

770 NOT DATED  
DATED 28<sup>th</sup> September 2012

NORFOLK COUNTY COUNCIL

- and -

GEOFFREY JAMES TAYLOR

- and -

LONGWATER (GRAVEL) COMPANY LIMITED

- and -

~~SARAH~~ <sup>STC</sup> JANE CLETHERO, MARION ELIZABETH MYRA PLAYFORD AND  
JILL IRENE WYE

- and -

NICHOLAS GEOFFREY TAYLOR

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## AGREEMENT



Under Section 106 of the  
Town and Country Planning Act 1990  
relating to land at Horstead Quarry Buxton Road Horstead

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Head of Law  
Norfolk County Council  
County Hall  
Martineau Lane  
Norwich  
NR1 2DH

1700001 Data

THIS AGREEMENT is made by Deed the 28<sup>th</sup> day of September 2012  
BETWEEN :-

- (1) **THE NORFOLK COUNTY COUNCIL** of County Hall Martineau Lane  
Norwich Norfolk NR1 2DH ("the County Council") and
- (2) **GEOFFREY JAMES TAYLOR** of Grange Farm Horstead Norwich  
Norfolk NR12 7VX ("the Main Site Owner") and
- (3) **LONGWATER (GRAVEL) COMPANY LIMITED** of Winnington House 2  
Woodberry Grove North Finchley London N12 0DR ("the Developer")  
and
- (4)  ~~SARAH JANE CLETHERO~~  also known as **SARA JANE CLETHERO**  
of 278 Gillott Road Edgbaston West Midlands, **MARION ELIZABETH**  
**MYRA PLAYFORD** of Bonds Road Tivetshall St Mary Norfolk and **JILL**  
**IRENE WYE** of 17 Nun Street St Davids Pembrokeshire ("the  
Extension Site Owners")
- (5) **NICHOLAS GEOFFREY TAYLOR** of Rose Cottage Mill Street Buxton  
Norfolk ("the Tenant")

## RECITALS

- A. The County Council is a local planning authority within the meaning of  
the 1990 Act for the area within which the Land is situated
- B. The Main Site Owner is the freehold owner of the Land edged red ("Main  
Site") on plan numbered 0127/S73/A attached and marked "Plan 1"  
("Plan 1") subject
- C. The Extension Site Owners are the freehold owners of the Land edged  
blue ("Extension Site") on Plan 1 subject to a Farm Business Tenancy in  
favour of the Tenant

- D. The Tenant has the benefit of a Farm Business Tenancy over the Extension Site and other land and is entering into this Agreement to bind his interest in the Extension Site
- E. The Developer has the benefit of a Lease over the Main Site and intends on taking out a further Lease over the Extension Site
- F. The Developer has submitted the Applications to the County Council for planning permission to carry out the Development and the County Council have resolved to grant the Planning Permissions subject to completion of this Deed

**NOW THIS DEED WITNESSETH as follows:**

**DEFINITIONS**

- 1. In this Deed:
  - 1.1 The following words have the following meanings unless in the context it would not be appropriate:
    - “the 1990 Act”                      the Town and Country Planning Act 1990 or any statutory modification or re-enactment thereof
    - “the Applications”                the application dated 18<sup>th</sup> November 2011 for planning permission for the continued progressive extraction of sand and gravel and restoration to agriculture at a lower level without compliance with condition 2 (timescale), 3 (working and restoration details) and 5 (processing of

imported materials) of planning permission C/5/2003/2011 as contained in appeal decision APP/X2600/A/02/110545 and referenced on C/5/2003/5011 on the Land in accordance with the forms plans and particulars deposited with the County Council and numbered C/5/2011/5014 in relation to the Main Site and the application dated 18<sup>th</sup> November 2011 for full planning permission for mineral extraction and restoration to agriculture as an extension to Horstead Quarry on the Land in accordance with the forms plans and particulars deposited with the County Council and numbered C/5/2011/5017 in relation to the Extension Site

**“Commencement”**

the initiation of the Development by the carrying out of a material operation within the meaning of Section 56(4) of the 1990 Act and “Commence” shall be interpreted in accordance with this definition

