

DATED 21 November 2023

**J.D. & R.J BAKER FARMS LIMITED (1)**

-and-

**EG PROPERTY LIMITED (2)**

-to-

**MID SUFFOLK DISTRICT COUNCIL**

-and-

**SUFFOLK COUNTY COUNCIL**

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**UNILATERAL OBLIGATION**

PURSUANT TO SECTION 106 TOWN AND COUNTRY PLANNING ACT 1990 and other enabling powers relating to APP/W3520/W/22/3312743

Land off A14, adjacent to Kiln Lane, Elmswell Suffolk IP30 9RU

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we certify this to be a true and complete copy of the original

Freeths LLP

Freeths LLP

Solicitors

Date 21 November

THIS DEED is made the 21 day of November 2023

BY

1. **J.D. & R.J BAKER FARMS LIMITED** (company number 02643804) of Whitefield Cottage, Park Road, Drinkstone, Bury St Edmunds, Suffolk IP30 9TJ ("**the Owner**")
2. **EG PROPERTY LIMITED** (Company number 14911511) of Waterside Head Office, Haslingden Road, Guide, Blackburn, Lancashire, England, BB1 2FA ("**the Developer**")

TO

**MID SUFFOLK DISTRICT COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ("**the District Council**"); and

**SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, IP1 2BX ("**the County Council**").

#### RECITALS

- (1) The District Council is the Local Planning Authority for the purposes of this Deed for the area within which the Land is situated and by whom the planning obligations contained in this Deed are enforceable
- (2) The County Council is the Local Highway Authority for the purposes of this Deed for the area within which the Land is situated and by whom the planning obligations contained in this Deed are enforceable
- (3) The Owner is the freehold owner of the Land being land off A14, IP30 9RU registered at HM Land Registry under title number SK311780
- (4) On 31 March 2017 Euro Garages Limited (Company number 04246195) entered into an agreement to purchase that part of the title number SK311780 which is edged mauve on the Plan. The agreement to purchase was varied on 27 May 2021.
- (5) Euro Garages Limited (Company number 04246195) has unilateral notices lodged against title number SK311780 in respect of the agreement to purchase and the variation agreement. However, the agreement to purchase (as varied) was novated to the Developer on 13 October 2023. The Developer has therefore agreed to enter into this Deed to acknowledge it would be bound by this Deed if it were to acquire a freehold or a leasehold interest in the Land.
- (6) Euro Garages Limited (Company number 04246195) submitted an application to the Council which was validated on 23 November 2021 under the District Council's reference number DC/21/06333 for development of a petrol filling station, a drive-thru restaurant and coffee shop, together with various infrastructure and landscaping works on the Land ("**the Development**")
- (7) On 8 December 2022 EG Group Limited (Company number 09826582) lodged the Non-Determination Appeal with the Secretary of State following the District Council's non-determination of the Planning Application

(8) On 7 March 2023 the District Council refused the Planning Application for the reasons set out in the decision notice

(9) On 14 June 2023 EG Group Limited (Company number 09826582) lodged the Planning Appeal with the Secretary of State following the refusal of the Planning Application under reference APP/W3520/W/22/3312743

(10) The Owner has agreed to enter into this Deed with the intention that the obligations contained in this Deed may be enforced by the Council and the County Council against the Owner and its successors in title and assigns and with the intention that this Deed shall bind the Land

(11) If the Inspector determines that any of the obligations secured by this Deed do not meet the requirements of Regulation 122 of the CIL Regulations the relevant obligations shall not take effect.

## NOW THIS DEED WITNESSETH AS FOLLOWS:

### 1. Definitions

In this Deed the following words and expressions shall unless the context otherwise requires have the following meanings: -

<b>“the Act”</b>	the Town and Country Planning Act 1990 (as amended)
<b>“BCIS Index”</b>	the All In Tender Price Index as published by the Building Cost Information Service or any successor organisation or any replacement of that index from time to time or (if there is no replacement of) such other appropriate alternative index agreed between the parties
<b>“CIL Regulations”</b>	the Community Infrastructure Regulations 2010 (as amended)
<b>“Commencement Date”</b>	the date upon which the Development shall be commenced by the carrying out of a Material Operation on the Land pursuant to the Planning Permission and “Commence” and “Commencement” shall be construed accordingly
<b>“County Monitoring Fee”</b>	the sum of £476 payable to the County Council to cover the costs of monitoring this Deed and registering to meet the County Council’s infrastructure reporting requirements
<b>“Deed”</b>	this deed
<b>“Development”</b>	the development of a petrol filling station, a drive-thru restaurant and coffee shop, together with various infrastructure and landscaping works
<b>“Highway Contribution”</b>	the sum of £75,000 payable to the County Council to provide a pedestrian refuge and associated paved connections to the Development from the Elmswell – Woolpit pedestrian and cycle link on the opposite side of the A1088 to the Land and

