:

Signature:

Name:

Address:

.....

Signed as a deed on behalf of the trustees of
ANGUSH'S EDUCATIONAL FOUNDATION by [
] and

[] two of their
number under an authority conferred
pursuant to Section 333 of the Charities Act
2011 in the presence of:

Witness:

Signature:

Name:

Address:

.....

Executed as a deed by KIER LIVING
LIMITED acting by a director in the
presence of:

Witness:

.....
Director

Signature:

Name:

Address:

.....

Executed as a deed by BIRKETTS TRUSTEES
LIMITED acting by a director in the
presence of:

Witness:

.....
Director

Signature:

Name:

Address:

.....

Executed as a deed by BIRKETTS TRUSTEES
TWO LIMITED acting by a director in the
presence of:

Witness:

.....
Director

Signature:

Name:

Address:

.....

APPENDIX 2

REPLACEMENT SCHOOL SITE LEGAL CHARGE

DATED

2018

KIER LIVING LIMITED

(1)

and

VARIOUS PARTIES BEING THE SELLERS

(2)

and

BIRKETTS TRUSTEES LIMITED and BIRKETTS
TRUSTEES TWO LIMITED

(3)

[replacement] FIRST LEGAL CHARGE

relating to
Land at Cringleford, South Norfolk
known as Lot 1 (Parcel B) (Cringleford 2)

Birketts

THIS LEGAL CHARGE is made on the

day of

2018

BETWEEN

- (1) **KIER LIVING LIMITED** (company number 00775505) whose registered office is at Tempsford Hall, Sandy, Bedfordshire SG19 2UD ("Buyer")
- (2) (a) **THE GURLOQUE SETTLEMENT** c/o Lime Tree Farm, Wellgate, Mattishall, Norfolk, NR20 3PJ acting by its trustees (whose details are set out in Part 1 of Schedule 1) ("Gurloque")
 - (b) **NORWICH CONSOLIDATED CHARITIES** a registered charity (registered charity number 1094602) of 1 Woolgate Court, St Benedicts Street, Norwich, NR2 4AP acting by its trustees (whose details are set out in Part 2 of Schedule 1) ("NCC")
 - (c) **GREAT HOSPITAL** a registered charity (registered charity number 211953) of Bishopgate, Norwich, Norfolk, NR1 4EL acting by its trustees (whose details are set out in Part 3 of Schedule 1) ("GH")
 - (d) **ANGUISH'S EDUCATIONAL FOUNDATION** a registered charity (registered charity number 311288) also of 1 Woolgate Court aforesaid acting by its trustees (whose details are set out in Part 4 of Schedule 1) ("AEF")

collectively the "Sellers"

- (3) **BIRKETTS TRUSTEES LIMITED** (company number 06122123) whose registered office is at Briery Place, New London Road, Chelmsford, CM2 0AP and **BIRKETTS TRUSTEES TWO LIMITED** (company number 10879076) whose registered office is also at Briery Place aforesaid ("Security Trustees")

BACKGROUND

- (A) By the Transfer the Property has been transferred to the Buyer.
- (B) The Secured Amount is outstanding on the date hereof.
- (C) The Buyer has agreed to grant this Legal Charge as a first legal charge to the Sellers as security for the Secured Amount.
- (D) The Sellers have appointed the Security Trustees to act on their behalf pursuant to this Legal Charge.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Defined terms

In this Legal Charge, the following words and expressions have the following meanings:

- | | | |
|-------|---------------------------------|--|
| 1.1.1 | 1925 Act | Law of Property Act 1925; |
| 1.1.2 | Alternative Compensation | means a reasonable and proper amount of financial compensation acceptable by the Sellers (acting reasonably) reflecting the financial loss that the Sellers have incurred or are likely to incur due to the Event of Default complained of to be paid by the Buyer to the Sellers in lieu of making good the Event of Default complained of. |
| 1.1.3 | Buyer's Solicitors | Roythornes Solicitors, Enterprise Way, Spalding, Lincolnshire PE11 3YR (Ref: NH.KIE18-39); |
| 1.1.4 | Collaboration Agreement | the collaboration agreement of even date and made between (1) Kier Living Limited (2) Kier Cross Keys Dev LLP (3) Allison Homes Eastern Limited (4) Big Sky Developments Limited (5) BSDAO (Cringleford) Limited (6) Roythornes Limited and (7) Birketts Trustees Limited and Birketts Trustees Two Limited. |
| 1.1.5 | Escrow Agreement | means the agreement for charge, overage and escrow dated 2018 and made between (1) Gurloque (2) NCC (3) GH (4) AEF (5) the Buyer and (6) Roythornes Limited and (7) the Security Trustees. |
| 1.1.6 | Event of Default | any of the following situations: <ul style="list-style-type: none">i. the Buyer does not pay any of the Secured Amount as they fall due in accordance with the Parcel B (School Site) Overage Agreement; orii. the Buyer does not comply with its other |

obligations in this Legal Charge;

- iii. there is any breach by the Buyer of the Warranties;
- iv. a receiver or administrative receiver is appointed of the whole or any part of the Property or any person takes possession of or exercises or attempts to exercise any power of sale in relation to the Property;
- v. where the Buyer is a company, an administrator is appointed over the Buyer;
- vi. where the Buyer is a company, a resolution is passed or an order made for the winding up of the Buyer;
- vii. where the Buyer is a company, a voluntary arrangement is made in respect of the Buyer under Part I Insolvency Act;
- viii. where the Buyer is an individual, a petition is presented for the bankruptcy of the Buyer or a bankruptcy order is made against the Buyer; or
- ix. where the Buyer is an individual, an interim order is made for a voluntary arrangement under Section 252 Insolvency Act in respect of the Buyer.

