

DATED

23rd June

2022

BABERGH DISTRICT COUNCIL (1)

SUFFOLK COUNTY COUNCIL (2)

ROBERT JAMES WILLIAM PAUL (3)

**PLANNING OBLIGATION BY DEED PURSUANT TO SECTION 106 OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

Relating to land to the West of Vicarage Lane Wherstead Suffolk

Shared Legal Service
West Suffolk House
Western Way
Bury St Edmunds
Suffolk
IP33 3YE
BM31.262 DC/19/05624

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THIS DEED IS MADE THE 23rd DAY OF June 2022

BETWEEN

- (1) **BABERGH DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX (**"The District Council"**)
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX (**"The District Council"**)
- (3) **ROBERT JAMES WILLIAM PAUL** of Wherstead Hall Wherstead Suffolk IP9 2AB (**"The Owner"**)

Together **"the Parties"**

WHEREAS

- (1) The District Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and by whom the obligations in this Deed are enforceable.
- (2) The County Council is the local highway authority (except for trunk roads) the local education authority and is also a local planning authority for the purposes of the Act for the area in which the land is situated and by whom the obligations contained in this deed are enforceable
- (3) The Owner is the freehold owner of the Land and details of ownership and other interests in the Land are provided in the First Schedule.
- (4) The District Council and the County Council enter into this Deed so that the requirements of their respective policies are met and that any objections by the District Council to the grant of planning permission on the basis of those policies are overcome and pursuant to Section 106 of the Act the Parties have agreed to enter into this Deed in order to secure the planning obligations contained in this Deed.
- (5) 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 in Regulation 122 of the Regulations.

NOW THIS DEED WITNESSES AS FOLLOWS

1. DEFINITIONS

1.1 In this Deed the following expressions shall have the following meanings:

Act	the Town and Country Planning Act 1990;
Application	the application for outline planning permission to develop the Land in accordance with the application plans and other materials deposited with the District Council validated on 22 July 2020 and bearing the District Council’s reference number DC/19/05624;
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 Indexed	the increase in a sum described as BCIS Indexed by an amount equivalent to the increase in the BCIS Index to be calculated in accordance with Clause 9 of this Deed;
Commencement Date	the date on which Commencement of Development occurs;
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 other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “Commence Development” shall be construed accordingly;

Completion of Development	the date that the last unit to be Occupied is first Occupied;
Commuted Sum	Eighty six thousand eight hundred and sixty one pounds (£86,861.00) payable by the Owner to the District Council under clause 1.10 of Part 1 of the Second Schedule for the future management and maintenance of the Open Space Land;
Development	Means the development permitted by the Planning Permission;
Full Workplace Travel Plan	a fully developed Travel Plan based on the Interim Workplace Travel Plan and travel monitoring data of the end users providing a package of measures aimed at promoting more sustainable travel choices and reducing reliance on the private car in relation to the Development;
Full Workplace Travel Plan Monitoring Report	the annual report that is submitted to the County Council by the Travel Plan Management Group in a form acceptable to the County Council that provides a summary of the traffic counts and surveys to demonstrate that the Full Workplace Travel Plan objectives and targets are being achieved;
Highway Improvements Contribution	Thirty-seven thousand, one hundred pounds (£37,100) BCIS Indexed payable by the Owner to the County Council towards footway and cycleway improvements in the vicinity of the A14 bridge;
Highway Mitigation Measures	The highway works required on the A14/A137 interchange as are currently shown in outline on Drawing No.194537/G/004 Rev A and bus stops and footway/cycleway improvements as are currently shown in outline in Drawing No. 194537/G/006 and including the Road Signage Package;
Interest	interest at four per cent (4%) above the base lending rate of the Bank of England from time to time;

Interim Workplace Travel Plan	a management plan in which the Owner outlines the interim targets, objectives, measures and remedial measures it will take to manage the travel needs of the Development, includes a commitment to carry out travel monitoring and to capture the data of the travel monitoring to help inform the Full Workplace Travel Plan and gives a commitment to producing a Full Workplace Travel Plan to mitigate the potential impacts of the Development and such management plan is to be in accordance with the mitigation measures identified in the Transport Assessment (dated November 2019) and Vectos SCC Consultation response (dated June 2020) submitted as part of the Application;
Land	the land described in the First Schedule and shown edged red for identification purposes only on the Plan against which this Deed may be enforced;
Occupation	In relation to the Land as a whole means occupation of the Land for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out, decoration, marketing, display, or security operations “Occupy” and “Occupied” shall be construed accordingly;
Open Space Land	The land identified on the Drawing as Open Space Land;
Open Space Scheme	A written scheme of the provision of public open space on the Open Space Land to include details of the layout planting and maintenance of the public open space;
Open Space Transfer	<p>a transfer of the Open Space Land to be approved in writing by the District Council and to include inter alia the following provisions</p> <p>(a) the Owner shall transfer the free simple estate free from encumbrances save those set out in the title</p>

