

Dated 24<sup>TH</sup> FEBRUARY

2021

Broadland District Council

-and-

Mackinnon Construction Limited

- and -

Newbridge Acquisitions Limited

**DEED OF PLANNING OBLIGATION  
UNDER SECTION 106  
OF THE TOWN AND COUNTRY PLANNING  
ACT 1990**

relating to land at the Site of T H Blyth and Sons Builders' Yard,  
Claypit Road, Foulsham, NR20 5RW

**THIS DEED** is dated

*24<sup>TH</sup> FEBRUARY.*

2021

**PARTIES:**

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Rd, Norwich NR7 0DU (referred to as "the Council")
- (2) **MACKINNON CONSTRUCTION LIMITED** (Co. Regn. No. 03831759) of 31 Holt Road, Cromer, Norfolk, NR27 9EB, company number (referred to as "the Developer")
- (3) **NEWBRIDGE ACQUISITIONS LIMITED** (Co. Regn. No.09545922) of 31 Holt Road, Cromer, Norfolk, NR27 9EB, company number 09545022 (referred to as "the Owner")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is a local planning authority for the purposes of this deed for the area within which the Site is located.
- (B) The Developer has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed.
- (C) The Developer owns the freehold of part of the Site which is registered at the Land Registry under title number NK195930 and is held free from encumbrances and shown outlined yellow on Plan 2
- (D) The Owner owns the freehold of part of the site which is registered at the Land Registry under title number NK339965 and is held free from encumbrances and shown outlined green on Plan 2
- (E) The Developer owns the leasehold of part of the Site which is registered at the Land Registry under title number NK197616 and shown outlined blue on Plan 2.

**1. DEFINITIONS**

In this Deed the following expressions have the following meanings:

Act

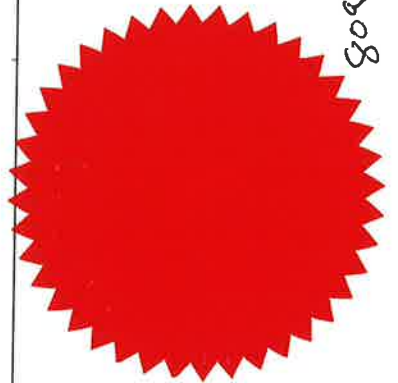
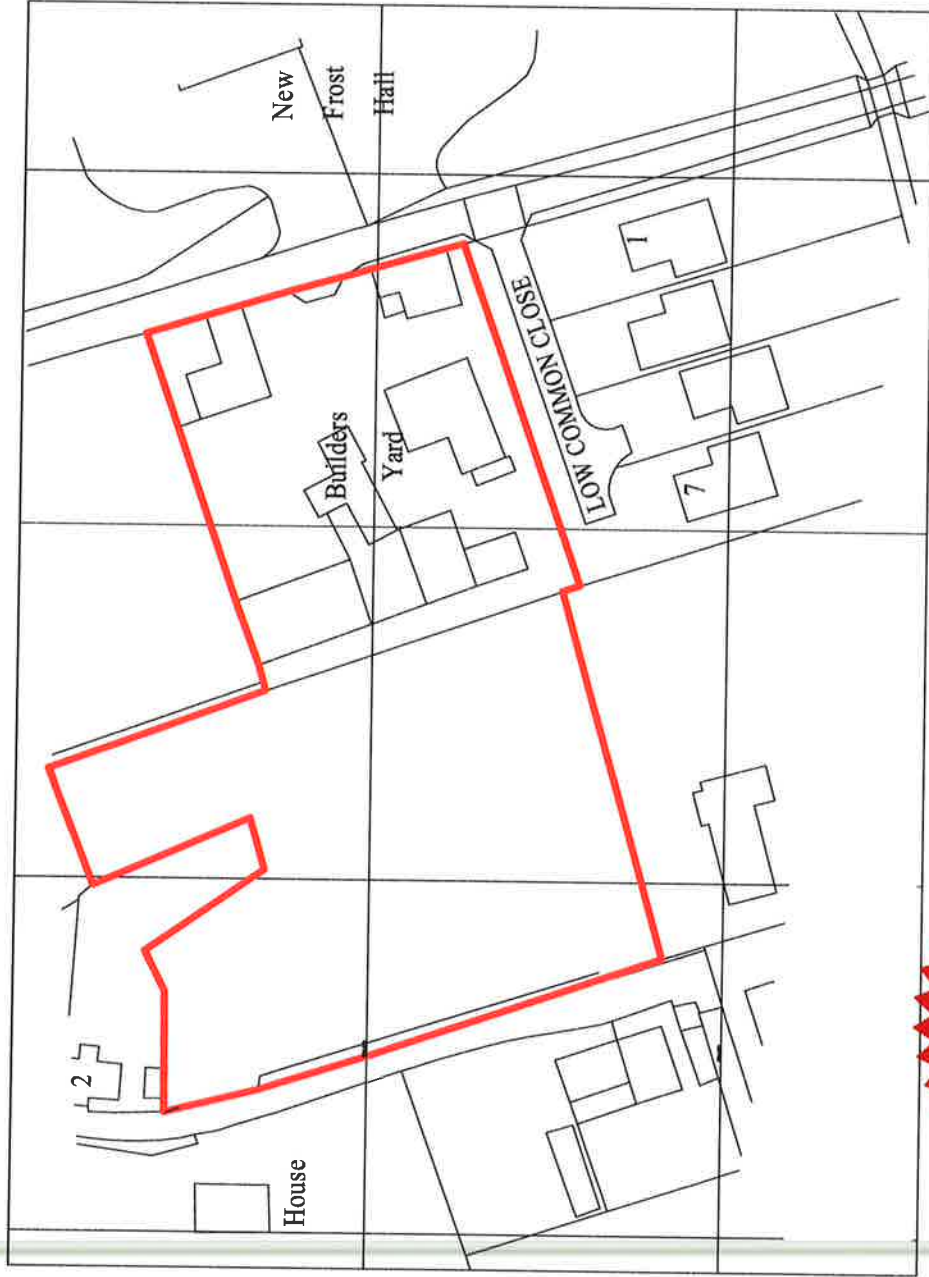
The Town and Country Planning Act 1990 as