1.1.7 Exempted Property

means any part of the Property in which the freehold interest is transferred pursuant to a Permitted Disposal.

1.1.8 Expert

the person appointed pursuant to clause 13

1.1.9 Group Company

has the same meaning as given to that phrase by Section 42 Landlord and Tenant Act 1954;

1.1.10 Insolvency Act

Insolvency Act 1986

1.1.11 Interest

interest at the Interest Rate from and including the due date for payment to and including the date on

which the payment is made and the interest is to be paid at the same time as the payment. The interest shall be calculated on a daily basis from and including the due date for payment to and including the date on which the payment is made;

1.1.12 Interest Rate

4% per annum above the base rate from time to time of Barclays Bank Plc;

1.1.13 Lease

any lease of the whole or any part of the Property and includes any ~~underlease, sublease or~~ tenancy and any agreement for a lease, underlease, sublease or tenancy;

1.1.14 Parcel B (School Site) Overage Agreement

the overage agreement dated with even date herewith and made pursuant to the Escrow Agreement between (1) the Buyer (2) the Sellers and (3) the Security Trustees marked as relating to "Primary School Site at Cringleford, South Norfolk being part of the land known as Parcel B, Lot 1 (Cringleford 2)" relating to the provision of a primary school

1.1.15 Permitted Disposal

has the same meaning given to the definition of "Permitted Disposal" in the Parcel B (School Site) Overage Agreement other than item "ix" of that definition in relation to which clause 2.4.1.3 applies.

1.1.16 Plan

the plan annexed to this Legal Charge and showing the Property edged red ;

1.1.17 Property

the land at Cringleford shown edged red on the Plan to the extent that such property has not been released from this Legal Charge from time to time;

1.1.18 Receiver

any receiver or manager appointed by the Sellers under this Legal Charge or pursuant to any statute, including the 1925 Act but does not include an administrative receiver;

1.1.19 Relevant Authority

any authority or body or company (whether public or otherwise) having jurisdiction in each instance

BROWN & CO

The Atium, St. George's Street, Norwich, NR3 1AB
Tel: 01603 629871 Email: norwich@brown-co.com

