

**Planning Obligation by Deed under Section 106 of the Town and Country
Planning Act 1990**

relating to the development of land north east of Flordon Road, Creeting St Mary,
Suffolk

Dated: 6 May 2020

**SUFFOLK COUNTY COUNCIL (1)
FIRSTFIELD PROPERTY LIMITED (2)**

Dated

6th May

2020

PARTIES

- (1) **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX ("**the County Council**")
- (2) **FIRSTFIELD PROPERTY LIMITED** (Company Registration Number: 9717850) whose registered office is situated at Unit 5 The Woodlands Badley Ipswich Suffolk IP6 8RS ("**the Owner**")

INTRODUCTION

- 1 The County Council is the local highway authority (except for trunk roads) and is also a local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The ownership of the Site is as set out in the First Schedule.
- 3 The parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- 4 The District Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

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

“Act” the Town and Country Planning Act 1990
(as amended)

“Application” the application for full planning permission to develop the Site in accordance with the application plans and other materials deposited with the District Council and validated on 23 January 2019 and bearing the District Council's reference number DC/19/00301

“BCIS Index” the All In Tender Price Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of

indexation as may be agreed between
the Parties hereto

"BCIS Indexation"

the increase in any sum referred to in the
Second Schedule by an equivalent to
the increase in the BCIS Index to be
calculated in accordance with clause 10
of this deed

"Commencement of Development"

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

construction of access to the Site and the temporary display of site notices or advertisements and "Commence" and "Commencement" and "Commence Development" shall be construed accordingly

"Development"

the development of the Site for the erection of three (3) detached residential dwellings and garages, the erection of six (6) small industrial units (B1) and the erection of one (1) main industrial unit (B2) as set out in the Application and in accordance with the Planning Permission

"District Council"

Mid Suffolk District Council of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX

"Planning Permission"

the planning permission as may be granted by the District Council pursuant to the Application subject to such