	amended
Commencement	<p>The date on which a material operation as defined in Section 56(4) of the Act is first carried out, except (for the purposes of this Deed only) operations consisting of:</p> <ul style="list-style-type: none"> <li>site clearance</li> <li>demolition</li> <li>archaeological investigations</li> <li>ground surveys</li> <li>removal of contamination or other adverse ground conditions</li> <li>erection of temporary fences</li> <li>temporary display of site notices and/or advertisements</li> </ul> <p>and 'Commence' and 'Commenced' will be construed accordingly</p>
Development	The Development of the Site in accordance with the Permission
Dwelling	A dwelling to be built on the Site as part of the Development
Nominated Officer	The senior officer of the Council responsible for development management or other officer of the Council notified to the Owner and Developer
Occupation	<p>Occupation of the Site, or any part of it, for any purpose authorised by the Permission, but excluding occupation for the purposes of:</p> <ul style="list-style-type: none"> <li>construction</li> <li>internal and external refurbishment</li> <li>decoration</li> <li>fitting-out</li> <li>marketing</li> </ul> <p>and 'Occupy' and 'Occupied' will be construed accordingly</p>

Permission	The planning permission to be granted by the Council for demolition of Builder's Yard and erection of 9 dwellings comprising of 5 houses and 4 bungalows with associated access and allocated reference number 20190792
Plan 1	The plan attached to this Deed and marked Proposed Site Location Plan LOC 02
Plan 2	The plan attached to this Deed and marked Plan 2 and showing the freehold and leasehold ownership of the Site
Site	The land known as the site of T H Blyth and Sons Builders' Yard, Claypit Road, Foulsham, NR20 5RW and shown edged red on Plan 1
Trigger	Means the Commencement date and any trigger or threshold in this Deed linked to the taking of specified steps, payment of money, or linked to the prohibition of a specified action