Land at Cringleford

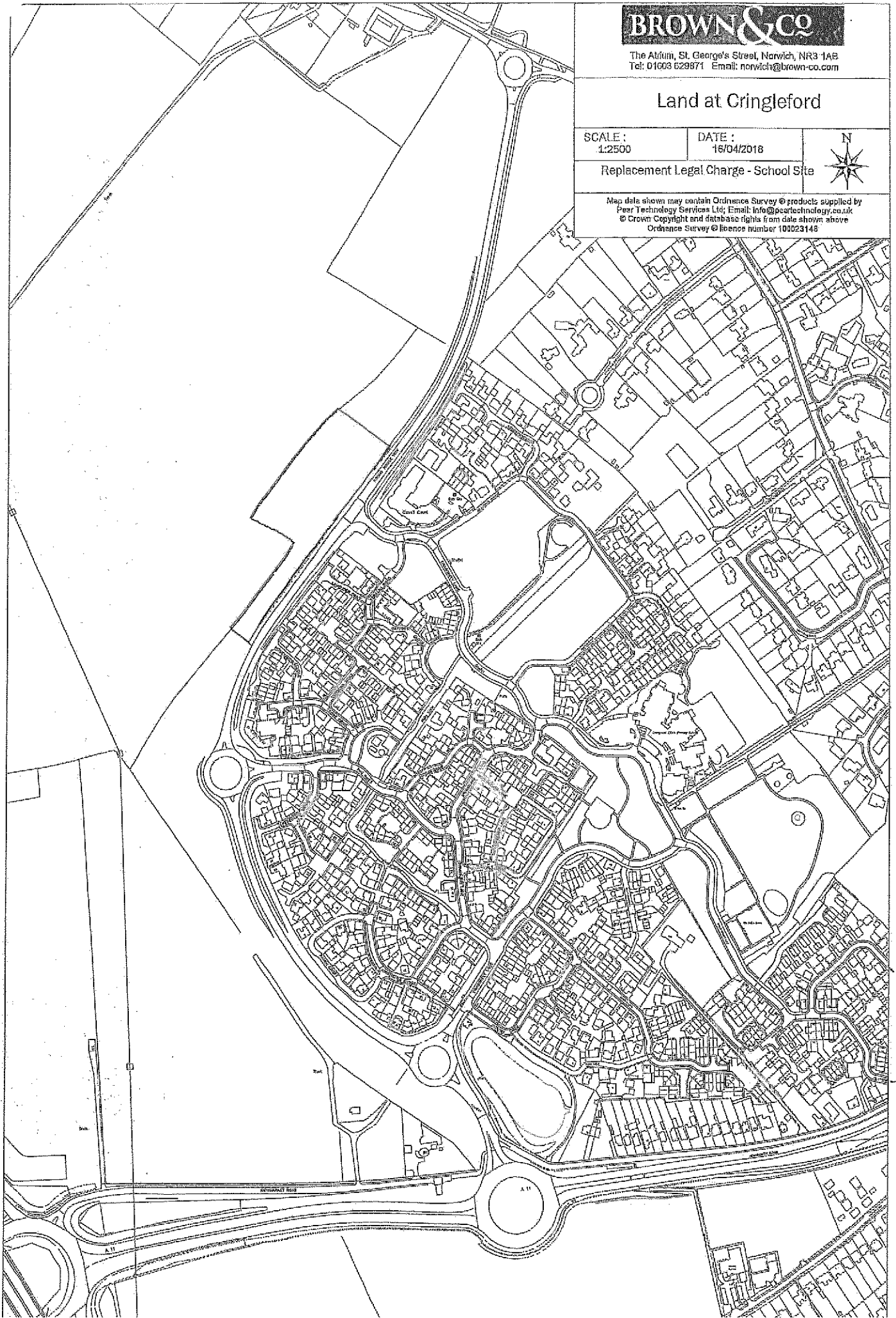
SCALE :
1:2500

DATE :
16/04/2018

Replacement Legal Charge - School Site



Map data shown may contain Ordnance Survey © products supplied by
Pear Technology Services Ltd; Email: info@peartechnology.co.uk
© Crown Copyright and database rights from data shown above
Ordnance Survey © licence number 100023148



in respect of the matter referred to or any aspect thereof including (without prejudice to the generality of the foregoing) the highways authority, the planning authority, the drainage undertaking, the gas, water, electricity and telecommunications suppliers and any other authority, body or company to whom the powers of such authority, body or company are delegated;

1.1.20 Secured Amount

means:

- i. any sums payable by the Buyer to the Sellers as "Overage Payment (Residential Condition)" pursuant to the Parcel B (School Site) Overage Agreement;
- ii. any sums payable by the Buyer to the Sellers as "Overage Payment (Commercial Condition)" pursuant to the Parcel B (School Site) Overage Agreement; and

all other sums due or that may become due from the Buyer to the Sellers and/or the Security Trustees under this Legal Charge and which relate to item i. above.;

1.1.21 Security

any legal charge, mortgage, lien or other form of security granting any legal or equitable charge fixed over the Property;

1.1.22 Security Trustees' Solicitors

the Sellers' Solicitors

1.1.23 Sellers' Solicitors

Birketts LLP of Kingfisher House, 1 Gilders Way, Norwich, Norfolk, NR3 1UB (Ref: RVG/182468.0007);

1.1.24 Statutory Agreement

an agreement obligation or undertaking to be made pursuant to all or any of the following

- (a) Section 106 Town and Country Planning Act 1990

(b) Section 38 and/or Section 278 Highways Act 1980

(c) Section 104 Water Industry Act 1991

(d) Section 33 Local Government (Miscellaneous Provisions) Act 1982

or pursuant to any other statutory enactment or derivative legislation or as may be required by a local authority the local highway authority or any service undertaker;

1.1.25 Transfer

the transfer of the Property dated the same date as this Legal Charge made between (1) Norfolk County Council and (2) the Buyer;

1.1.26 Warranties

the warranties given by the Buyer to the Sellers under clause 9;

1.1.27 VAT

value added tax or other similar tax or levy.

1.1.28 Unredeemed Event of Default

an Event of Default (which does not include situations i and/or iv and/or v and/or vi and/or vii and/or viii and/or ix) that has not been redeemed in accordance with clause 4.5.2

1.2 Construction

In this Legal Charge:

1.2.1 the clause headings do not affect its interpretation;

1.2.2 unless otherwise indicated, references to clauses and schedules are to clauses of and schedules to this legal charge and references in a schedule to a part or paragraph are to a part or paragraph of that schedule;

1.2.3 references to any statute or statutory provision include references to:

1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and

1.2.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute

and also include any orders, regulations, instruments or other subordinate legislation made under that statute;

1.2.4 references to the Property include any part of it and references to Tranche include any part of it;

1.2.5 references to the powers of the Receiver are references to the respective powers, discretions and rights given to the Trustee or a Receiver under this Legal Charge, the 1925 Act, the Insolvency Act or otherwise given to or exercisable by the Trustee or the Receiver;

1.2.6 "including" means "including, without limitation";

1.2.7 "indemnify" means to indemnify against all reasonable and proper actions, claims, demands and proceedings taken or made against the Sellers and all reasonable and proper costs, damages, expenses, liabilities and losses incurred by the Sellers;

1.2.8 the obligations undertaken by the Sellers in this Legal Charge may only be enforced against them all jointly;

1.2.9 the obligations undertaken by the Security Trustees in this Legal Charge may only be enforced against them both jointly; and

1.2.10 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Legal Charge is to be unaffected.

1.3 **Contracts (Rights of Third Parties) Act 1999**

The parties to this Legal Charge do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

2. **CHARGE**

2.1 **Covenant to pay**

The Buyer covenants with the Sellers to pay the Secured Amount in accordance with the provisions of the Parcel B (School Site) Overage Agreement.

2.2 **Legal mortgage**

The Buyer with full title guarantee charges to the Sellers the Property by way of first fixed legal mortgage as security for the payment of the Secured Amount Provided

That this charge shall not preclude the Buyer (without the consent of the Sellers in their capacity as chargee being required) from:

- 2.2.1 carrying out development, building, civil engineering operations and laying, constructing, installing and effecting (or permitting to be laid constructed, installed or effected) all necessary or requisite works in connection with the development of the Property or any part of the same and thereafter having rights to use roads, footpaths, sewers drains, watercourses, service pipes, wires, cables and other conducting media, equipment and the apparatus of any statutory undertaking or Relevant Authority or other works or installations (including a compound and site huts) in or under or over the Property or any part of the same for the purposes of the development and residential and other uses of the Property permitted by planning law or any part of the same;
- 2.2.2 granting to the Buyer's successors in title to the Property and those deriving title under it or them in respect of each and every part of the Property the rights referred to in clause 2.2.1;
- 2.2.3 granting to any Relevant Authority such easements or rights as may be required in connection with the works referred to in clause 2.2.1 or in respect of the Property or the relevant part or parts of it;
- 2.2.4 transferring or demising to any Relevant Authority any Exempted Property;
- 2.2.5 making any Permitted Disposal;
- 2.2.6 entering into and performing the terms of any Statutory Agreement;
- 2.2.7 carrying out any act or granting any right pursuant to the terms of the Collaboration Agreement;

and it is acknowledged and agreed that subject as referred to in this clause such works, easements, rights, transfers and demises and the terms of any such Statutory Agreement and the performance thereof shall be free of this Legal Charge. The Sellers shall forthwith enter into such documentation and do all such acts and things as are reasonably required to perfect the grant of such rights and easements or the transfer of such Exempted Property or the completing of any Permitted Disposal upon request by and the Sellers covenant with the Buyer to do so or procure that it is so done as soon as reasonably practicable.

2.3 Security

This Legal Charge is made for securing the Secured Amount.

2.4 Release

2.4.1 The Sellers covenant with the Buyer to release from this Legal Charge (and from any related caution, notice or restriction on the title to the Property):

2.4.1.1 all Exempted Property;

2.4.1.2 each Residential Unit and Commercial Unit which is released from the Parcel B (School Site) Overage Agreement simultaneously with such release;

2.4.1.3 the Property on the date of expiry or sooner determination of the Parcel B (School Site) Overage Agreement provided that all Secured Amounts (if having become due and liable to the Sellers) have been paid to the Sellers.

and upon release of any part or parts of the Property from this Legal Charge, all references to the Property in this Legal Charge shall be construed as references to those parts of the Property which remain for the time being subject to this Legal Charge and the covenants on the part of the Buyer shall continue in full force and effect in all respects as though they had at all times related solely to such parts of the Property so remaining subject to the provisions of this Legal Charge

2.4.2 The Sellers irrevocably appoint the Buyer's Solicitors to complete and submit to the Land Registry such forms as are properly required pursuant to clause 2.4.1 in order to comply with the Sellers' obligations to release.

2.5 Sellers' Co-operation

Upon request at any time by the Buyer and at the Buyer's cost (so that the Buyer shall first indemnify the Security Trustees and the Sellers in respect of all relevant reasonable costs and expenses properly incurred and any consequent liability), the Sellers shall as chargee:

2.5.1 join in and execute all such Statutory Agreements or other agreements as may be required by the Buyer in pursuing any planning application or in conducting any planning appeal in respect of the Property or any part of it;

2.5.2 enter into all such Statutory Agreements and/or consent to the giving or granting or entering into by the Buyer of any Statutory Agreements or any rights under such agreements which may be imposed or required by

any Relevant Authority in connection with the supply, diversion or adoption of any service media or services to and from in, on, under or over the Property or any part of it, the construction or dedication of any road, path, sewer or drain and all ancillary works, facilities and apparatus and the undertaking of any works in or the widening of any public highway in, on, under or over the Property or any part of it; and

- 2.5.3 jointly consent with the Buyer to the grant of such rights as shall reasonably be required to permit or facilitate the development and use of such part or parts of the Property which have been released from this Legal Charge and their beneficial occupation following development;

and the Sellers shall forthwith at the Buyer's request apply to HM Land Registry for the release or modification of any caution, notice or restriction on the title to the Property so as to permit the dealings referred to in this clause 2.65 and provided that in entering into such agreements and grants the Sellers shall not be obliged to be subject to any liability.

2.6 Land Registry restriction and other matters

- 2.6.1 The Buyer is to apply to the H M Land Registrar on H M Land Registry form RX1 to enter a restriction on the register of the title number allocated to the Property by the Land Registry in the following Land Registry standard form N:

"No disposition of the registered estate by a proprietor of the registered estate is to be registered without a written consent signed by Birketts LLP of Kingfisher House 1 Gilders Way Norwich Norfolk NR3 1UB (reference RVG/182468.0007)".

- 2.6.2 The Sellers shall procure that the Seller's Solicitors will forthwith provide:

- 2.6.2.1 the relevant consent in relation to any Permitted Disposal;
- 2.6.2.2 such release of all Exempted Property as the Land Registry require in order to release that Exempted Property from this Legal Charge; and
- 2.6.2.3 such release of all parts of the Property released from this Legal Charge pursuant to clause 2.4 as the Land Registry require in order to release that or those parts of the Property from this Legal Charge.

2.7 Exempt information document

The Buyer shall register this Legal Charge at H M Land Registry on behalf of the Sellers and when doing so, the Buyer is to make an application to the Land Registry on Form EX1 and Form EX1A, each signed by the Sellers and the Buyer and in a form agreed between the Sellers and the Buyer both acting reasonably, applying for this Legal Charge to be designated as an Exempt Information Document by H M Land Registry.

2.8 Further assurance

The Sellers and the Buyer each covenant with one another that they will execute or procure the execution of all such further documents as may reasonably be required to:

- 2.8.1 give effect to the provisions of this Legal Charge and the security created by it including this clause 2; and
- 2.8.2 allow the development of the Property and any part of it from time to time released from this Legal Charge to be developed and occupied or transferred for occupation; and
- 2.8.3 to ensure that the Property remaining subject to this Legal Charge is capable of serviced residential development with all necessary infrastructure rights.

