

IN TRIPLICATE

DATED 2023

109 APRIL 2023

SUFFOLK COUNTY COUNCIL (1)

- and -

ARBORA HOMES (WESTLETON) LIMITED (2)

AGREEMENT

made pursuant to Section 278 of the Highways Act 1980
and any other enabling power relating to
the development of land at Cherry Lee, Darsham Road,
Westleton, Suffolk

Nigel Inness
Head of Legal Services
Suffolk County Council
5 Constanine Road Ipswich
Suffolk IP1 2DH

Ref: 69700/JL

**SECTION 278 AGREEMENT
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THIS AGREEMENT is made the 19 day of April 2023

BETWEEN the following parties :-

- (1) SUFFOLK COUNTY COUNCIL of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX ("the County Council")
- (2) ARBORA HOMES (WESTLETON) LIMITED (company number 14002524) of 1 and 2 Tollgate Business Park, Tollgate West, Stanway, Colchester, Essex CO3 8AB ("the Developer")

RECITALS AND DEFINITIONS

(A) In this Agreement unless the context otherwise requires the following words shall have the following meanings :-

- "1980 Act" means the Highways Act 1980 (as amended)
- "Approved Contractor" means the contractor(s) approved by the County Council for carrying out the Highway Works of the value and complexity proposed
- "Approved Sub-Contractor" means the sub-contractor(s) approved by the County Council for carrying out the Highway Works of the value and complexity proposed
- "CDM Regulations" means the Construction (Design and Management) Regulations 2015 (SI 2015/51)
- "Certificate of Final Completion" means any of the certificates referred to in paragraph 15.3 of Schedule I
- "Certificate of Substantial Completion" means any of the certificates referred to in paragraph 14.2 of Schedule I
- "Committed Sums" means the sum of £2243.80 (Two thousand, two hundred and forty-three pounds and eighty pence) which is calculated, as set out in paragraph 18.1 on Schedule I towards the cost of the County Council's future maintenance liability of the Highway Works

"Compensation Figure"	means the sum of £3950 (three thousand nine hundred and fifty pounds) which is the amount which the Director reasonably considers sufficient to meet the likely cost of settling claims and connected costs under Part I of the Land Compensation Act 1973
"Compensation Cash Deposit"	means the cash deposit to be paid to the County Council in the sum of the Compensation Figure being the sum the County Council reasonably considers sufficient to meet the likely cost of settling claims and connected costs under Part I of the Land Compensation Act 1973
"Contract"	means the contract or contracts in respect of each and all of the Highway Works
"Contractor"	means the contractor or contractors who have been awarded the Contract to execute the Highway Works. For the avoidance of doubt the aforementioned definition does not include any subcontractor
"Development"	means the development to be carried out pursuant to the Permission
"Director"	means the County Council's Executive Director of Growth, Highways and Infrastructure or other officers of the County Council acting under his hand
"Highway Works"	means the works collectively or individually as the context requires which are set out in Schedule III of this Agreement and shown in the Works Drawings
"Performance Bond"	means the bond with the Performance Bond Surety for each and all of the Highway Works, such bond to be in the form set out in Schedule II.A, to the effect that should the Developer default in the execution of its obligations to carry out the Highway Works and to maintain the same in accordance with the provisions of this Agreement then the County Council will call upon the Performance Bond Surety to provide the full value of the Performance Bond (subject to the provisions

hereinafter contained) to carry out the Highway Works and maintain the same as aforesaid

“Performance Figure” means the sum of £57,095.91 (fifty-seven thousand and ninety-five pounds and ninety-one pence) being the Tender Sum plus 10 per cent in respect of the Highway Works and as set out in each of the Contracts

“Performance Bond Surety” means HCC International Insurance Company Plc of The Grange, Rearsby, Leicester LE7 4FY, UK

“Permission” means the planning permission granted by East Suffolk Council dated 31 March 2022 with reference number DC/20/4709/OUT in respect of the Site together with any modification of it

“Road Safety Audit” means the evaluation of each and all of the Highway Works during design and at the end of construction to identify potential road safety problems that may affect any users of the highway and to suggest measures to eliminate or mitigate those problems in accordance with Department for Transport standards or by the County Council as agreed by the Director