	which sum may also be applied to the aforementioned pedestrian and cycle link
<b>“Land”</b>	the land shown edged purple upon the Plan annexed to the First Schedule hereto and known as land off A14, adjacent to Kiln Lane, Elmswell Suffolk IP30 9RU forming land registered at HM Land Registry under title number SK311780
<b>“Index Linked”</b>	indexation payable by reference to the BCIS Index and calculated in accordance with Clause 6.10 of this Deed
<b>“Inspector”</b>	the person appointed by the Secretary of State or PINS by virtue of the Act to hear and/or determine the Planning Appeal
<b>“Interest”</b>	interest at four per cent above the base lending rate of the Bank of England from time to time
<b>“Material Operation”</b>	an operation as defined in Section 56(4) of the Act other than for the purposes of this Deed operations consisting of demolition or site clearance 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
<b>“Non-Determination Appeal”</b>	the appeal under section 78 of the Act to the non-determination of the Planning Application by the District Council with planning appeal reference APP/W3520/W/22/3312743
<b>“PINS”</b>	the Planning Inspectorate
<b>“Plan”</b>	the location plan annexed hereto at Schedule 1 showing the Land
<b>“Planning Appeal”</b>	the appeal under section 78 of the Act to the refusal of the Planning Application by the District Council with planning appeal reference APP/W3520/W/22/3312743
<b>“Planning Application”</b>	the planning application for the Development under reference DC/21/06333
<b>“Planning Permission”</b>	the planning permission to be granted for the Development pursuant to the Planning Appeal

## 2. Interpretation

- 2.1. Words importing one gender shall be construed as meaning any other gender
- 2.2. Words in the singular include the plural and vice versa
- 2.3. References to clauses and schedules are reference to clauses and schedules within this Deed only
- 2.4. A reference to a person includes a company or any legal entity

- 2.5. reference to Statutes Acts Orders Directions Regulations and Instruments includes (where appropriate) reference to their amendments and replacements

### **3. Covenants**

- 3.1. Subject as provided in this Deed the Owner hereby for themselves and for any person deriving title from them undertake agree declare and covenant with the District Council and the County Council that they shall carry out perform and be bound by the obligation set out in this Deed and that the Land shall be subject to the obligation as set out in this Deed
- 3.2. The Owner hereby covenants to observe and perform the planning obligations contained in the Second Schedule

### **4. Obligations and statutory powers**

- 4.1. This Deed is entered into by unilateral undertaking and is a planning obligation for the purposes of section 106 of the Act and it is acknowledged by the parties that the obligations contained within it are binding on the Land and are enforceable by the Council as local planning authority against the Owner of the Land and against successors in title in respect of their interests in each and every part of the Land
- 4.2. In so far as any of the covenants, restrictions and obligations contained in this Deed are not planning obligations within the meaning of the Act they are entered into pursuant to the powers contained in section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers enabling the Owner to enter into the Deed and in consideration of the covenants, restrictions and obligations hereinafter contained

### **5. Land Bound**

- 5.1. The Land is bound by the planning obligations contained in the Second Schedule

### **6. Miscellaneous**

- 6.1. This Deed is a local land charge and shall be registerable as a local land charge by the District Council
- 6.2. With the exception of Clause 6.1 the provisions, covenants, restrictions and obligations in this Deed shall only come into effect on grant of the Planning Permission
- 6.3. If the Planning Permission shall expire before the Commencement Date or be quashed as a result of legal proceedings, then this Deed shall forthwith determine and cease to have effect save as already complied with
- 6.4. No person shall be liable for a breach of covenant contained in this Deed after he shall have parted with all interest in the Land or the part in respect of which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