3. COVENANTS

3.1 Restriction on further security

The Buyer covenants with the Sellers that it will not create or permit any Security to be created in or over the Property without the prior written consent of the Sellers (such consent not to be unreasonably withheld or delayed where the further security is to rank below this Legal Charge).

3.2 Statutory requirements

The Buyer covenants with the Sellers that it will comply with all statutory and other requirements affecting the Property.

3.3 Taxes and outgoings

The Buyer covenants with the Sellers that it will punctually pay all taxes, duties, rates and outgoings payable in respect of the Property.

3.4 Interest

The Buyer covenants with the Sellers to pay Interest on all sums payable by it under this Legal Charge to the Sellers and not paid on the due date for payment Provided That Interest shall not be charged on any sums that are already subject to additional interest payable to the Sellers under any other document or on any such other interest amounts so that no sum shall be subject to interest twice and interest shall not be paid on interest.

3.5 Property

The Buyer covenants with the Sellers and the Security Trustees that it will not do or permit to be done anything on the Property which would prevent the Property (whilst it is the subject of this Legal Charge) from being capable of being developed as serviced residential or commercial development with ancillary uses and with all necessary infrastructure rights.

3.6 Disposals

3.6.1 The Buyer, the Sellers, the Security Trustees and any Receiver appointed by any of them will:

3.6.1.1 not dispose of any part of the Property without ensuring that the remainder of the Property has the benefit of all necessary rights reservations and covenants reasonably required (if any) for the development of the remainder of the Property in accordance with the Collaboration Agreement and anticipated by the Parcel B (School Site) Overage Agreement; and

3.6.1.2 enter into all necessary deeds and documents required to give effect to clause 3.6.1.

4. POWER OF SALE

4.1 Consolidation of mortgages

The restrictions on the consolidation of mortgages in section 93 of the 1925 Act do not apply to this Legal Charge.

4.2 Power of leasing

The restriction on the powers of the Sellers or the Receiver to grant Leases or to accept the surrender of Leases in sections 99 and 100 of the 1925 Act do not apply to this Legal Charge.

4.5.34.5.4 This Legal Charge will become immediately enforceable and the powers of the Seller and the Receiver exercisable in the event of any of situations i, iv, v, vi, vii, viii and ix in the definition of Event of Default.

5. APPOINTMENT OF RECEIVERS

5.1 Appointment of receivers

At any time after the Sellers' power of sale has become exercisable, the Sellers may appoint one or more than one Receiver in respect of the Property and the Sellers will forthwith give the Buyer notice of such appointment.

5.2 Removal of restrictions on appointment

None of the restrictions imposed by the 1925 Act in relation to the appointment of receivers or to the giving of notice or otherwise will apply.

5.3 Joint and several powers

If more than one Receiver is appointed the Receiver may act jointly or jointly and severally.

5.4 Additional or alternative receivers

The Sellers may remove the Receiver and appoint another Receiver and the Sellers may also appoint an alternative or additional Receiver.

5.5 Agent of the Buyer

The Receiver will, so far as the law permits, be the agent of the Buyer.

5.6 Buyer's liability

The Buyer will be responsible for the proper acts or defaults of the Receiver and will be liable on any contracts or obligations properly made or entered into by the Receiver acting in good faith.

5.7 Liability for default

Neither the Sellers nor the Buyer will be responsible for any misconduct, negligence or default of the Receiver.

5.8 Continuation of powers following liquidation or bankruptcy

The powers of the Receiver will continue in full force and effect following the liquidation or bankruptcy of the Buyer.

5.9 General powers of a Receiver

A Receiver will have the power on behalf and at the cost of the Buyer:

- 5.9.1 to do or omit to do anything which the Buyer could do or omit to do in relation to the Property; and
- 5.9.2 to exercise all or any of the powers conferred on the Receiver or the Trustee under this Legal Charge or conferred upon receivers by the Insolvency Act, the 1925 Act or any other statutory provision (whether or not the Receiver was appointed pursuant to the relevant statutory provision).

5.10 Specific powers of a Receiver

Without limitation to the powers of the Receiver, the Receiver will have full power and discretion:

- 5.10.1 to take possession of and collect the income from the Property and for that purpose to take any proceedings in the name of the Buyer;
- 5.10.2 to carry on, manage or permit the carrying on and managing any business of the Buyer at the Property as the Receiver may think fit;
- 5.10.3 to sell, whether by public auction or private contract or otherwise, exchange, license or otherwise dispose of or deal with all or any part of the Property for such consideration, if any, and upon such terms as the Receiver reasonably thinks fit; and
- 5.10.4 to grant any Lease and to accept or agree to accept surrenders of Leases in such circumstances and for such purposes and upon such terms as the Receiver may reasonably think fit.

5.11 Application of proceeds

Sections 109(6) and 109(8) of the 1925 Act will not apply in relation to a Receiver appointed under this **clause 5**.

6. DISTRIBUTIONS

Subject to section 176A Insolvency Act, the net proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Amount, be applied in or towards discharging in the following order of priority:

- 6.1.1 the Secured Amount;

- 6.1.2 the reasonable costs, charges and expenses incurred and payments made by the Receiver in connection with or as a result of the exercise of the Receiver's powers and the reasonable costs, charges and expenses of and incidental to the Receiver's appointment;
- 6.1.3 the remuneration of the Receiver;
- 6.1.4 in payment of the surplus (if any) to the Buyer.

7. PURCHASER

A purchaser from, tenant or other person dealing with the Sellers or the Receiver will not be concerned to enquire whether any of the powers which they have exercised or purported to exercise have arisen or become exercisable.