conditions as may be imposed on the grant of planning permission

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

“Site Plan” the plan (ref: 1579/17/01) attached to this Deed

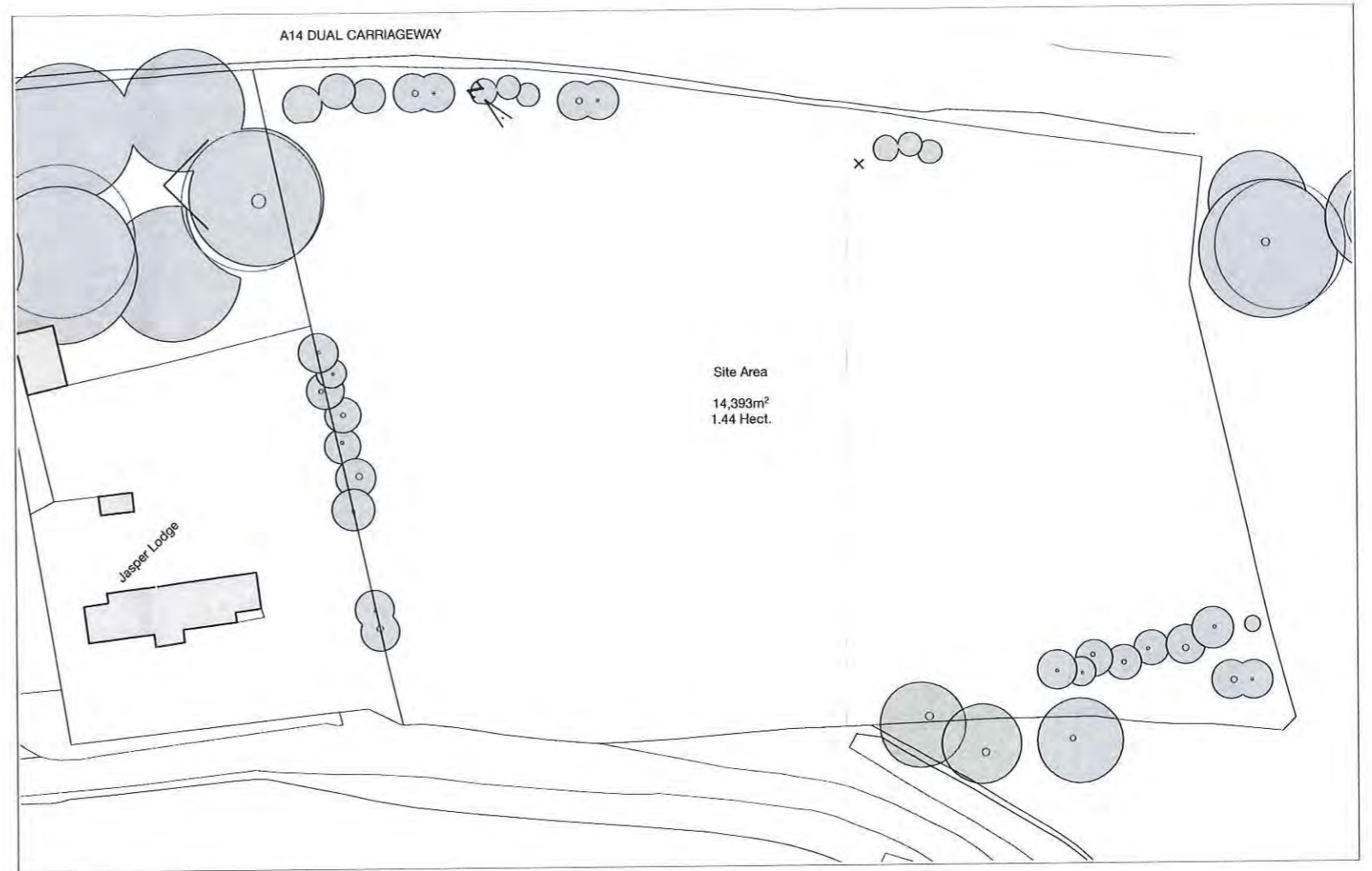
“Traffic Regulation Order Contribution” the sum of £10,000 (ten thousand pounds) subject to BCIS Indexation in accordance with Clause 10

“Unit” means any of the residential dwellings, the industrial units or the main industrial unit to be constructed in accordance with the Planning Permission and “Units” is to be construed accordingly

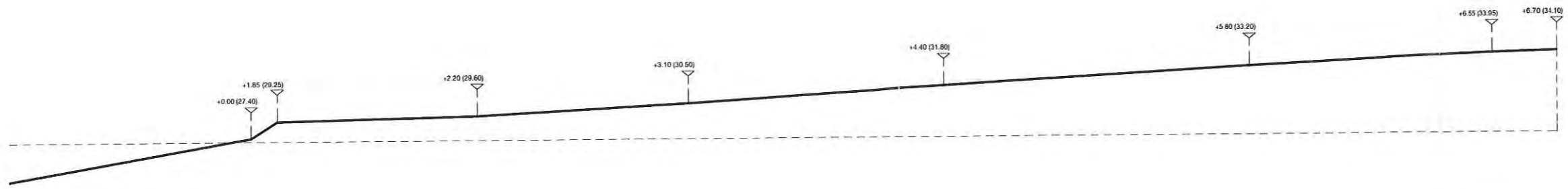
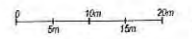
“Working Days” Monday to Friday (inclusive) except Good Friday, Christmas Day and public or bank holidays from time to time in England.



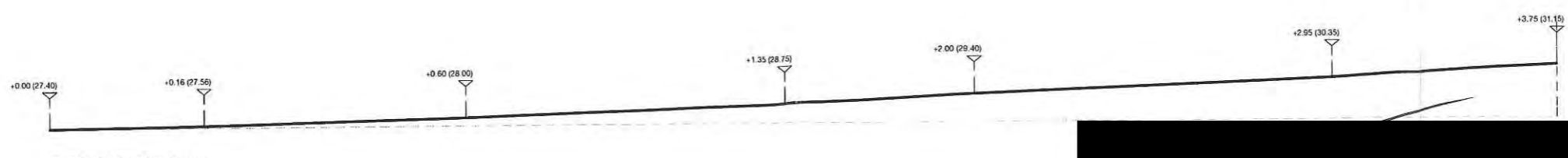
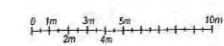
Location Plan
Scale: 1:1000



Existing Site Plan
Scale: 1:500



Existing Site Section A-A
Scale: 1:200



Existing Site Section B-B
Scale: 1:200

Status: **Planning**

Medusa Design
Architectural Designers
Unit 4, Show Valley Business Centre
Brundon Lane, Sudbury, CO10 7QB
Tel: 01787 683339 Fax: 01787 682658
E-Mail: info@medusadesign.co.uk
Web site: www.medusadesign.co.uk

Client: Mr J Haynes Unit 5, The Woodlands Badley, Ipswich, IP6 8RS		
Project: Residential & Commercial Development Land at Flordon Road (South) Needham Market		
Drawing Details: Location Plan & Existing Site Plan/ Section Detail(s)		
Date: April 2017	Scale's: 1:500, 1:1000 @ A1	Drawn: AL
Number: 1579/17/01		Rev: ---

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, sub-clause, schedule, paragraph, sub-paragraph or recital such reference (unless the context otherwise requires) is a reference to a clause, sub-clause, schedule, paragraph, sub-paragraph or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed as interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually insofar as such obligation relates to land within such party's ownership unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any party deriving title through or under that party and in the case of the County Council the successor to the County Council's statutory functions.

- 2.7 Where this Deed requires a plan or strategy or other document to be submitted to the County Council for approval or agreement then upon approval of the same it shall be deemed to have been incorporated into this Deed and the same shall apply to any provision requiring a review of any such plan or strategy or other document.
- 2.8 None of the covenants contained in this Deed on the part of the Owner shall be enforceable against owner occupiers mortgagees or tenants of the Units nor against those deriving title from them.
- 2.9 None of the covenants in this Deed shall be enforceable against any statutory undertaker who acquires any part of the Site or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.
- 2.10 The headings are for reference only and shall not affect construction.
- 2.11 Any covenant by the Owner not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the County Council as local planning authority against the Owner and their successors in title.

3.3 This Deed is a deed and may be modified or discharged in part or in total at any time after the date of this Deed by deed between the parties in the form of a deed.

3.4 This Deed is a local land charge and upon completion shall be registerable by the District Council as such.

4 CONDITIONALITY

This Deed is conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

save for the provisions of this Clause and Clauses 3.4, 7.2, 7.5, 7.9, 7.10, 7.13, 8, 9, 10, 13, 14, 15, 16 and 17 and any other relevant provisions which shall come into effect immediately upon completion of this Deed

5 THE OWNER'S COVENANTS

The Owner covenants with the County Council as set out in the Second Schedule.

6 THE COUNTY COUNCIL'S COVENANTS

The County Council covenants with the Owner as set out in the Third Schedule.

7 MISCELLANEOUS

7.1 The Owner shall act in good faith and shall co-operate with the County Council to facilitate the discharge and performance of all obligations contained herein and following the Commencement of Development the Owner shall comply with any reasonable requests of the County Council and their duly authorised officers or agents to provide documentation within the Owner's possession (at the Owner's

expense) for the purposes of monitoring compliance with the obligations contained herein.