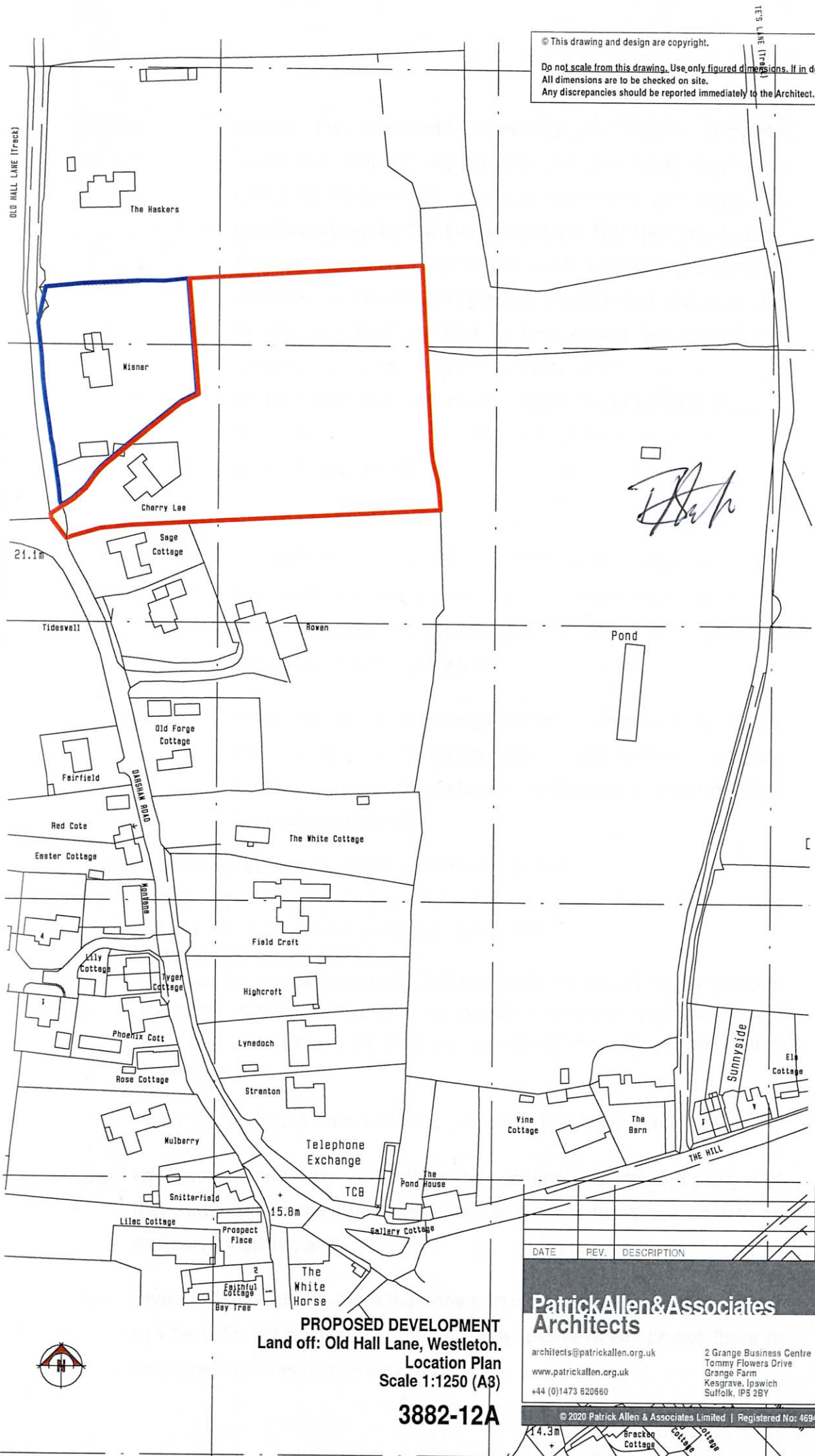
“Site” means land situated at Cherry Lee, Darsham Road, Westleton, Suffolk shown edged red for identification only on the attached plan no 3882-12A

“Specification” means the County Council’s “Specification for Estate Roads” dated May 2007 (or later amendment current at the date of this Agreement) so far as this is consistent with the Works Drawings and the description in Schedule III (subject to any variations agreed in writing)

“Sub-contractor” means the sub-contractor(s) working for the Contractor(s) who have been contracted to execute the Highway Works

“Substantial Completion” means complete to the reasonable satisfaction of the Director and so that the Highway Works can be used for the purpose and operate in the manner for which they were designed

© This drawing and design are copyright.
 Do not scale from this drawing. Use only figured dimensions. If in doubt, ask.
 All dimensions are to be checked on site.
 Any discrepancies should be reported immediately to the Architect.