- 6.5. 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
- 6.6. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Deed confers or purports to confer any right to enforce any of the terms of this Deed on any person who is not a party hereto
- 6.7. Any notice served pursuant to this Deed shall be deemed to be served correctly if served to the above addresses by registered post
- 6.8. This Deed is governed by the laws of England and Wales
- 6.9. The Developer consents to its interest in the Land being bound hereby and covenants with the District Council and the County Council that upon acquiring a freehold or leasehold interest in the Land it will be subject to the obligations in this Deed as a person deriving title thereto Provided That it shall have no liability under the terms of this Deed unless and until it acquires a freehold or a leasehold interest in the Land.
- 6.10. Where any obligation in the Second Schedule of this Deed requires the Owner to pay, provide or make available any sum of money, the amount to be paid, provided or made available shall be adjusted (upwards only) by reference to changes in the BCIS Index in accordance with the following formula:

$$A \times (B / C) = D$$

where:

**A** is the sum of money stated in this Deed;

**B** the figure shown in the BCIS Index for the period immediately prior to the date on which the sum concerned is due to be paid or where such sum is paid earlier than it is due the BCIS Index for the period immediately prior to the date upon which it is paid under the provisions of this Deed;

**C** is the figure shown in the BCIS Index for the period immediately prior to the date the Planning Permission is granted; and

**D** is the amount of money required to be paid

- 6.11. If any payment under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.
- 6.12. The Developer covenants with the County Council to pay before completion of this Deed:
- 6.12.1. The County Monitoring Fee; and
- 6.12.2. The County Council's reasonable legal fees in respect of the negotiation of this Deed in the sum of £375 (with no VAT payable).

6.13. In the event that the Inspector appointed to determine the Planning Appeal states in his decision letter either:

(a) that a planning obligation contained in this Deed (or relevant part of a planning obligation) is not a material consideration in the granting of the Planning Permission pursuant to the Planning Appeal; or

(b) that a planning obligation contained in this Deed (or relevant part of a planning obligation) is incompatible with any one or more of the tests for planning obligations set out in Regulation 122 of the CIL Regulations and accordingly attaches no weight to that obligation in determining the Planning Appeal

then that planning obligation (or part of the planning obligation as appropriate) shall cease to have effect and the Owner shall not be required to comply with that obligation.