- 7.2 The Owner shall pay to the County Council on completion the proper and reasonable legal costs of the County Council incurred in the negotiation preparation and execution and completion of this Deed.
- 7.3 The Owner agrees declares and covenants to pay the County Council prior to Commencement of Development the reasonable fee incurred by the County Council for monitoring compliance with the obligations within this deed in the sum of £412.
- 7.4 No provision of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 7.5 Where an approval consent or expression of satisfaction or a subsequent deed is required by the Owner from the County Council under the terms of this Deed such approval or consent or expression of satisfaction or subsequent deed shall not be unreasonably withheld or delayed and any such consent approval or expression of satisfaction shall be given on behalf of the County Council by the Executive Director of Growth, Highways and Infrastructure.
- 7.6 Following the performance and satisfaction of all the obligations contained in this Deed the District Council may effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 7.7 Insofar as any clause or other provision of this Deed is found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

- 7.8 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed revoked or otherwise withdrawn or expires by effluxion of time before the Commencement of the Development or is modified (without the consent of the Owner).
- 7.9 No person will be liable for any breach of any of the planning obligations or other provisions of this Deed if he no longer has an interest in the Site (or that part of the Site in respect of which such breach occurs) but without prejudice to liability for any subsisting breach arising prior to parting with such interest AND FOR THE AVOIDANCE OF DOUBT neither the reservation of any rights or the inclusion of any covenants or restrictions over the Site in any transfer of the Site (or any part or parts of the Site) shall constitute an interest for the purposes of this Clause.
- 7.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 7.11 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Deed are hereby waived.
- 7.12 Save as otherwise provided in this Deed all works and activities to be carried out under the terms of this Deed (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the County Council.

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

7.14 The Owner covenants and warrants to the County Council that they have full power to enter into this Deed and there is no other person having a charge over or any other interest in that part of the Site registered with the Land Registry under title number SK206752.

7.15 The Owner covenants and warrants to give to the County Council prior written notice of Commencement of Development at least ten (10) days prior to the Commencement of Development.

8 WAIVER

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

9 CHANGE IN OWNERSHIP

The Owner agrees with the County Council to give the County Council written notice of any transfer in ownership of any of its freehold interests in the Site occurring before all the positive obligations under this Deed have been discharged such notice to be served within twenty one (21) days of such transfer and to give details of the

transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan PROVIDED THAT this obligation shall not apply to transfers of individual Units within the Development or the transfer or grant of leases of electricity sub-stations or gas governors or the like.

10 INDEXATION

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

10.1 A is the sum payable under this deed

10.2 B is the original sum calculated as the sum payable

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

10.4 D is the BCIS Index for the month two (2) before the date of this Deed and

10.5 C/D is greater than one (1)

11 VAT

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

12 NOTICES

12.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by first class recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing PROVIDED THAT the notice or other written communication is addressed and delivered or sent by first class recorded delivery post to the address of the party concerned as nominated in clause 12.2

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

The County Council	The Executive Director of Growth, Highways and Infrastructure, Endeavour House, Russell Road, Ipswich, Suffolk IP1 2BX.
The Owner	Unit 5 The Woodlands Badley Ipswich Suffolk IP6 8RS

12.3 Any notice or other written communication to be given by the County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the County Council by a duly authorised officer of the County Council.

13 DISPUTE RESOLUTION

13.1 Any dispute or difference of any kind whatsoever arising between the Owner and the County Council ("the Parties") out of or in connection with this Deed (including without limitation any question regarding its existence validity or termination) shall be referred to arbitration before a single Expert (the "Expert").

13.2 Parties to the dispute shall jointly appoint the Expert not later than twenty-eight (28) days after service (on all other Parties to the dispute) of a request in writing by any Party to the dispute to do so.

13.3 If the Parties to the dispute are unable to agree within twenty-eight (28) days as to the appointment of such Expert then the Expert shall be appointed on the application of any of the Parties to the dispute as follows:

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

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

13.3.3 difference or question relates to the value of any interest in property it shall be referred to a chartered surveyor agreed upon by the Parties to the

dispute but in default of agreement appointed at the request of a Party to the dispute by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or

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

13.4 In the event of a reference to arbitration the Parties to that dispute agree to:

13.4.1 prosecute any such reference expeditiously; and

13.4.2 do all things or take all steps reasonably necessary in order to enable the Expert to deliver any award (interim, final or otherwise) as soon as reasonably practicable.