PROPOSED DEVELOPMENT
 Land off: Old Hall Lane, Westleton.
 Location Plan
 Scale 1:1250 (A3)

3882-12A

DATE	REV.	DESCRIPTION	DRAWN

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“Technical Standards” means the standards necessary to ensure complete conformity with all UK primary and secondary legislation (including by-laws) all guidance standards and codes of practice issued by the Department for Transport the County Council statutory undertakers and relevant professional institutes the Road Safety Audit and formal instructions issued by the Director from time to time during the design and implementation of the Highway Works and for the avoidance of doubt this shall include the Traffic Signs Regulations and General Directions 2016 and BS5489 in relation to the design of any street lighting

“Tender Sum” means the sum of £51905.37 (fifty-one thousand, nine hundred and five pounds and thirty-seven pence) (including the costs associated with statutory undertakers work and traffic management) agreed by the Director for carrying out the Contract by the Contractor

“Works Drawings” means the attached drawings bearing the numbers referred to in Schedule IV or any subsequent revision of them which has been approved or requested by the Director and which relate to the Highway Works

(B) In this Agreement unless the context otherwise requires :-

- (i) Words importing the singular meaning where the context so admits include the plural meaning and vice versa; and
- (ii) 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 interchangeably in that manner; and
- (iii) “party” or “parties” means a party or parties to this Agreement; and
- (iv) references to any party shall include the successors in title and assigns of that party; and in the case of the County Council the successors to its statutory functions; and
- (v) where a party includes more than one person any obligations of that party can be enforced against all of them jointly and severally unless there is an express provision otherwise; and

- (vi) the headings and contents list in this Agreement shall not form part of or affect its construction; and
 - (vii) references to clauses schedules and paragraphs are references to clauses in and schedules to this Agreement and paragraphs in schedules to this Agreement; and
 - (viii) where a party or any officer or employee is required to give its consent approval or agreement to any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed; and
 - (ix) any mention herein of any act or of any section regulation or statutory instrument shall be deemed to refer to the same source as at any time amended and where such act section regulation or statutory instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting act or section or regulation or statutory instrument
- (C) The County Council is the local highway authority (except for trunk roads) for the purposes of the 1980 Act for the area within which the Site is situated and the Highway Works will be carried out.
- (D) The Developer has the benefit of the Permission
- (E) Having regard to the development plan and other material considerations the County Council considers it expedient in the interests of the proper planning of their area that the Highway Works need to be carried out to facilitate the Development and the County Council considers that entering into this Agreement will be of benefit to the public

NOW THIS DEED WITNESSES as follows:-

1 LEGAL EFFECT

1.1. This Agreement and the covenants that appear hereinafter are made pursuant to Sections 278 of the 1980 Act Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers to the intent that the provisions of this Agreement

shall bind the Site and the parties hereto and all persons deriving title through or under them

- 1.2. This Agreement is a Deed. Any financial default under this Agreement will be registered as a Local Land Charge under Section 278(5)(c) of the 1980 Act
- 1.3. No waiver (whether express or implied) by the County Council of any breach or default by the Developer in the performance or observance of any of the covenants, terms or obligations in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the covenants, terms or obligations or from acting upon any subsequent breach or default in respect thereof
- 1.4. Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement
- 1.5. This Agreement is governed by and interpreted in accordance with English law and shall be determined in the Courts of England

2 NOTICES

- 2.1. 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 Agreement shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post or sent by the DX service or sent by electronic e-mail 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 by hand or by recorded delivery post or by the DX service to the address of the party concerned as nominated in sub-clause 2.2 below
- 2.2. The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The County Council Suffolk County Council Constantine
House 8 Russell Road Ipswich IP1

2BX marked for the attention of the Assistant Director of Governance, Legal and Assurance (or where the context requires the Executive Director of Growth, Highways and Infrastructure, Endeavour House 8 Russell Road Ipswich IP1 2BX) or if by electronic e-mail marked for the attention of: Chris Barber at the following e-mail address:

Highways.DevelopmentControl@suffolk.gov.uk

The Developer

marked for the attention of Michael Reeves Land Director at the address appearing above for the Developer or if by electronic e-mail marked for the attention of:

Michael@arborahomes.co.uk

- 2.3 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
- 2.4 Where any notice or other written communication is given by one party to this Agreement to another party to this Agreement by electronic e-mail then that party shall seek confirmation of receipt of that e-mail either by sending a return e-mail or a follow up telephone call to ensure safe receipt of the original e-mail

3 GENERAL

- 3.1. All works and activities to be carried out under the terms of this Agreement (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 Developer and at no cost to the County Council

- 3.2. All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly
- 3.3. The County Council and their respectively duly authorised officers and agents may enter upon the land on which the Highway Works are being carried out at any reasonable time to ascertain whether the terms of the Agreement are being or have been complied with

4 ARBITRATION

- 4.1. Any dispute or difference arising between the parties as a result of this Agreement may be referred to the arbitration of a single arbitrator to be agreed upon between the parties or failing agreement within fourteen days after either of the parties has given to the other a written request requiring the appointment of an arbitrator to a person to be appointed at the request of either of the parties by the President for the time being of The Institution of Civil Engineers
- 4.2. Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-
- (a) the seat of the arbitration shall be at the County Council's offices in Ipswich Suffolk
 - (b) where appropriate the arbitrator may consolidate arbitral proceedings
 - (c) with the parties' agreement the arbitrator may appoint experts or legal advisers
- 4.3 A party wishing to refer any such dispute or difference to arbitration shall notify the other party in writing of such intention without delay

- 4.4 The arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the arbitrator when such parties may also agree that such arbitrator shall act as an expert
- 4.5 Subject to Sections 67 68 and 69 of the Arbitration Act 1996 the parties agree to be bound by the decision of the arbitrator

5 COVENANTS

- 5.1 The Developer hereby covenants and undertakes with the County Council that from the date of this Agreement it will (unless otherwise agreed by the County Council) carry out and comply with the obligations set out in Schedule I and the details set out in Schedules III and IV hereto
- 5.2 The County Council without prejudice to its statutory powers and duties hereby appoints the Developer to act as its agent and gives to the Developer licence (in so far as is reasonably necessary for the Developer to perform the obligations under the terms of this Agreement) to enter into and upon and remain upon the public highway to carry out the construction of the Highway Works within the timescales referred to in Schedule III hereto or such other period as may be agreed in writing by the Director, provided that this licence shall not extend to the Developer's successors in title or assigns unless otherwise agreed in writing by the Director prior to that successor or assignee commencing work in the public highway
- 5.3 The Developer covenants with the County Council not to commence the Highway Works set out in Schedule III unless road space has first been booked with the County Council
- 5.4 The Developer covenants with the County Council as Highways Authority to give written notice not less than three calendar months prior to works commencing, in order that the County Council as Highways Authority has sufficient time to ensure that the commencement of works will cause the least disruption possible to road users. The County Council reserves the right to refuse consent and/or to stop works under the terms of this Agreement and relevant legislation where the aforesaid notice period is not complied with

5.5 The Developer covenants with the County Council as Highways Authority to comply with the provisions of the New Roads and Street Works Act 1991, the Traffic Management Act 2004 and any amendments thereof

5.6 The County Council covenants with the Developer that on the date of issue of the Certificate of Final Completion the roads subject to the Highway Works shall thenceforth be, to the extent they are not already, adopted as highways maintainable at the public expense

6 THIRD PARTY RIGHTS

6.1 It is hereby agreed and declared that the provisions of Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

7 LAPSE

7.1 If the Highway Works have not been commenced within one (1) year from the date of this Agreement, save as this period is otherwise extended in writing by the Director at his discretion, then this Agreement shall lapse and be of no further effect (save to the extent already complied with) and the Developer agrees to pay to the County Council any costs properly incurred by the County Council prior to the lapse of this Agreement (which have not already been paid) including but not limited to those costs set out in paragraph 19 of Schedule I to this Agreement

7.2 Where, in accordance with clause 7.1 above the Director, at his discretion, agrees in writing to an extension to the period of one (1) year after which this Agreement shall lapse, this Agreement shall lapse at the end of such period as agreed in writing by the Director

8 CONSENT

8.1 The County Council hereby acknowledges that the Developer and their predecessors in title have accessed the Site by crossing Bridleway 32 Westleton by motor vehicles in the exercise of claimed private rights.

8.2 Subject to the Works as set out in this Agreement being undertaken in full by the Developer and subject to there not being any unlawful obstruction or danger to members of the public using Bridleway 32 Westleton or material damage to the surface of Bridleway 32 Westleton caused by any motor vehicles accessing the Site by crossing over Bridleway 32