- (b) all easements and rights necessary in relation to access for the benefit of the Open Space Land
- (c) any exceptions and reservations in relation to drainage and services support and access of light and air for the benefit of the development
- (d) restrictive covenants
 - (i) not to use or permit the Open Space Land to be used for any purpose other than for the provision of recreation facilities or amenity land for use by the general public or as open space as defined in this Deed
 - (ii) not to use or permit the Open Space Land to be used in a manner which is or may become a nuisance (whether or not a legal nuisance) annoyance disturbance or cause damage to the rest of the development

Plan the plan attached as Annex A;

Planning Permission the outline planning permission subject to conditions which may be granted by the District Council or by the Planning Inspectorate upon appeal in respect of the Application and which for the avoidance of doubt encompasses any modification to a planning permission which is permitted upon the grant of an application for a Non-Material Amendment pursuant to Section 96A of the Act;

Road Signage Package A package of measures to improve road signage in the vicinity of the Development as set out on Plan 194537/G/005;

RPI Index	the “All Items“ index figure of the Index of Retail Prices published by the Office for National Statistics from time to time 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;
RPI Indexed	the increase in a sum described as RPI Indexed by an amount equivalent to the increase in the RPI Index to be calculated in accordance with Clause 9 of this Deed;
Training Scheme	means a written scheme which conforms to the detailed requirements of Para 2 of Schedule 2 and seeks to facilitate employment opportunities within the Development and training initiatives particularly targeted at school leavers and the long term unemployed resident in the district of Babergh and neighbouring districts;
Traffic Count Data	Data showing traffic volume flows provided as a result of a Traffic Survey;
Traffic Management Agreement	an agreement in a form substantively compliant with the County Council’s standard highway agreements under Sections 278 and 38 of the Highways Act 1980 between the County Council and the Owner to deliver the Traffic Management Measures and (if such are deemed by the County Council to be required) the dedication and adoption of the Development access road and turning head shown indicatively on Plan 194537/G/005 edged red as highway maintainable at public expense and if required the funding of a traffic regulation order to support the Traffic Management Measures;
Traffic Management Measures	<p>Traffic management measures to be undertaken by the Owner in The Street and Vicarage Lane determined in accordance with paragraph 3 of Schedule 3 and subject to Clause 22.2) which may include such measures as follows (non-exhaustive):</p> <ul style="list-style-type: none"> • A travel plan to enforce the measures outlined ie no workers to use Vicarage Road

- Additional road signs to direct deliveries via required route away from Vicarage lane
- Weight limit to prevent large vehicles using Vicarage lane north of Access Road

provided that such measures shall not be expected to exceed fifty thousand pounds (£50,000) in estimated cost which for the avoidance of doubt may include if required the County Council's reasonable legal, professional, administrative and officer costs to implement a traffic regulation order to restrict vehicular passage along Vicarage Lane

And shall also include further traffic management measures to be undertaken by the Owner as determined in accordance with paragraph 3.9 of Schedule 3 which may include:

- Prohibition of motor vehicles using Vicarage Lane north of Development access road - including TRO and any highway improvements (ie turning head, making up and adoption of alternative route);
- Or any lesser measure

But which such further measures may fall outside of the fifty thousand pounds (£50,000) estimated cost cap set out above;

Traffic Management Measures Notice

A notice issued by the County Council setting out the required Traffic Management Measures to be carried out by the Owner as determined in accordance with Schedule 3;

Traffic Survey

A survey to analyse traffic volume flows to provide Traffic Count Data for the Development to be carried out between 0700-1900 hours over 1no. weekday with vehicle types at:

1. A manual classified turning count at The Street/Vicarage Lane Junction.

2. An automatic traffic counter installed on the access road connecting the A137 and Vicarage Lane (to the west of the Site access);
3. An automatic traffic counter installed to the north of the Park Farm Barns access
4. An automatic traffic counter installed on Vicarage Lane to the north of Peninsula Business Park entrance; and
5. An automatic traffic counter installed on Vicarage Lane to the south of Peninsula Business Park entrance

as shown indicatively on attached plan ROSA190824 CMP-02 P5 or such other locations as are deemed suitable to provide accurate Traffic Count Data for the Development as agreed between the Owner and the County Council;