13.5 The Expert will have the power to consolidate proceedings or hold concurrent proceedings and to order on a provisional basis any relief which he would have power to grant on a final award.

13.6 The award shall be in writing signed by the Expert and shall be finalised within fourteen (14) days of the hearing.

13.7 The award shall be final and binding in the absence of manifest error both on the Parties to the dispute and on any persons claiming through or under them and judgment upon the award may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement as the case may be and the Expert's costs shall be payable

by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.

13.8 Unless this Deed has already been terminated each of the Parties to the dispute shall in every case continue to comply with its obligations under this Deed regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution pursuant to this Clause 13 but without prejudice to the rights and obligations of the Parties in relation to the termination of this Deed and other methods of enforcement.

13.9 The provisions of this clause shall not affect the ability of a party to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

14 SATISFACTION OF ANY OF THE PROVISIONS OF THIS DEED

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

15 COMMUNITY INFRASTRUCTURE LEVY

The Parties to this Deed agree that for the purposes of the Community Infrastructure Levy Regulations 2010 the obligations imposed in this Deed are (a) necessary to make the Development permitted pursuant to the Application acceptable in planning

terms (b) directly relate to the Development permitted pursuant to the Application and (c) fairly and reasonably relate in scale and kind to the Development permitted pursuant to the Application.

16 JURISDICTION

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

17 DELIVERY

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

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

FIRST SCHEDULE

FREEHOLD INTEREST

The Owner is the freehold owner of the Site shown edged red for identification purposes only on the Site Plan the title to which is part of the land registered at the Land Registry with Title Absolute under Title Number SK206752.

SECOND SCHEDULE

THE OWNER'S COVENANT WITH THE COUNTY COUNCIL

TRAFFIC REGULATION ORDER CONTRIBUTIONS

- 1 The Owner covenants to pay to the County Council the Traffic Regulation Order Contribution prior to the Commencement of the Development.
- 2 The Owner hereby covenants not to Commence or permit the Commencement of the Development until the Traffic Regulation Order Contribution has been paid to the County Council.

THIRD SCHEDULE

COUNTY COUNCIL'S COVENANTS

TRAFFIC REGULATION ORDER CONTRIBUTION

- 1 The County Council covenants to pay the Traffic Regulation Order Contribution into an interest bearing account and to use the Traffic Regulation Order Contribution for the purpose of using reasonable endeavours to seek an extension of the 30mph speed limit on Flordon Road, Creeting St Mary, Suffolk to approximately 200 metres south of its current location and to begin the procedure to seek this extension of the 30mph speed limit on Flordon Road within ten (10) Working Days of receipt of the Traffic Regulation Order Contribution; and

2 If requested to do so in writing by the Owners after the expiry of ten (10) years of payment of the Traffic Regulation Order Contribution within a further period of one (1) year the County Council shall repay to any person who paid the Traffic Regulation Order Contribution in accordance with the provisions of this Deed any amount which has not been committed or expended by the County Council in accordance with the provisions of this Deed within five (5) years of receipt together with any interest accrued on receipt of a written request PROVIDED THAT, if for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period

3 If requested to do so in writing by the Owner after the expiry of ten (10) years of the payment of the Traffic Regulation Order Contribution within a further period of one (1) year the County Council shall notify the Owner that such monies have been spent or committed such notice to include full details of what the said monies were spent on or committed to.

THE COMMON SEAL OF
SUFFOLK COUNTY COUNCIL

was affixed in the presence of:

)
[Redacted]
Authorised Officer



EXECUTED AS A DEED by)
FIRSTFIELD PROPERTY LIMITED)
acting by a director in the presence of:)

Director: [Redacted]

Witness Name: [Redacted]
Witness Address: [Redacted]
Witness Signature [Redacted]