8. EXCLUSION OF LIABILITY AND INDEMNITY

8.1 Liability for loss and damage

The the Sellers and the Receiver will not be liable to the Buyer for any loss or damage incurred by the Buyer arising out of the proper exercise of their respective powers including entering into possession or any attempt or failure to exercise those powers.

8.2 Liability of the Sellers

- 8.2.1 The liability of the Sellers under this Legal Charge is joint and the Buyer may not take any action against or release or compromise the liability of, grant time or other indulgence to any one of the Sellers without doing so with all of the persons who are the herein named Sellers.
- 8.2.2 The expression "net value of the assets" in this clause 9.2 shall mean the net value for the time being of the assets of the relevant trust at the date of this Legal Charge less the value of any liability to taxation or any other liability arising from the administration of the relevant trust and properly payable from trust assets.
- 8.2.3 The aggregate liability of NCC and its trustees in respect of any claim (including the costs relating to any such claim) under this Legal Charge shall not exceed the net value of the assets of NCC and nothing in this Legal Charge shall entitle the Buyer or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of the NCC or against any assets for the time being vested in them or any of them which are not assets of NCC.

- 8.2.4 The obligations which the trustees of NCC undertake can only be enforced against them jointly and not individually and then only as trustees of NCC and a trustee who retires from being a trustee of NCC will after his/her retirement no longer be liable for any breach of an obligation under this Legal Charge regardless of whether the breach occurred before or after the retirement.
- 8.2.5 Clauses 8.2.3 and 8.2.4 in relation to the liability of a trustee of NCC will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.
-
- 8.2.6 The aggregate liability of the trustees of GH in respect of any claim (including the costs relating to any such claim) under this Legal Charge shall not exceed the net value of the assets of GH and nothing in this Legal Charge shall entitle the Buyer or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of the GH or against any assets for the time being vested in them or any of them which are not assets of GH.
- 8.2.7 The obligations which the trustees of GH undertake can only be enforced against them jointly and not individually and then only as trustees of GH and a trustee who retires from being a trustee of GH will after his/her retirement no longer be liable for any breach of an obligation under this Legal Charge regardless of whether the breach occurred before or after the retirement.
- 8.2.8 Clauses 8.2.6 and 8.2.7 in relation to the liability of a trustee of GH will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.
- 8.2.9 The aggregate liability of the trustees of AEF in respect of any claim (including the costs relating to any such claim) under this Legal Charge shall not exceed the net value of the assets of AEF and nothing in this Legal Charge shall entitle the Buyer or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of AEF or against any assets for the time being vested in them or any of them which are not assets of AEF.
- 8.2.10 The obligations which the trustees of AEF undertake can only be enforced against them jointly and not individually and then only as trustees of AEF and a trustee who retires from being a trustee of AEF will after his/her retirement no longer be liable for any breach of an

obligation under this Legal Charge regardless of whether the breach occurred before or after the retirement.

8.2.11 Clauses 8.2.9 and 8.2.10 in relation to the liability of a trustee of AEF will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.

8.2.12 The aggregate liability of the trustees of Gurloque in respect of any claim (including the costs relating to any such claim) under this Legal Charge shall not exceed the net value of the assets of Gurloque and nothing in this Legal Charge shall entitle the Buyer or any other person to pursue, exercise or enforce any right or remedy against the personal effects, estate, property or assets of the said trustees or other the trustees from time to time of Gurloque or against any assets for the time being vested in them or any of them which are not assets of Gurloque.

8.2.13 The obligations which the trustees of Gurloque undertake can only be enforced against them jointly and not individually and then only as trustees of Gurloque and a trustee who retires from being a trustee of Gurloque will after his/her retirement no longer be liable for any breach of an obligation under this Legal Charge regardless of whether the breach occurred before or after the retirement.

8.2.14 Clauses 8.2.12 and 8.2.13 in relation to the liability of a trustee of Gurloque will not apply to such a trustee in respect of any liability resulting from a fraudulent act by that trustee.

8.3 **Buyer's Indemnity**

The Buyer agrees with the Security Trustees and the Sellers to indemnify the Security Trustees and the Sellers and the Receiver against any reasonable and proper exercise of the powers of the Security Trustees in relation to this Legal Charge.

9. **WARRANTIES**

9.1 The Buyer warrants to the Security Trustees and as a separate warranty to the Sellers that as at the date of this Legal Charge:

9.1.1 neither the execution of this Legal Charge by the Buyer nor compliance with its terms will:

9.1.1.1 conflict with or result in any breach of any law or enactment or any deed, agreement or other obligation or duty to which the Buyer is bound; or

9.1.1.2 cause any limitation on any of the powers of the Buyer or on the right or ability of the directors of the Buyer to exercise those powers to be exceeded;

9.1.2 all consents required by the Buyer for the execution, delivery, issue, validity or enforceability of this Legal Charge have been obtained and have not been withdrawn;

9.1.3 no person having any charge or other form of security over the Property or any other assets of the Buyer has enforced or given notice of its intention to enforce such security; and

9.1.4 no Event of Default has occurred or is continuing.

10. POWERS

10.1 Execution of documents

The Receiver will have power, either in the name of the Buyer or in the name of the Receiver, to execute documents and do all acts or things which may be necessary under this Legal Charge or in exercise of the Receiver's powers.

10.2 Disposal of chattels

If the Sellers or the Receiver obtain possession of the Property and the Buyer does not remove any chattels on the Property within 20 working days of being requested in writing to do so, the Sellers or the Receiver may remove and store or sell them without being under any liability to the Buyer other than to account for the net proceeds of the sale. All reasonable and proper expenses and liabilities incurred by the Sellers or the Receiver in connection with the removal, storage and sale of the chattels will form part of the Secured Amount.