Traffic Survey Notice

A notice issued by the County Council setting out that a further Traffic Survey is required to confirm that the Traffic Management Measures have been successful in mitigating the impact of the Traffic Count Data in accordance with paragraph 3.7 of Schedule 3;

Travel Plans

Means together the Interim Workplace Travel Plan and the Full Workplace Travel Plan;

Travel Plan Co-ordinator

means the person appointed by the Owner to fully implement and monitor the Travel Plans;

Travel Plan Evaluation and Support Contribution

means the sum of one thousand pounds (£1,000.00) RPI Indexed per annum payable in accordance with Schedule 3 of this Deed towards the costs of the County Council monitoring the implementation of the Travel Plan;

Travel Plan Management Group

A working group that incorporates a member or representative of each unit in the Development to coordinate, implement and deliver the Travel Plans;

Working Days

any day which is not a Saturday, a Sunday, a bank or public holiday in England;

Workplace Travel Pack

means a travel pack provided to each employee of any unit in the Development that includes current public transport information for bus and rail services, provision of maps of pedestrian and cycle routes, car sharing information, sustainable transport discounts, personalised Travel Plans and information to promote the benefits of sustainable travel in the local area to encourage sustainable travel.

2. INTERPRETATION

- 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 Headings are for reference only and shall not affect the interpretation of this Deed.
- 2.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4 Words of the masculine gender include the feminine and neuter genders.
- 2.5 Words denoting actual persons include companies, corporations and firms and all such words shall be constructed as interchangeable in that manner. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 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 District Council and the County Council the successors to their respective statutory functions.
- 2.7 A reference to "writing" or "written" excludes fax and email.
- 2.8 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.
- 2.9 An obligation on a party not to do something includes an obligation not to allow that thing to be done by another person.
- 2.10 Any reference to an Act of Parliament or Statutory Instrument shall include any modification, extension or re-enactment of that Act or Instrument 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 Instrument or deriving validity from it.

- 2.11 References to a “Plan” or “Drawing” in this Deed shall be reference to the plans attached to this Deed bearing the relevant plan number of any amended plans as shall be agreed in writing between the Owner the District Council and the County Council.
- 2.12 Where this Deed requires a plan, scheme, strategy or other document to be submitted to the District Council or the County Council for approval or agreement then upon written approval being given by the District Council or the County Council (as appropriate) 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, scheme, strategy or other document.
- 2.13 None of the covenants contained in this Deed on the part of the Owner shall be enforceable against any statutory undertaker who acquires any part of the Land or interest therein for the purposes of the supply of electricity gas water drainage telecommunication services or public transport services.

3. LEGAL BASIS

- 3.1 This agreement is a Deed and is made pursuant to Section 106 of the Act, 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 District Council as local planning authorities against the Owner and the Owner’s successors in title.

4. CONSENT TO ENTER DEED

- 4.1 The Owner covenants and warrants to the District Council and 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 the Land whose consent is necessary to make this Deed binding on the Land and all estates and interests therein.

5. THIRD PARTIES

No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 and any such rights that arise pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

6. CONDITIONALITY

6.1 This Deed shall take effect on the date that it is completed but performance of the planning obligations contained in this Deed at Clause 7 and the Schedules apart from the obligations to give notice prior the Commencement of Development are conditional upon the grant of the Planning Permission and the Commencement of Development.

6.2 Where the Planning Permission is the subject of any judicial review proceedings or other legal challenge:

6.2.1 until such time as such proceedings or challenge including any appeal have been finally resolved the terms and provisions of this Deed will remain without operative effect notwithstanding the issue of the Planning Permission and the Commencement of Development PROVIDED THAT the Owner shall not undertake any further works to implement the Planning Permission following the issue of such proceedings;

6.2.2 if following the conclusion of such proceedings or challenge the Planning Permission is quashed this Deed will cease to have any further effect; and

6.2.3 if following the conclusion of such proceedings or challenge the Planning Permission remains valid and fully enforceable all of the terms and provisions of this Deed will apply in full.

6.3 Wherever in this Deed reference is made to a date on which "legal proceedings or challenge in relation to the Planning Permission are concluded" (or cognate expressions are used), the following provisions will apply:

6.3.1 proceedings by way of judicial review are concluded:

6.3.1.1 when permission to apply for judicial review has been refused and no further application can be made;

6.3.1.2 when the court has given judgment in the matter and the time for making an appeal expires without any appeal having been made or permission to appeal is refused; or

6.3.1.3 when any appeal(s) is or are finally determined.

6.3.2 proceedings under Section 288 of the Act are concluded:

6.3.2.1 when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

6.3.2.2 when any appeal(s) is or are finally determined

7. THE OWNER'S COVENANTS

7.1 The Owner hereby covenants with the District Council as set out in the Schedule 2 and with the County Council as set out in Schedule 3 so as to bind the Land and each and every part thereof.

8. LOCAL LAND CHARGE

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

8.2 The District Council shall effect the cancellation of all entries made in the register of local land charges in respect of this Deed upon the written request of the Owner (a) following the performance and satisfaction of all the obligations contained in this Deed or (b) on the determination of this Deed in accordance with clause 6

9. INDEXATION

Any sum referred to in Schedule 3 or Schedule 4 (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the Index or RPI Index (as the context dictates) 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:

9.1.1 A is the sum payable under this Deed;

9.1.2 B is the original sum calculated as the sum payable;

9.1.3 C is the Index or RPI Index (as the context dictates) for the month 2 months before the date on which the sum is payable;

9.1.4 D is the Index or RPI Index (as the context dictates) for the month 2 months before the date of this Deed; and

9.1.5 C/D is greater than 1

10. INTEREST

If any payment due from the Owner under this Deed is paid late, Interest will be payable on the sum due and shall accrue on a daily basis from the date the sum is due to the date of payment.

11. VAT

Each amount stated to be payable by any party to this Deed to another party to this Deed pursuant to this Deed is exclusive of any VAT properly payable.

12. CHANGES OF OWNERSHIP

The Owner agrees with the District Council and the County Council to give written notice of any transfer in ownership of its freehold interest in the Land occurring before all the obligations under this Deed have been discharged such notice to be served within twenty (20) Working Days' of such transfer quoting the District Council's reference DC/19/05624 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 Land purchased by reference to a plan and a copy of the registered title and plan thereto.

13. APPROVALS

Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the District Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the District Council by the Chief Planning Officer or officer acting under his hand or officer acting under his hand and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.

14. RIGHT OF ENTRY

14.1 At all times on not less than twenty-four (24) hours' written notice (except in case of emergency) the Owner shall allow any employee or agent of the District Council entry to the Land for the purposes of inspection and monitoring compliance with the provisions of this Deed PROVIDED THAT:

- 14.1.1 such employee or agent on arrival at the Land shall if requested by any person present who appears to be the Owner or manager or person in charge thereof produce evidence of identity (but entry may be made if there is or appears to be no such person on the Land);
- 14.1.2 such entry shall be effected between 08:00 and 18:00 on any Working Day;
- 14.1.3 such employee or agent may be accompanied by such other persons as may be reasonably necessary;
- 14.1.4 such employee or agent may take photographs, measurements and levels;
- 14.1.5 such employee or agent may not remain on the Land for longer than is reasonably necessary for carrying out a proper inspection;

14.1.6 such employee or agent and any accompanying persons shall comply with the Owner's or the Owner's representative's reasonable directions and precautions in the interests of health and safety;

14.2 For the avoidance of doubt the provisions of this Clause 14 shall be in addition to and does not prejudice the powers conferred on the District Council by Sections 196A, 196B and 196C of the Act.

15. **NO WAIVER**

No waiver (whether expressed or implied) by the District Council 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 District Council the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

16. **INDEMNITY**

The Owner hereby indemnifies the District Council and the County Council for any expenses or liability arising to the District Council or the County Council as may be for any breach by the Owner of any obligation contained herein save the extent that any act or omission of the District Council or the County Council or their respective employees or agents has caused or contributed to such expenses or liability.

17. **CONFIRMATION OF DISCHARGE**

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 District Council or the County Council for a certificate to that effect and upon the District Council or the County Council (acting reasonably) being satisfied that the relevant agreement obligation and covenant as the case may be has been satisfied the District Council or the County Council shall forthwith issue a certificate to such effect.

18. **RELEASE**

No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed occurring after it has parted with its entire interest in the Land or part of the Land to which the breach relates save for an interest arising only from the grant or reservation of an easement or similar right or the benefit of any restrictive covenant in the Land notwithstanding the retention of easements or the benefit of covenants, restrictions or reservations in respect of it

19. **DETERMINATION**

The obligations in this Deed except for Clause 25 shall cease to have effect insofar as it has not already been complied with if the Planning Permission:

- 19.1 expires;
- 19.2 is modified or revoked; or
- 19.3 is quashed following a successful legal challenge.

20. **SEVERANCE**

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.