## **2. LEGAL BASIS**

- 2.1 This Deed is made pursuant to Section 106 of the Act and, to the extent that it does not contain planning obligations, under Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011, and all other enabling powers.
- 2.2 The covenants and obligations contained in this Deed create planning obligations for the purposes of section 106 of the Act enforceable by the Council and relate to the Site.
- 2.3 Covenants given by more than one party can be enforced against them individually or jointly.
- 2.4 A reference to an Act of Parliament includes any later modification or re-enactment, including any statutory instruments made under that Act, and reference to a gender or person includes all genders or classes of person.
- 2.5 Any covenant in this Deed not to do something includes an obligation not to allow



Deputy Monitoring Officer

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*[Handwritten signature]*

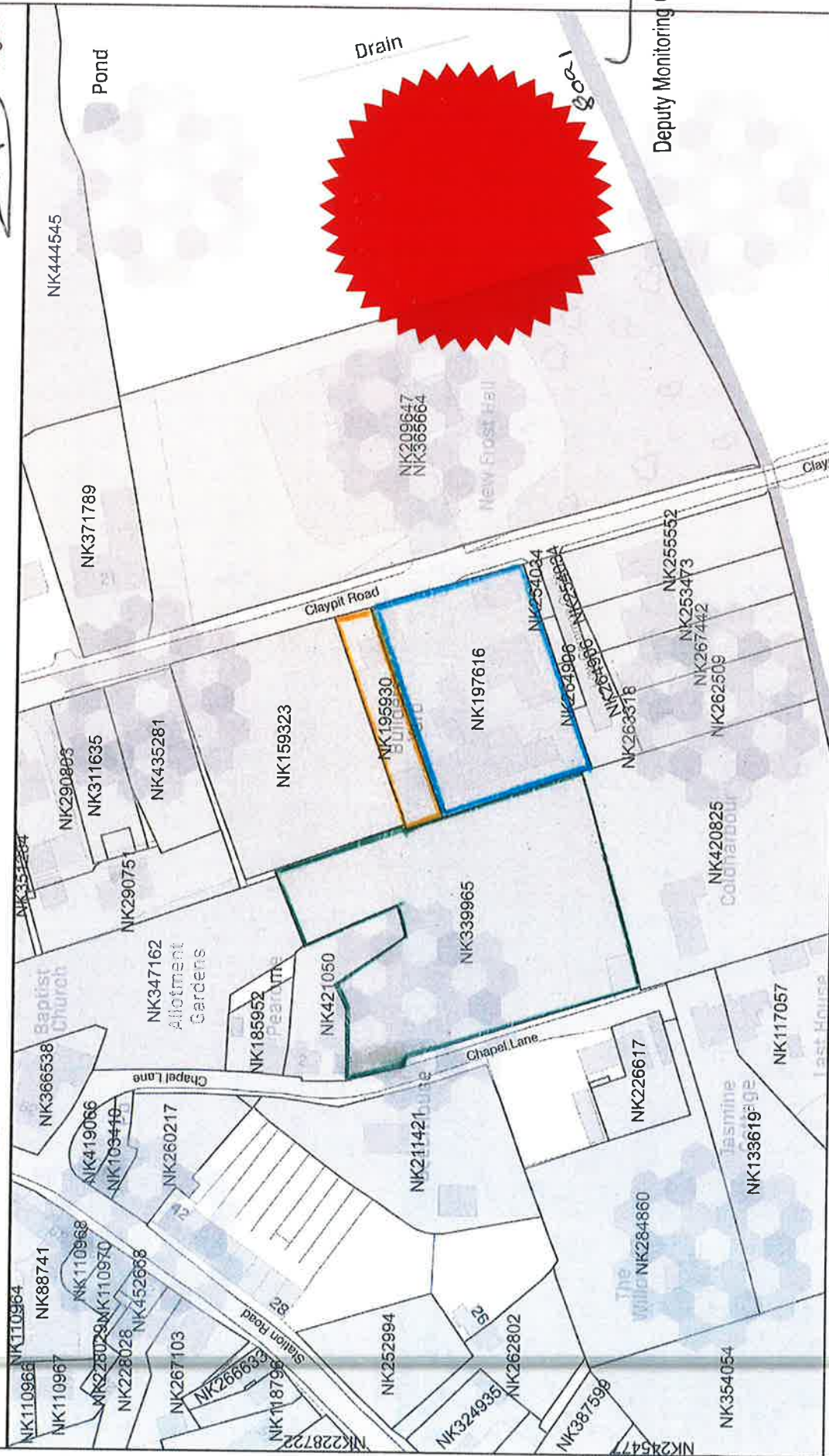
<b>NOTES</b> The Client is to provide all necessary information and data for the proposed development. Where dimensions are to be used, they shall be in accordance with the relevant standards. The drawings are to be used for information only and are not to be used for construction purposes. The drawings are to be used for information only and are not to be used for construction purposes.	
<b>REVISIONS</b> No. Description 1. Initial issue for information only.	
<b>CLIENT:</b> MACKINNON CONSTRUCTION, 31 Holt Road CROMER Norfolk NR27 9EB	
<b>PROJECT:</b> RESIDENTIAL DEVELOPMENT, CLAYPIT ROAD, FOULSHAM	
<b>DRAWING TITLE:</b> PROPOSED SITE LOCATION PLAN	
<b>SCALES:</b> 1:1000 @ A4	<b>DATE:</b> DEC 2019
<b>ASD ARCHITECTURE LTD</b> 16A Bridge Street, Halesworth, Suffolk, IP19 9AQ Tel: (01586) 872250 Fax: (01586) 872251 Email: enquiries@asd-architecture.co.uk www.asd-architecture.co.uk	
<b>JOB NO:</b> 6627	<b>LOC NO:</b> 02





# MapSearch Snapshot

## PLAN 2



0 5 10 15 20 25 30 35 40 50m

Map scale 1:1250

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Data last updated 10:00pm 20 JANUARY, 2021

or permit it to be done.

- 2.6 References to any party to this Deed shall include successors in title to that party and to any person deriving title through or under that party and in the case of the Council and the County the successors to their respective statutory functions.
- 2.7 Representatives of the Council may enter the Site at any reasonable time to ascertain whether the terms of this Deed are being or have been complied with provided that:
  - 2.7.1 they do not enter any individual Dwelling; and
  - 2.7.2 they adhere to all reasonable health and safety requirements.

### **3. CONDITIONALITY**

This Deed is conditional upon:

- 3.1 The grant of the Permission; and
- 3.2 The Commencement of Development.

Save for the provisions of this clause and clauses 6.4, 6.8, 7, 8, and 9 and any obligation contained within this Deed which must be performed prior to Commencement of Development which shall come into effect immediately on completion of this Deed.

### **4. COVENANTS**

- 4.1 The Owner and the Developer covenant with the Council for himself and his successors in title to observe and perform the obligations and stipulations contained in this Deed.
- 4.2 The Council covenants with the Owner to comply with its respective requirements contained in this Deed.
- 4.3 The Council covenants with the Owner and the Developer to use its reasonable endeavours to issue the Permission within 14 working days of the date of this Deed.

### **5. USE OF CONTRIBUTIONS INDEXATION AND INTEREST**

- 5.1 The improvements referred to in this Deed for which contributions are required may at the Council's absolute discretion be commenced or provided (in whole or in part) at any time after the date of this Deed even if payment of the relevant contribution may not have become due.
- 5.2 If the improvements have been commenced or provided prior to the due date for payment of the relevant contribution then the payment will be regarded as a reimbursement of the costs incurred in providing the improvement.
- 5.3 Nothing in this Deed binds the Owner or the Developer to pay;
- 5.3.1 any contribution before the date on which it is due under the Schedules, or
- 5.3.2 any contribution at all if the relevant due date is not reached, or
- 5.3.3 any greater contribution than provided in the relevant Schedule together with an Index Linked sum and interest due
- 5.4 The Council is entitled to use all interest accrued on each contribution specified in the Schedules from the date of actual payment of the contribution until the date when the contribution and interest accrued is spent.
- 5.5 The contributions specified in the Schedules are to be Index Linked
- 5.6 In the event of any delay in paying the contributions specified in the Schedules then from the due date of payment:
- 5.6.1 the contributions are a debt due to the Council and are recoverable by action by the Council; and
- 5.6.2 are liable to interest calculated on a daily basis at a rate of 4 percent over the bank rate as set by the Bank of England in force from time to time from the due date for payment until the actual date of payment.
- 5.7 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid.
- 5.8 Any money from time to time held by the Council in respect of any payment made to the Council by the Owner or the Developer under the provisions of this Deed will in any event become the absolute property of the Council and will not be subject to return by the Council to the party who made that payment if that party:
- 5.8.1 becomes bankrupt or has a winding-up petition or a petition for an administration order presented against it, or
- 5.8.2 passes a winding-up resolution or an administrative receiver or a



receiver and manager is appointed in respect of the property (or any part thereof) belonging to that party, or

5.8.3 enters into any arrangement scheme compromise moratorium or composition with its creditors or any of them but shall continue to be held by the Council under the terms of this Deed.

5.9 The Council may spend part of the Commuted Sum on reasonable legal costs and disbursements which are supplemental to or incurred in connection with the spending of the said Commuted Sum.

## **6. OTHER PROVISIONS**

6.1 No person will be liable for any breach of this Deed if he no longer has an interest in the Site (unless the breach occurred before he disposed of his interest).

6.2 The Owner and the Developer confirm that they are the owners of their respective parts of the Site with full power to enter into this Deed

6.3 The covenants, restrictions and requirements contained in this Deed shall not be enforceable against:

6.3.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease.

6.3.2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site.

6.4 On completion the Owner or the Developer will pay the Council's reasonable legal costs in connection with this Deed.

6.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions.

6.7 No waiver, express or implied, by the Council of any breach or failure to perform or observe any of the covenants, terms or conditions of this Deed constitutes a

continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed.

- 6.8 If the Permission is quashed revoked or expires before Commencement then, save for clause 6.4 this Deed will cease to have effect (insofar only as it has not already been complied with).
- 6.9 Subject to clause 6.10, nothing in this deed prohibits or limits the right to develop any part of the Site in accordance with a planning permission (other than the Permission) granted after the date of this Deed.
- 6.10 If the Permission is subject to an application under Section 73 of the Act for the removal or amendment of any condition attached to the Permission then the obligations in this deed shall also apply to the new planning permission resulting from such application if so agreed by the Council (acting in its absolute discretion).
- 6.11 This Deed is registrable as a local land charge.
- 6.12 Following the performance and satisfaction of all the obligations contained in this Deed the Council will, upon the written request of the Owner, cancel all relevant entries contained in the Register of Local Land Charges.
- 6.13 An agreement, approval, consent or expression of satisfaction required by the Owner or the Developer from the Council under the terms of this deed must be given in writing and shall not be unreasonably withheld or delayed.
- 6.14 The provisions of this Deed (other than this clause which takes immediate effect) will be of no effect until this deed has been dated.
- 6.15 Nothing contained or implied in this Deed will fetter, prejudice or affect the rights, discretions, powers, duties and obligations of the Council in the exercise of any of its functions as local authority.

## **7. DISPUTES**

- 7.1 If any dispute is not resolved between the Parties, any of the Parties may refer it for determination by an expert. The expert will be appointed by agreement between the parties or, in default of agreement, by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's decision shall be final and binding.

- 7.2 The expert is to be replaced by a fresh appointee in the event that he becomes at any time unable or unwilling for any reason to proceed to discharge his functions. The fresh appointee is to be appointed in the manner prescribed in this clause.
- 7.3 The expert is to make his decision within 6 weeks of being appointed.
- 7.4 The costs of appointing the expert are to be shared equally by the parties to the dispute except where the expert takes the view that one party has acted unreasonably. In that case the expert has binding discretion as to apportionment of the costs.
- 7.5 Nothing in this clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

## **8. NOTIFICATIONS**

- 8.1 Any notice or written communication given under this Deed is validly given if hand delivered or sent by recorded delivery post to the address set out at the beginning of this Deed, unless written notification of another address has been received.
- 8.2 The Owner and the Developer will notify the Nominated Officer in writing of the relevant
  - 8.2.1 anticipated Triggers seven days in advance of each anticipated date,
  - 8.2.2 actual Triggers within seven days of each actual date.
- 8.3 If the Owner or the Developer disposes of his respective interest in all or part of the Site he will notify the Nominated Officer within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site.

## **9. CESSATION OF SITE USE**

- 9.1 The Owner covenants with the Council that on Commencement the Owner will cease the use of the Site as a builder's yard or for any purposes ancillary
- 9.2 The Parties hereto acknowledge that the covenants contained in this Deed shall not give rise to any right to compensation whatsoever and the Owner and the Developer covenant not to pursue any such claim against the Council

## **10. JURISDICTION**

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

## **SCHEDULE 1**

### **Commuted Sum Payment**

In this Schedule (and elsewhere in this Deed where the context permits) the following words and phrases shall have the following meaning:

<b>"Commuted Sum"</b>	means both the Green Infrastructure Contribution and Open Space Contribution which FOR THE AVOIDANCE OF DOUBT totals forty six thousand two hundred and seven pounds and twelve pence (£46,207.12) Index Linked
<b>"Green Infrastructure Contribution"</b>	means the sum of twenty five thousand three hundred and seventy six pounds and twenty eight pence (£25,376.28) towards green infrastructure projects in accordance with the Council's Green Infrastructure Project plans or other such projects that meet the aims of policy EN3 in the Council's Development Management DPD (2015) as agreed by the Council in its absolute discretion and Index Linked
<b>"Index Linked"</b>	Index linked from 1 <sup>st</sup> January 2020 until the date any payment referred to in this Deed is made, such index linking being equivalent to any change in the RICS Building Cost Information Service All In Tender Index (or if such index ceases to be published, another index notified to the Owner and the Developer by the Nominated Officer)
<b>"Open Space Contribution"</b>	means the sum of twenty thousand eight hundred and thirty pounds and eighty four pence (£20,830.84) applied towards the provision of open space in the parish of Freethorpe and Index Linked

1. The Owner and Developer covenant with the Council
- 1.1 to pay the Commuted Sum to the Council in a single lump sum payment prior to Commencement of the Development

The Council covenants with the Owner and Developer as follows:

- 2.1 the Council will place the Commuted Sum in a central interest bearing account and apply the same towards the purpose for which it was paid
- 2.2 in the event that the Commuted Sum has not been committed (by way of contract or otherwise) to the purpose for which it was paid within 10 years of final Occupation of the Development then the Council shall repay to the payer

(for the avoidance of doubt, the person who paid the Commuted Sum to the Council) so much of the Commuted Sum as shall remain uncommitted together with any interest accrued



IN WITNESS whereof the parties hereto have executed this document as a Deed on the day and year first before written.

THE COMMON SEAL OF  
**BROADLAND DISTRICT COUNCIL**  
was affixed hereto in the presence of:

Authorised Signatory:

Deputy Monitoring Officer

*Linda Mockford*

and this deed has been duly and properly executed  
in accordance with the constitution of Broadland District Council



EXECUTED AS A DEED by  
**MACKINNON CONSTRUCTION LIMITED**  
in the presence of:

Director:

Director/Secretary:

) *J. Percy* J PERCY  
) *[Signature]*  
*[Signature]*

EXECUTED AS A DEED by  
**NEWBRIDGE ACQUISITIONS LIMITED**  
in the presence of:

Director:

Director/Secretary:

) *J. Percy* J PERCY  
) *[Signature]*  
*[Signature]*