11. NOTICES

11.1 Form of notices

Any notice served under this Legal Charge is to be:

11.1.1 in writing;

11.1.2 signed by an officer of the party serving the notice or by its solicitors;

11.1.3 delivered by hand, first class post, pre-paid or special delivery at the address of the party on whom it is served set out above or such other address which they may notify in writing to the other parties at any time with a copy being sent also to at the same time (as the case may be) the

Buyer's Solicitors and the Sellers' Solicitors and the Security Trustees' Solicitors.

11.2 Time of receipt

If a notice is received after 4.00 pm on a working day, or on a day which is not a working day, it is to be treated as having been received on the next working day.

11.3 Deemed receipt

Unless the time of actual receipt is proved, a notice served by the following means is to be treated as having been received;

11.3.1 if delivered by hand, at the time of delivery;

11.3.2 if sent by post, on the second working day after posting.

12. LAW AND JURISDICTION

12.1 Governing law

This Legal Charge is to be governed by and interpreted in accordance with English law.

12.2 Jurisdiction

The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Legal Charge. This clause operates for the benefit of the Sellers who retain the right to sue the Buyer and enforce any judgment against the Buyer in the courts of any competent jurisdiction.

13. EXPERT DETERMINATION

13.1 The Buyer and the Sellers shall use all reasonable and commercially prudent endeavours to settle any dispute relating to the subject matter or provisions of this Legal Charge by negotiation but if they are not able to do so within a period of 10 working days from the date of the dispute arising it shall be settled by an Expert under the following terms of this clause.

13.2 The Expert shall be appointed jointly by the Buyer and the Sellers within 20 working days of the dispute arising. If the Buyer and the Sellers fail to make a joint appointment of an Expert within the period the Expert shall be appointed on the application of either of them by the President (or if the President is not available the next senior officer available) of the Royal Institution of Chartered Surveyors.

13.3 The Expert shall be instructed on terms that on appointment he shall forthwith notify the Buyer and the Sellers in writing of his appointment and he will make his determination within six weeks of the date of his appointment.

13.4 If the Expert shall fail to make a determination on the matter in question within a reasonable time or if he shall relinquish his appointment or die or should it become apparent that for any reason he will not be able to complete his duties either of them may apply to the President (or other officer as before) of the Royal Institution of Chartered for a substitute to be appointed in his place and this procedure may be repeated as many times as necessary and the provisions of this clause shall operate in relation to that application as in relation to any earlier application.

13.5 The Expert shall afford the Buyer and the Sellers or their professional advisors the opportunity to make written representations and cross-representations and shall act as an Expert.

13.6 The determination of the Expert shall be final and binding upon the Buyer and the Sellers (except in the case of manifest error)

13.7 The Buyer and the Sellers shall bear the fees and expenses of the Expert in such proportions as the Expert shall determine but otherwise in equal shares.

14. **CHARITIES STATEMENT**

The interests of NCC, GH and AEF in the Property and this Legal Charge are held in trust for NCC, GH and AEF, who are all non-exempt charities, and the restrictions on disposition imposed by sections 117 to 121 of the Charities Act 2011 will apply to their interests in the Property and this Legal Charge (subject to section 117(3) of that Act).

15. **SECURITY TRUSTEES**

15.1 The Sellers the Security Trustees and the Buyer acknowledge that the Sellers have appointed the Security Trustees to act on the Sellers' behalf in relation to all matters arising out of this Legal Charge and until otherwise advised by the Sellers to the Buyer in writing:

15.1.1 a reference to the Sellers in this Legal Charge shall be deemed to be a reference to the Seller or the Security Trustees;

15.1.2 in the event of notices served or representations made by both the Sellers and the Security Trustees to the Buyer relating to the same subject matter the Buyer shall only be obliged to consider the notice(s) or representations made by the Security Trustees;

- 15.1.3 unless otherwise requested in writing by either the Security Trustees or the Sellers, any payment to be made by the Buyer to the Sellers shall be made to the Security Trustees; and
- 15.1.4 a payment to the Sellers' Solicitors shall be deemed to be a payment to the Seller or the Security Trustees as appropriate.
- 15.2 The Security Trustees have joined into this Deed to confirm their acknowledgment of and agreement to the matters contained in clause 15.1.

16. EXECUTION

16.1 This Legal Charge:

- 16.1.1 is executed as a deed and by its execution the parties authorise their respective solicitors to deliver it for them when it is dated;
- 16.1.2 was delivered when it was dated;
- 16.1.3 may be executed in any number of duplicate parts, all of which taken together will constitute one deed.

SCHEDULE 1

(TRUSTEES)

Part 1

(THE TRUSTEES OF THE GURLOQUE SETTLEMENT)

1.	William David Winslow Barr	c/o Mills & Reeve LLP, Whitefriars, 1 St. James Court, Norwich, NR3 1RU
2.	Kate Alice Paul	c/o Mills & Reeve LLP, Whitefriars, 1 St. James Court, Norwich, NR3 1RU
3.	David Edward Brown	c/o Mills & Reeve LLP, Whitefriars, 1 St. James Court, Norwich, NR3 1RU

Part 2

(THE TRUSTEES OF NORWICH CONSOLIDATED CHARITIES)

	Name of Trustee	Address of Trustee
1.	Philip Blanchflower	1 Broadmead Green, Thorpe End, Norwich, NR13 5DE
2.	Brenda Ferris	7 Valentine Street, Norwich, NR2 4BA
3.	David Fullman	115 Somerleyton Gardens, Norwich, NR2 2BP
4.	Christine Herries	21 Oak Street, Norwich, NR3 3AE
5.	Geoffrey Loades	Upland House, Main Road, Swardeston, Norwich, NR14 8AD
6.	Iain Brooksby	Swainsthorpe Hall, Swainsthorpe, Norwich, NR14 8QA
7.	Jeanne Southgate	11 Lime Tree Road, Norwich, NR2 2NQ
8.	Marion Maxwell	Flat 4, 37 St. Benedicts Street, Norwich, NR2 4PG
9.	Karen Davis	61 Pettus Road, Norwich, NR4 7BY

10.	Heather Tyrrell	29 Hardley Street, Hardley, Norwich, NR14 6BY
11.	Beth Jones	59 Stafford Street, Norwich, NR2 3BD
12.	Peter Shields	54 Thunder Lane, Norwich, NR7 0PZ
13.	Michael Flynn	190 Wroxham Road, Sprowston, Norwich NR7 8DE
14.	Lesley Grahame	7 Railway Cottages, Hardy Road, Norwich, NR1 1JW

Part 3

(THE TRUSTEES OF GREAT HOSPITAL)

	Name of Trustees	Address of Trustee
1.	William John Walker	18 Indigo Yard, Norwich, NR3 3QZ
2.	Elizabeth Ann Crocker	36 Eaton Road, Norwich, NR4 6PZ
3.	Michael John Brookes	32 Eaton Road, Norwich, NR4 6PZ
4.	Alexandra de Bunsen	Old Rectory, Kirby Bedon, Norwich, NR14 7DX
5.	Jon Stanley	2, Meadway, Norwich, NR4 6XS
6.	James Shanklin Powell	Ivy Farmhouse, Anchor Street, Tunstead, Norwich, NR12 8HW
7.	David Howard Buck	2 Riverside, Reedham, Norwich, NR13 3TQ
8.	Julie Anne James	Bishops House, Norwich, NR3 1SB
9.	David Marris	55 Mount Pleasant, Norwich, NR2 2DQ
10.	Catherine Jeffries	9 Judges Drive, Norwich, NR4 7QQ
11.	James Banham	Breydon House, 13 High Street, Loddon, NR14 6ET
12.	Clare Singh	Chandlers Ford, 4 Dian Road, Brundall, Norwich, NR13 5PD

Part 4

(THE TRUSTEES OF ANGUISH'S EDUCATIONAL FOUNDATION)

	Name of Trustee	Address of Trustee
1.	Philip Blanchflower	1 Broadmead Green, Thorpe End, Norwich, NR13 5DE
2.	Brenda Ferris	7 Valentine Street, Norwich, NR2 4BA
3.	David Fullman	115 Somerleyton Gardens, Norwich, NR2 2BP
4.	Christine Herries	21 Oak Street, Norwich, NR3 3AE
5.	Geoffrey Loades	Upland House, Main Road, Swardeston, Norwich, NR14 8AD
6.	Iain Brooksby	Swainsthorpe Hall, Swainsthorpe, Norwich, NR14 8QA
7.	Jeanne Southgate	11 Lime Tree Road, Norwich, NR2 2NQ
8.	Marion Maxwell	Flat 4, 37 St. Benedicts Street, Norwich, NR2 4PG
9.	Karen Davis	61 Pettus Road, Norwich, NR4 7BY
10.	Heather Tyrrell	29 Hardley Street, Hardley, Norwich, NR14 6BY
11.	Beth Jones	59 Stafford Street, Norwich, NR2 3BD
12.	Peter Shields	54 Thunder Lane, Norwich, NR7 0PZ
13.	Michael Flynn	190 Wroxham Road, Sprowston, Norwich NR7 8DE
14.	Lesley Grahame	7 Railway Cottages, Hardy Road, Norwich, NR1 1JW

Executed as a deed by KIER LIVING
LIMITED acting by a director in the
presence of:

Witness:

Signature: Director

Name:

Address:

Signed as a deed by WILLIAM DAVID
WINSLOW BARR in the presence of:

Witness:

Signature:

Name:

Address:

Signed as a deed by KATE ALICE PAUL in
the presence of:

Witness:

Signature:

Name:

Address:

Signed as a deed by DAVID EDWARD
BROWN in the presence of:

Witness:

Signature:

Name:

Address:

.....

Signed as a deed on behalf of the trustees
of NORWICH CONSOLIDATED
CHARITIES by [] and
[] two of their
number under an authority conferred
pursuant to Section 333 of the Charities
Act 2011 in the presence of:

Witness:

Signature:

Name:

Address:

.....

Signed as a deed on behalf of the trustees
of GREAT HOSPITAL by []
and [] two of
their number under an authority conferred
pursuant to Section 333 of the Charities
Act 2011 in the presence of:

Witness:

Signature:

Name:

Address:

.....

Signed as a deed on behalf of the trustees
of ANGUISH'S EDUCATIONAL
FOUNDATION by [] and
[] two of
their number under an authority conferred
pursuant to Section 333 of the Charities
Act 2011 in the presence of:

Witness:

Signature:

Name:

Address:

.....

Executed as a deed by BIRKETTS
TRUSTEES LIMITED acting by a
director in the presence of:

Witness:

.....
Director

Signature:

Name:

Address:

.....

Executed as a deed by BIRKETTS
TRUSTEES TWO LIMITED acting by a
director in the presence of:

Witness:

.....
Director

Signature:

Name:

Address:

.....