**“the Development”**

development carried out pursuant to the Planning Permissions

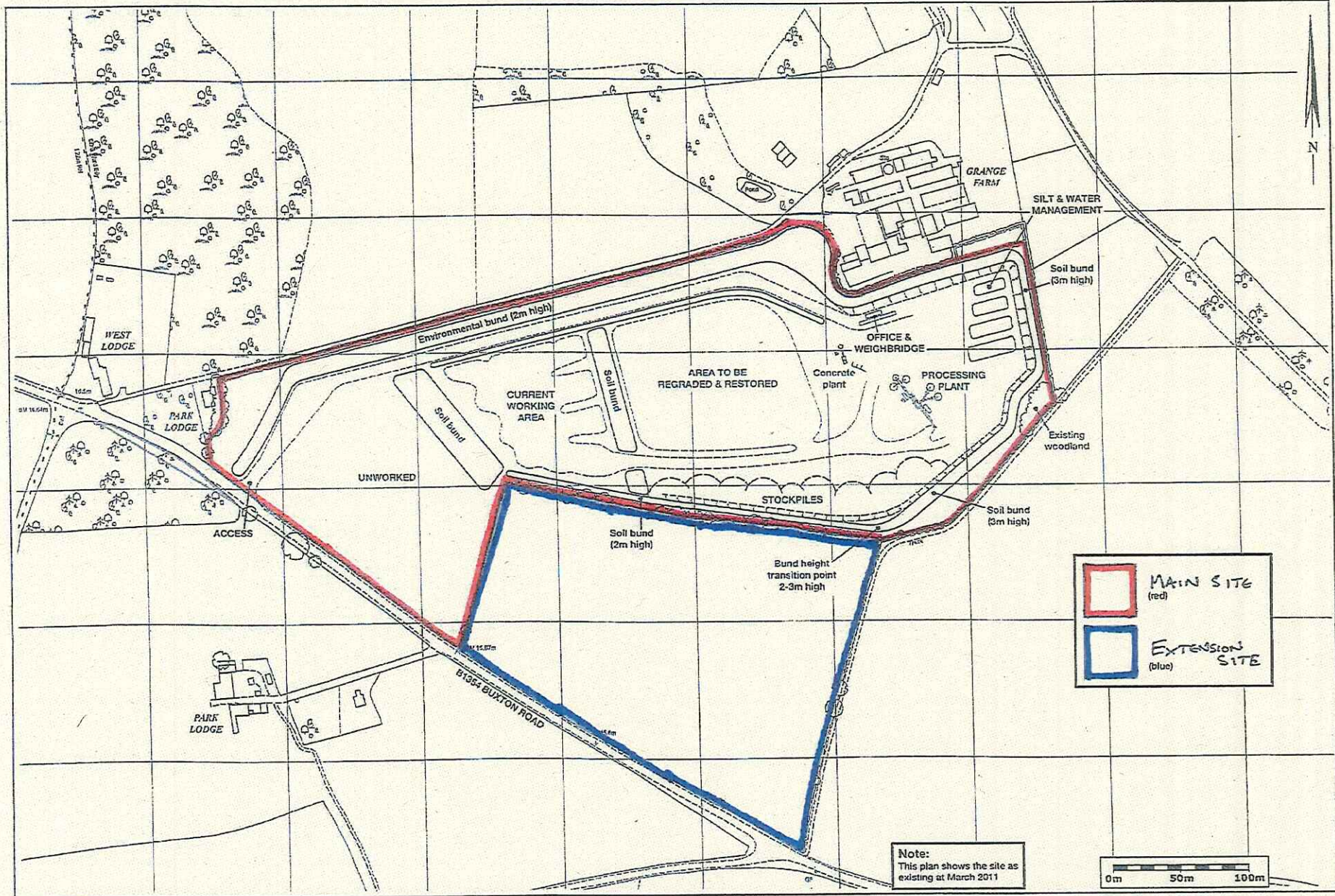
**“the Land”**

the land known as Horstead Quarry, Buxton Road Horstead and edged red and blue on Plan 1



# PLAN 1

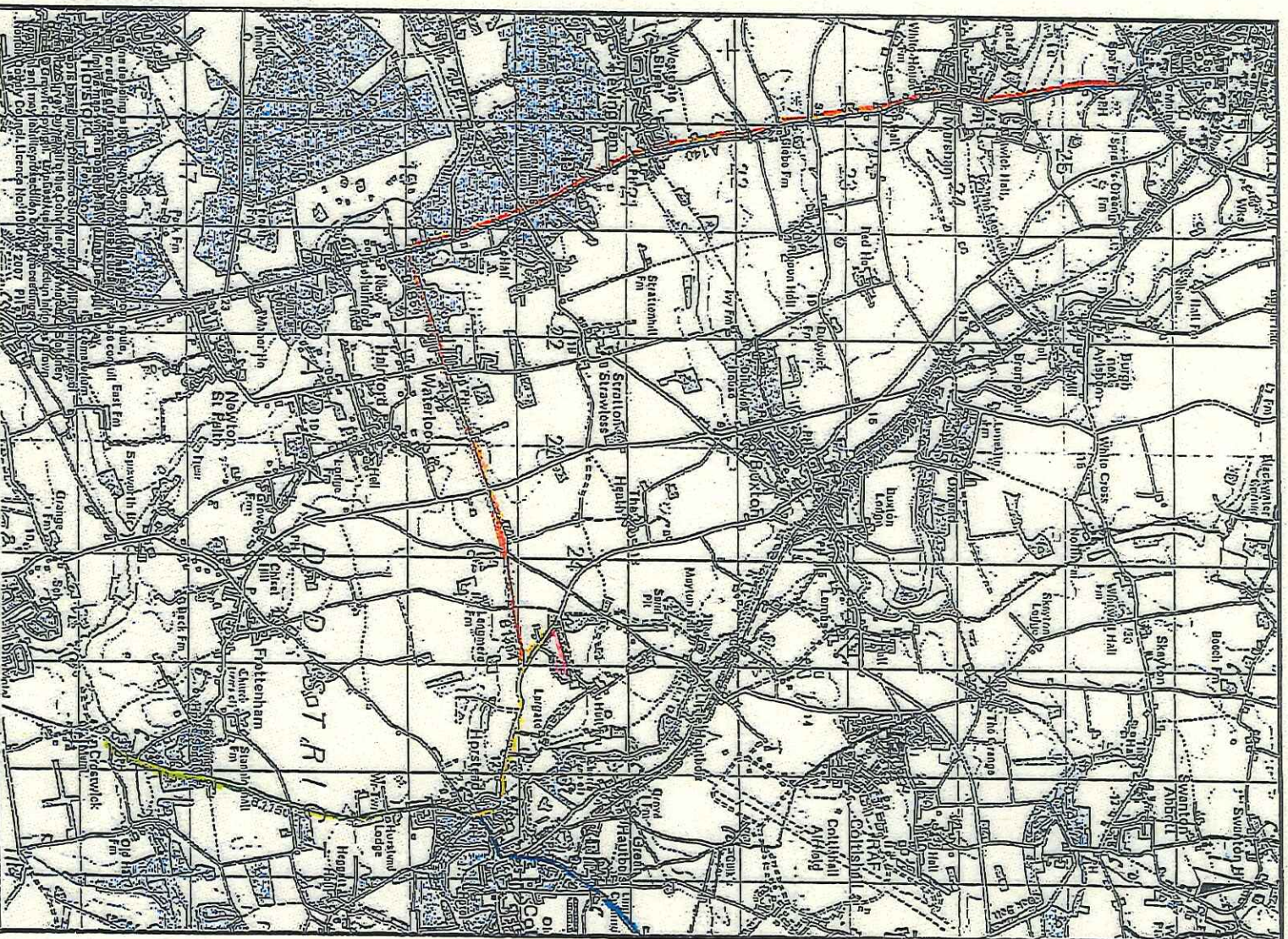
Land at Horstead, Norfolk











NMB print

Northamptonshire County Council

Produced using NMB Express  
Scale 1:50000  
Map centre: 623257, 321117







**“Local Deliveries”**

means deliveries from the Land to any property within a 2.5 mile radius of the Land

**“the Owners”**

shall mean the Main Site Owner and the Extension Site Owners together

**“the Planning Permissions”**

means the planning permissions granted pursuant to the Application for the Development which shall include any subsequent planning permissions issued pursuant to an application to vary its conditions under Section 73 of the Act

**“Vehicles”**

means any motorized vehicle other than private cars

**INTERPRETATION**

1.2 One gender includes all the others

1.3 The singular includes the plural and vice versa

1.4 the obligations imposed by this Deed on more than one person are joint and several

1.5 The parties to this Deed include their respective successors in title

1.6 A covenant not to do something includes a covenant not to permit or suffer that thing to be done

1.7 Headings in this Deed are for ease of reference only and cannot be taken into account in its construction or interpretation

- 1.8 A reference to a paragraph or clause in the Schedule of this Deed is a reference to a paragraph or clause in that part of the Schedule

## **ENABLING POWERS**

2. This Deed and the covenants hereinafter contained are made with the County Council and are enforceable by the County Council pursuant to Section 106 of the 1990 Act (and to the extent to which the said covenants are capable of being entered into thereunder they shall constitute planning obligations for the purposes thereof) Sections 111 and 139 of the Local Government Act 1972 or any statutory modification or re-enactment thereof and any other powers thereby enabling

## **DEVELOPER'S OWNER'S AND TENANT'S OBLIGATIONS**

- 3.1 The Developer hereby covenants with the County Council so as to bind it's interest in the Land that it will observe and perform the obligations contained in the Schedule to this Deed
- 3.2 The Owners acknowledge that their interests in the Land are bound by the obligations contained in the Schedule to this Deed and they will not so far as is within his reasonable control cause permit or suffer any breach of the obligations contained in this Agreement and in the event that any of them carry on the Development they too will be bound by the obligations contained herein
- 3.3 Subject to Clause 3.4 below the Owners covenant that they are the freehold owners of the Land and have full power to enter into this Deed and that the Land is free from all mortgages charges or other encumbrances and that there are no other persons with an interest in the



Land other than the parties to this Deed whose consent is necessary to make this Deed binding on the Land and all estates and interests in it

- 3.4 The Tenant acknowledges that his interest in the Extension Site is bound by the obligations contained in the Schedule to this Deed and he will not so far as is within his reasonable control cause permit or suffer any breach of the obligations contained in this Agreement and in the event that he shall carry on the Development then he too will be bound by the obligations contained herein

## **AGREEMENTS AND DECLARATIONS**

4. The parties agree and declare as follows:

- 4.1 No waiver (whether express or implied) by the County Council of any breach or default by the Developer or the Owners or their successors in title in performing or observing any of their obligations under this Deed shall constitute a continuing waiver or prevent the County Council from enforcing those obligations or from acting upon any subsequent breach or default

- 4.2 This Deed shall cease to have effect if either of the Planning Permissions shall be quashed revoked or otherwise withdrawn before the date upon which the Development is Commenced AND FOR THE AVOIDANCE OF DOUBT where permission is issued pursuant to an application under section 73 of the Act this Deed shall continue in full force and effect subject to and in accordance with the provisions contained herein AND PROVIDED THAT in the event that upon receipt of an application under section 73 of the Act the County Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the County Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations.

4.3 The provisions of this Deed shall only come into effect on Commencement of the Development unless otherwise specifically indicated in this Deed or to construe otherwise would be inconsistent with the requirements of any such covenants or provisions

4.4 Without prejudice to the enforcement of restrictions and obligations against successors in title no person shall be liable for any breach of this Deed if at the time the breach occurs they have no interest in the Land

4.5 The County Council shall not be liable to any person under this Deed after that person has parted with all interest in the land but without prejudice to any liability arising prior thereto

4.6 The Developer agrees to pay to the County Council their reasonable legal costs incurred in connection with the preparation of this Deed

#### **DEVELOPER INDEMNITY**

5 The Developer hereby covenants with the Owners that it will perform the obligations contained in the Schedule on behalf of the Owners and will indemnify the Owners on a full indemnity basis against all costs claims and demands as a result of non-compliance

#### **DISPUTE RESOLUTION**

6.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the parties or their legal representatives who have authority to settle the same.



6.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (“ADR”) procedure as recommended to the parties by the Centre for Dispute Resolution.

6.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.

6.4 Nothing in this clause shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

#### **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

7. Subject to Clause 1.5 no person shall derive any benefit or have any right entitlement or claim in relation to this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999

#### **JURISDICTION**

8. This Deed is govern by and interpreted in accordance with the laws of England and Wales

## **SCHEDULE**

- 1 The Developer hereby covenants with the County Council that with effect from Commencement of the Development within the meaning of section 56 of the Act that the Land shall not be used for the purposes authorised by the Planning Permission unless:-
  - 1.1 All Vehicles operated by the Developer or its employees or otherwise under the direct control of the Developer approach and leave the Land via the route shown in yellow on the plan annexed to this Agreement and marked "Plan 2" ("the Plan") and then follow one of the routes shown in green, blue or orange on the Plan (the "Permitted Route") except when making Local Deliveries
  - 1.2 in relation to Vehicles not under the direct control of the Developer all reasonable endeavours shall be used to ensure that such Vehicles approach and leave the Land via the Permitted Route
  - 1.3 there are affixed and displayed and maintained on the Land such signs approved by the County Council in writing as to locations numbers size and legend and as shall be required from time to time by the County Council (including any modifications, additions or subtractions to those first or subsequently approved by the County Council)
2. It is hereby agreed and declared for the purposes of paragraph 1.1 above that the requirement to use reasonable endeavours:



2.1 requires the Developer to incorporate in all contracts with persons likely to visit the Land a term having the same effect as clause 1.1

2.2 requires the Developer to communicate in writing with persons whose Vehicles from time to time regularly visit the Land informing them of the Permitted Route and requesting that their vehicles follow it at all times when visiting the Land at a method and frequency as shall be reasonably likely to secure co-operation with the use of the Permitted Route such method and frequency to be determined by the Developer and disclosed to the County Council as requested or at the County Councils discretion shall be as reasonably determined by the County Council

2.3 requires the Developer on receiving information that any driver of a Vehicle shall have taken any route to or from the Land other than the Permitted Route to take all necessary and lawful action possible against the Driver to ensure future compliance

2.4 will be breached if an employee of the Developer uses a route other than the Permitted Route

**IN WITNESS** whereof the parties hereto have executed this instrument as their deed and it is the parties' intention that this deed be delivered and it is hereby delivered on the date first before written

35291.

THE COMMON SEAL of  
THE NORFOLK COUNTY COUNCIL  
was hereunto affixed  
in the presence of:-

authorised to sign  
on behalf of:



HEAD OF LAW

SIGNED as a DEED by the said  
GEOFFREY JAMES TAYLOR

In the presence of:

*G. J. Taylor*

Witness:

*ST Edm  
Simon EDWARDS  
45, THE MARTINS, DEBENHAM, NORFOLK  
NR19 2UH*

THE COMMON SEAL of  
LONGWATER (GRAVEL) COMPANY LIMITED  
was hereunto affixed  
in the presence of:-

Director *Elaine Pittsley*

Director/Secretary

SIGNED as a DEED by the said  
SARAH JANE CLETHERO

In the presence of:

*Sara J. Clethero*

Witness:

*David Lambourn*  
28 FREDERICK ROAD  
BIRMINGHAM B15 1TN

SIGNED as a DEED by the said  
MARION ELIZABETH MYRA PLAYFORD

*Marion Playford*



In the presence of:

Witness:

*Jill Irene Wye*

*Audrey Janet Pye  
Green Pastures  
The Street  
Tiverton St Mary  
NR15 2BT*

SIGNED as a DEED by the said  
JILL IRENE WYE in the presence of:

*Jill Irene Wye*

Witness:

*N Seward*

*Nana Seward  
3 Trevellyn, Cotham  
Marjorie Street SAG2 5DU*

SIGNED as a DEED by the said

NICHOLAS GEOFFREY TAYLOR

*Nicholas Geoffrey Taylor*

In the presence of:

Witness:

*Jill Irene Wye*

*Name*

*Pat Barker*

*Address*

*Alwoodley House  
Mill St  
Buxton  
Derbyshire  
NE10 3YE*