21. **FUTURE PERMISSIONS**

21.1 Subject to the remainder of this Clause 21 nothing in this Deed shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

21.2 In the event that any new planning applications are made in respect of the Development pursuant to Section 73 of the Act then with effect from the date that the new planning permission is granted pursuant to Section 73 of the Act:

21.2.1 the planning obligations in this Deed shall in addition to binding the Land in respect of the Planning Permission shall also bind the Land in respect of any planning permission granted pursuant to Section 73 of the Act; and

21.2.2 the definitions of "Application", "Development" and "Planning Permission" shall be assumed to include references to any applications under Section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this Clause 21 shall fetter the discretion of the District Council in determining any applications under Section 73 of the Act and the appropriate nature and/or quantum of planning obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under Section 73 of the Act (whether by way of a new Deed or supplemental Deed pursuant to Section 106 of the Act or a modification pursuant to Section 106A of the Act).

22. MISCELLANEOUS

- 22.1 Nothing contained or implied in this Deed shall prejudice or affect the rights, discretions, functions, powers, duties and obligations of the District Council or the County Council under all statutes, by-laws, statutory instruments, orders or regulations in the exercise of their function as local authorities.
- 22.2 Nothing contained or implied in this Deed shall impose any obligation upon the County Council to require any Traffic Management Measures and the County Council may at its discretion not seek Traffic Management Measures and may seek if it chooses to do so such more limited Traffic Management Measures as it determines can be reasonably delivered without preventing passage along Vicarage Lane.
- 22.3 Nothing contained or implied in this Deed shall impose any obligation upon the County Council to pursue a traffic regulation order should the making of such be objected to or to defend the making of it at any public inquiry or in other legal proceedings.

23. DISPUTE RESOLUTION PROVISIONS

- 23.1 Any dispute or difference of any kind whatsoever arising between any or all of 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 an independent single Expert ("the Expert")
- 23.2 The Expert shall have no less than ten (10) years' experience of resolving disputes similar in nature to the one that is proposed to be referred pursuant under clause 23.1.
- 23.3 The Parties to the dispute shall jointly appoint the Expert not later than twenty (20) Working Days' after service of a request in writing by any Party to the dispute to do so
- 23.4 If the Parties to the dispute are unable to agree within twenty (20) Working Days' as to the appointment of such Expert then the Expert shall be appointed on the application of either of the Parties to the dispute as follows:
- 23.4.1 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
- 23.4.2 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

23.4.3 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 but in default of agreement appointed by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors; or

23.4.4 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 but in default of agreement by or on behalf of the President for the time being of the Royal Town Planning Institute.

23.5 In the event of a reference to an Expert the Parties to the dispute agree to:

23.5.1 prosecute any such reference expeditiously; and

23.5.2 do all things or take all steps reasonably necessary in order to enable the Expert to make a final determination as soon as reasonably practicable and in any event within one (1) month of his appointment Provided That if the Expert fails to do so either Party to the dispute may apply to the President for the time being of the Institution of Law Society, Civil Engineers, Royal Institute of Chartered Surveyors or Royal Town Planning Institute (as appropriate) for a substitute to be appointed in which case the same procedure shall be repeated.

23.6 The Expert shall invite written representations from each of the Parties.

23.6.1 The Expert will have the power to consolidate proceedings or hold concurrent proceedings.

23.7 The findings of the Expert shall be in writing signed by the Expert.

23.8 The findings of the Expert shall be final and binding both on the Parties to the dispute except in the case of manifest, material error.

23.9 The Expert shall act as an expert and not as an arbitrator.

23.10 The costs of the Expert shall be payable by the Parties in such proportion as may be determined by the Expert and failing such determination to be borne in equal shares by the Parties.

23.11 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 23 but without prejudice to the rights and obligations of the Parties to the dispute in relation to the termination of the Deed.

23.12 Nothing in the provisions of this clause 23 shall be construed as removing the jurisdiction of the courts to enforce the provisions of this Deed.

24. NOTICES

24.1 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 24.2

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

The District Council	The Chief Planning Officer, Babergh District Council, Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
The County Council	The Executive Director for Growth Highways and Infrastructure Suffolk County Council Constantine House, 5 Constantine Road, Ipswich, IP1 2DH
The Owner	As detailed on the first page of this Deed

24.3 The Owner covenants to inform the Council and the County Council by way of written notice within seven (7) days following:

- 24.3.1 Commencement of Development
- 24.3.2 Completion of ground floor slab level of the first unit
- 24.3.3 1st Occupation of the Development
- 24.3.4 Completion of Development

25. LEGAL AND MONITORING FEES

25.1 The Owner shall on completion of this Deed pay to the District Council their reasonable legal costs together with any disbursements incurred in the negotiation, preparation, execution and completion of this Deed.

25.2 The Owner shall on completion of this Deed pay to the County Council their reasonable legal costs together with any disbursements incurred in the negotiation, preparation, execution and completion of this Deed.

25.3 The Owner shall on completion of this Deed pay to the County Council £2,060.00 (Two Thousand and Sixty Pounds) towards the costs of monitoring the obligations contained in this Deed.

26. GOVERNING LAW

This Deed is governed by and interpreted in accordance with the law of England and the Parties submit to the non-exclusive jurisdiction of the courts of England

27. DELIVERY

The provisions of this Deed (other than this clause which shall have 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.

The Common Seal of _____)

BABERGH DISTRICT COUNCIL)

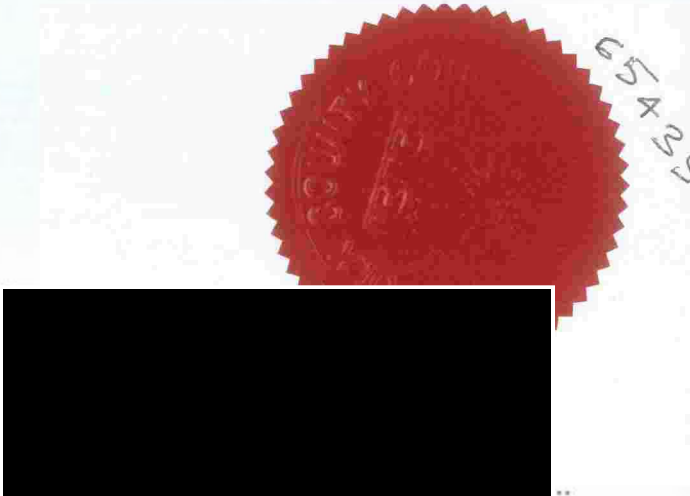
was hereunto affixed)

in the presence of _____)



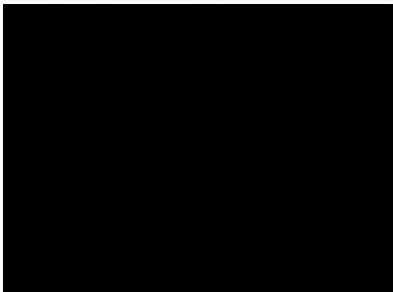
Authorised Officer

The Common Seal of)
SUFFOLK COUNTY COUNCIL)
was hereunto affixed)
in the presence of)



Authorised Officer

Executed as a Deed by)
ROBERT JAMES WILLIAM PAUL)
in the presence of)

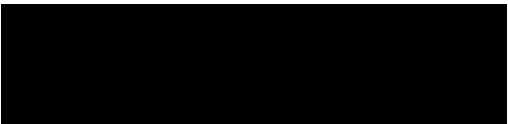


X



[witness full name]

X



[witness address]

SCHEDULE 1

LAND AND OWNERSHIP

1. DESCRIPTION OF THE LAND

- 1.1 All that freehold land registered at HM Land Registry under Title Number SK327269 and known as land to the west of Vicarage Lane Wherstead Suffolk

2. INTERESTS

- 2.1 The Owner is the freehold owner of the land.
- 2.2 The land is not subject to any mortgage or other charge or encumbrance

SCHEDULE 2

THE OWNER'S COVENANTS WITH THE DISTRICT COUNCIL

The Owner for themselves and their successors in title to the Land covenant as follows

1. OPEN SPACE

- 1.1 To submit the Open Space Scheme to the District Council with or before the first application for reserved matters approval
- 1.2 Not to Commence Development until the Open Space Scheme has been approved in writing by the District Council
- 1.3 The District Council covenants with the Owner to use reasonable endeavours to provide approval in writing of the Open Space Scheme within eight (8) weeks of submission of the Open Space Scheme in full to the District Council and if the District Council has not provided such approval or reasons for refusal of such approval within three (3) months of receipt in full of the Open Space Scheme by the District Council such approval shall be deemed to have been given by the District Council.
- 1.4 To prepare and lay out the Open Space Land in accordance with the Planning Permission and the Open Space Scheme. Following the provision of the Open Space Land the Owner shall invite the District Council to inspect the Open Space Land and provided that the Open Space Land has been delivered in accordance with the Open Space Scheme to the reasonable satisfaction of the District Council the District Council shall confirm in writing that it is satisfied that the Open Space Land has been provided in accordance with the Open Space Scheme within 20 Working days of such inspection
- 1.5 Not to occupy or permit Occupation of the Development before the District Council has confirmed in writing that it is satisfied that the Open Space Land has been provided in accordance with the Open Space Scheme
- 1.6 The District Council covenants with the Owner to use reasonable endeavours to provide confirmation in writing that it is satisfied that the Open Space Land has been provided in accordance with the Open Space Scheme within eight (8) weeks of the inspection of the Open Space Land (set out in paragraph 1.4 above) by the District Council and if the District Council has not provided such confirmation or reasons for refusal of such confirmation within three (3) months of the inspection of the Open Space Land (set out in paragraph 1.4 above) by the District Council such confirmation shall be deemed to have been given by the District Council.

- 1.7 To keep the Open Space Land open to the public at all times
- 1.8 At their own cost to maintain the Open Space Land strictly in accordance with the Open Space Scheme and the Planning Permission until the date of the Open Space Transfer as described in paragraph 1.7 below
- 1.9 Having received the District Council's written confirmation under paragraph 1.4 above of its satisfaction with the provision of the Open Space Land to transfer the freehold of the Open Space Land to the District Council for the sum of one pound £1 by means of the Open Space Transfer no later than twelve months after the Completion of Development
- 1.10 To pay the commuted sum to the District Council on or before the date of the transfer of the Open Space Land

2. TRAINING SCHEME

- 2.1 To prepare the Training Scheme in consultation with the District Council and Job Centre Plus and any local education providers and training and employment agencies recommended by them
- 2.2 To submit the Training Scheme to the District Council no later than six (6) months after the Commencement of Development and prior to Occupation of any part of the development
- 2.3 To implement the Training Scheme for a period of not less than ten (10) years after first Occupation of the Development
- 2.4 The Training Scheme shall include
 - 2.4.1 Measures to facilitate apprenticeships and other training opportunities within the Development
 - 2.4.2 Measures to facilitate work experience, work shadowing and other mentoring experiences within the Development
 - 2.4.3 Practical arrangements to encourage and facilitate co-operation between businesses in the Development and local providers of education and training with the aim in particular of encouraging skills training relevant to the businesses in the Development
 - 2.4.4 an advertising campaign aimed at maximising and awareness of training initiatives and full and part-time employment opportunities within the Development targeting school leavers and the long term unemployed

2.4.5 the administration of a central database within the Development identifying job opportunities and training initiatives.

2.5 To inform the District Council at not less than six (6) monthly intervals during the first three (3) years after the date of first occupation of measures taken and progress made in furtherance of the aims of the Training Scheme and within two (2) years of the date of first Occupation of the Development to provide the District Council with a written report comprising an appraisal and assessment of the success of the Training Scheme.

2.6 For the avoidance of doubt

2.6.1 'School Leaver' shall be interpreted so as to include any young person who has within the previous two (2) years attended a school or a sixth form facility or a college of further education or any similar educational institution which provides courses of the kind commonly offered to the 16-19 year old age group and

2.6.2 'long term unemployed' shall be interpreted so as to include any person who has been without regular employment for a period of at least six (6) months

SCHEDULE 3

THE OWNER'S COVENANTS WITH THE COUNTY COUNCIL

1. HIGHWAY IMPROVEMENTS

- 1.1 To submit to the County Council prior to the Commencement of Development detailed designs of the Highway Mitigation Measures
- 1.2 Not to Commence Development until the detailed designs of the Highway Mitigation Measures to be submitted under paragraph 1.1 above have been approved by the County Council
- 1.3 The County Council covenants with the Owner to use reasonable endeavours to agree the detailed design of the Highway Mitigation Measures with the Owner within eight (8) weeks of submission of each of the Highway Mitigation Measures respectively in full to the County Council and after agreement to provide approval of such detailed designs of the Highway Mitigation measures in writing without unreasonable delay
- 1.4 To undertake in full the works to deliver all of the Highway Mitigation Measures as required and approved by the County Council in accordance with paragraph 1.3 above under an agreement with the County Council pursuant to section 278 of the Highways Act 1980 prior to the Occupation of the Development
- 1.5 Not to permit Occupation of the Development until all of the Highways Mitigation Measures have been delivered in full in accordance with paragraph 1.4 above
- 1.6 Should the County Council deem that all or any part of the Highway Mitigation Measures are no longer required because they have been delivered by a third party then the County Council shall provide confirmation of this in writing and the Owner will no longer be required to carry out the obligations in relation to the Highway Mitigation Measures made under this Deed.

2. HIGHWAYS IMPROVEMENTS CONTRIBUTION

- 2.1 To pay to the County Council the Highway Improvements Contribution (BCIS Indexed) prior to Commencement of Development
- 2.2 Not to Commence Development until the Highway Improvements Contribution (BCIS Indexed) has been paid to the County Council

3. TRAFFIC MANAGEMENT MEASURES

- 3.1 The Owner shall prior to the Commencement of Development carry out a Traffic Survey and provide the Traffic Count Data to the County Council within 7 Working Days of completion of the Traffic Survey
- 3.2 The Owner shall after one year post Completion of Development (or upon request by the County Council acting reasonably if earlier) carry out a Traffic Survey without unreasonable delay and provide the Traffic Count Data to the County Council within 7 Working Days of completion of the Traffic Survey
- 3.3 Should the Traffic Count Data from the Traffic Survey carried out in accordance with paragraph 3.2 above show that the volume of HGV's using Vicarage Lane for the purpose of accessing and egressing the Development have increased by more than 30% or more than 10 HGV movements, whichever is the greater, the County Council will give due consideration to whether the impact of this increase necessitates the provision of Traffic Management Measures.
- 3.4 Should the County Council consider that the Traffic Count Data does necessitate the provision of Traffic Management Measures as determined in accordance with paragraph 3.3 above the County Council shall determine what Traffic Management Measures are required after reasonable consultation with the Owner, Wherstead Parish Council and reasonable engagement with local businesses (AND FOR THE AVOIDANCE OF DOUBT will not include the prohibition of motor vehicles using Vicarage Lane north of the Development access road) and shall provide the Owner with a Traffic Management Measures Notice without unreasonable delay from receipt of the Traffic Count Data provided under paragraph 3.2 above.
- 3.5 Upon receipt of the Traffic Management Measures Notice the Owner shall:
 - 3.5.1 without unreasonable delay submit to and agree plans for the Traffic Management Measures with the County Council such to comply with the County Council's reasonable specification for such works
 - 3.5.2 without unreasonable delay from the approval of the Traffic Management Measures plans by the County Council agree and enter into a Traffic Management Agreement (if required) with the County Council at no cost to the County Council
 - 3.5.3 without unreasonable delay from the completion of the Traffic Management Agreement deliver the Traffic Management Measures in accordance with the Traffic Management Agreement
- 3.6 Should the County Council consider that the Traffic Count Data does not necessitate the provision of Traffic Management Measures as determined in accordance with

paragraph 3.3 above the County Council shall confirm this in writing to the Owner without unreasonable delay from receipt of the Traffic Count Data provided under paragraph 3.2 above

- 3.7 Should the County Council consider within the 2 years post completion of the Traffic Management Measures as set out in the Traffic Management Measures Notice in accordance with 3.5 that a further Traffic Survey is required to confirm that the Traffic Management Measures have been successful in mitigating the impact of the Traffic Count Data as determined in accordance with paragraph 3.3 above then the County Council shall issue the Traffic Survey Notice to the Owner.
- 3.8 Following receipt of the Traffic Survey Notice the Owner shall carry out a Traffic Survey without unreasonable delay and provide the Traffic Count Data to the County Council within 7 Days of completion of the Traffic Survey.
- 3.9 Should the Traffic Count Data from the Traffic Survey carried out in accordance with paragraph 3.8 above show that the Traffic Management Measures have not been successful in mitigating the impact of the Traffic Count Data as determined in accordance with paragraph 3.3 above the County Council shall determine what additional/increased Traffic Management Measures (AND FOR THE AVOIDANCE OF DOUBT may include the prohibition of motor vehicles using Vicarage Lane north of the Development access road and the making up and adoption of an alternative route as highway maintainable at public expense) are required after reasonable consultation with the Owner, Wherstead Parish Council and reasonable engagement with local businesses and shall provide the Owner with a second Traffic Management Measures Notice without unreasonable delay from receipt of the Traffic Count Data provided under paragraph 3.8 above
- 3.10 Upon receipt of the Traffic Management Measures Notice provided under paragraph 3.9 above the Owner shall:
- 3.10.1 without unreasonable delay submit to and agree plans for the Traffic Management Measures with the County Council such to comply with the County Council's reasonable specification for such works
 - 3.10.2 without unreasonable delay from the approval of the Traffic Management Measures plans by the County Council agree and enter into a Traffic Management Agreement (if required) with the County Council at no cost to the County Council
 - 3.10.3 without unreasonable delay from the completion of the Traffic Management Agreement deliver the Traffic Management Measures in accordance with the Traffic Management Agreement