**FIRST SCHEDULE**

**The Plan**

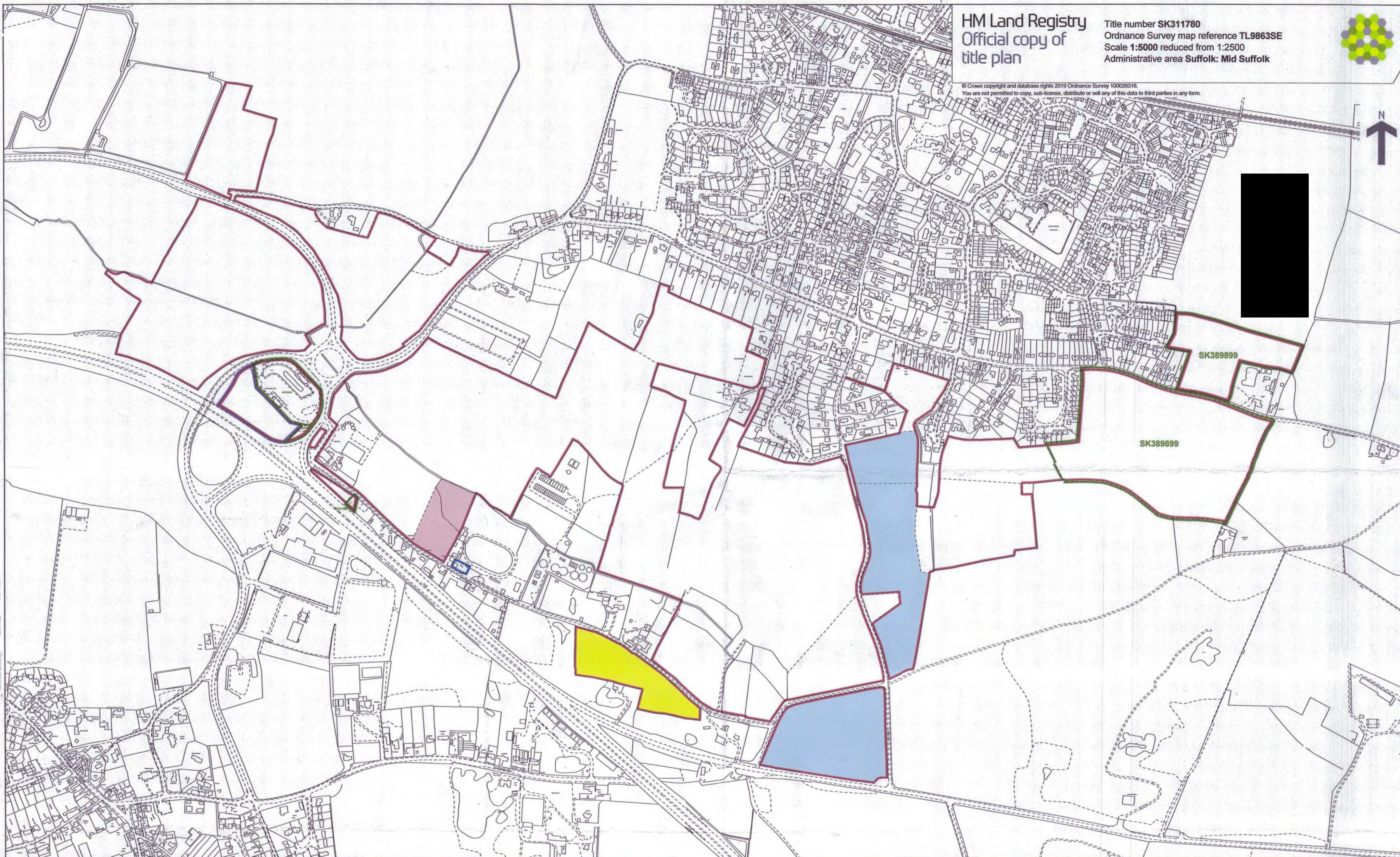


HM Land Registry  
Official copy of  
title plan

Title number SK311780  
Ordnance Survey map reference TL9863SE  
Scale 1:5000 reduced from 1:2500  
Administrative area Suffolk: Mid Suffolk



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This official copy issued on 10 November 2023 shows the state of this title plan on 10 November 2023 at 16:07:17.  
It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).  
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.  
This title is dealt with by HM Land Registry, Durham Office.

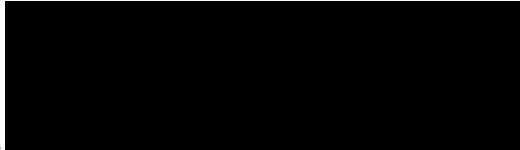
**SECOND SCHEDULE**  
**Planning Obligations**

**The Owner hereby covenants with the District Council and the County Council as follows:**

1. At least 15 days prior to the Commencement Date provide written notice to the District Council and the County Council of the anticipated Commencement Date
2. Provide written notice to the District Council and the County Council of the Commencement Date within 15 days of its occurrence
3. To pay the Highways Contribution (Index Linked) to the County Council prior to the Commencement Date
4. Not to Commence or cause or permit the Commencement of the Development unless and until the Highways Contribution (Index Linked) has been paid to the County Council

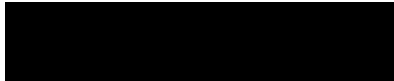
IN WITNESS whereof the parties have executed this Deed and delivered it on the date stated at the beginning of this Deed

**EXECUTED as a DEED by  
J.D. & R.J BAKER FARMS LIMITED**  
acting by a director in the presence of:



Director

Witness' Signature:



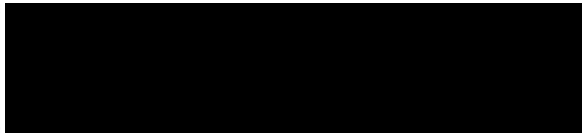
Witness' Name:

JONATHAN MATHERS

Witness' Address:

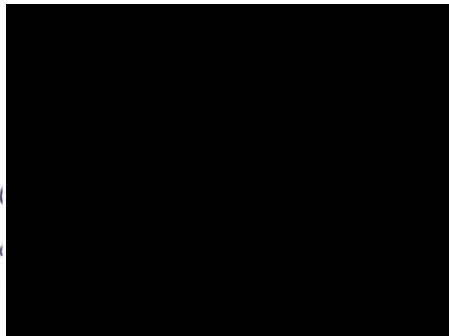
GREENE & GREENE  
SOLICITORS  
80 GUILDHALL STREET  
BURY ST EDMUNDS  
SUFFOLK IP33 1QB

**EXECUTED as a DEED by  
EG PROPERTY LIMITED**  
acting by a director in the presence of:



Director

Witness' Signature:



Witness' Name:

Witness' Address: