

20152081

Dated 02 OCTOBER 2017

BROADLAND DISTRICT COUNCIL

-and-

PAUL STEPHEN DUNTHORNE

and

R. DUNTHORNE LIMITED

and

SANDRA RICHES

**DEED OF PLANNING OBLIGATION**

**UNDER SECTION 106**

**OF THE TOWN AND COUNTRY PLANNING**

**ACT 1990**

relating to land off Green Lane West, Rackheath

**THIS DEED** is dated

02 OCTOBER

2017

**PARTIES:**

- (1) BROADLAND DISTRICT COUNCIL (referred to as "the Council") of Thorpe Lodge 1 Yarmouth Road Norwich, NR7 0DU
  
- (2) PAUL STEPHEN DUNTHORNE of House Opposite Hill House Farm, Limpenhoe, Norfolk, R. DUNTHORNE LIMITED (registered company number 03081046) of registered address at Hill House Farm, Limpenhoe, Cantley, Norwich, NR13 3HT and SANDRA RICHES of Hall Farm Lords Lane Burgh Castle Great Yarmouth NR31 9EP (collectively referred to as "the Owners")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is the local planning authority for the area within which the Site is located
- (B) The Owners have applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (C) The Owners own the freehold of the Site

**1. DEFINITIONS**

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990 as amended
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Commencement	The first date on which a material operation as defined in Section 56(4) of the Act is first carried out, except
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operations consisting of:  
site clearance  
demolition  
archaeological investigations  
ground surveys  
removal of contamination  
erection of temporary fences  
and 'Commence' and 'Commenced' will be construed accordingly

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 Owners
Index Linked	Index linked from committee date of 7 December 2016 until the date any payment referred to in this Deed is made, such index linking being equivalent to the increase (if any) in the RICS Building Cost Information Service All In Tender Price Index (but in relation to Schedule 3 (Recreation and Open Space) the index shall be the Inflation Provision (or if such indices cease to be published, another reasonably equivalent index notified to the Owner by the Nominated Officer)
Occupation	Occupation of the Site, or any part of it, for any purpose authorised by the Permission, but excluding

occupation for the purposes of:  
construction  
internal and external refurbishment  
decoration  
fitting-out  
marketing  
and 'Occupy' and 'Occupied' will be construed accordingly

Permission	The planning permission to be granted by the Council for residential development and allocated reference number 2015/2081 or if the Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development
Plan	The plan attached to this Deed at Schedule 1
Site	The land at Green Lane Rackheath shown edged red on the Plan
Trigger	means the date of Commencement 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 Section 111 of the Local Government Act 1972 and to the extent that any obligation does not fall within Section 106 of that Act all other enabling powers and the covenants

and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council

2.2 It is agreed by the Parties that:

2.2.1 there are two planning obligations pursuant to Section 106 of the Act and that these planning obligations are set out in Schedules 2 and 3 of this Deed

2.2.2 Schedules 2 and 3 to this Deed which set out how the planning obligation will be performed will not amount to more than one planning obligation per Schedule for the purposes of Regulation 123 of the Community Infrastructure Levy Regulations 2010, as amended

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 so far as is within the reasonable control of the Owners to allow or permit it to be done

2.6 This Deed is governed by and interpreted in accordance with the law of England

### **3. COVENANTS**

3.1 The Owners covenant with the Council for themselves and their successors in title to observe and perform the obligations and stipulations contained in this Deed



- 3.2 The Council covenants with the Owners to comply with the requirements on its part contained in this Deed

#### **4. OTHER PROVISIONS**

- 4.1 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)
- 4.2 The Owners confirm that they are the owners of the Site with full power to enter into this Deed and that at the date of this Deed there is no person or body with an interest in the Site whose consent is necessary to make this Deed binding on all interests in the Site
- 4.3 This Deed will not bind anyone who acquires an interest in part of the Site for the purpose of the supply of utility services
- 4.4 On completion the Owners will pay the Council's reasonable legal costs in connection with this Deed (not exceeding £4000 on which no VAT is payable)
- 4.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 4.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions
- 4.7 No waiver, express or implied, by the Council constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed
- 4.8 Where the agreement, approval, consent or expression of satisfaction is required from any party to this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed

## **5. DISPUTES**

- 5.1 If any dispute is not resolved between the Parties, either 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
- 5.2 Nothing in this Clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## **6. INTEREST AND VAT**

- 6.1 If any payment due to the Council is paid late interest will be added from the date payment is due to the date of payment at the rate of 4% above the base lending rate of the Bank of England from time to time
- 6.2 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid

## **7. NOTIFICATIONS**

- 7.1 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
- 7.2 The Owners will notify the Nominated Officer in writing of the relevant
- 7.2.1 anticipated Triggers seven days in advance of each anticipated date
- 7.2.2 actual Triggers within seven days of each actual date

- 7.3 If the Owners dispose of their interest in all or part of the Site they 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



**BROADLAND DISTRICT COUNCIL**  
 24 Dec 2015  
 20152081  
**PLANNING CONTROL**

*SPSR*

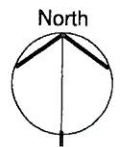
*PSD Dunthorne*

*PSD Dunthorne*

*JD Dunthorne*

*M. Munn*

**Head of Democratic Services and Monitoring Officer**



40m 0 40 80 120 160 200 240  
 1:5000

client	Mr P Dunthorne
project	Proposed Housing Development Land Off Green Lane West Rackheath
drawing	Site Location
date	Sept 15
scale	1:5000 @ A3
drawn	FH

**OWEN BOND**  
**ARCHITECTS**

Owen Bond at Brown & Co. The Actium, 21 George Street, Norwich, NR3 1AB.  
 Registration no: 07812561. Registered in England & Wales.  
 T: 01603 820325 E: o.bond@owenbond.co.uk W: owenbond.co.uk

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## Schedule 1

### Plan

Schedule 2  
Affordable Housing

Part 1

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

"Affordable Dwellings"	the Dwellings to be constructed to Design & Quality Standards on the Site as Affordable Housing and "Affordable Dwelling" shall be construed accordingly
"Affordable Housing"	the Intermediate Housing and Rented Housing to be provided to Eligible Households whose needs are not met by the market
"Affordable Housing Mix"	60% Rented Housing and 40% Intermediate Housing (or as otherwise agreed by the Council in its absolute discretion)
"Affordable Housing Provision"	the construction and provision of Affordable Dwellings on the Site equating to 33% of the total number of Dwellings (or such other percentage as the Council may agree in its absolute discretion) in accordance with the Affordable Housing Mix
"Affordable Housing Scheme"	<p>a scheme securing the Affordable Housing Provision and specifying:</p> <ul style="list-style-type: none"> <li>- The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;</li> <li>- The identity of the Provider or such details as the Council requires to satisfy itself that the Affordable</li> </ul>



	<p>Dwellings will be secured as Affordable Housing in perpetuity;</p> <ul style="list-style-type: none"> <li>- The number, location, type and size of Affordable Dwellings to be constructed on the Site;</li> <li>- full details of the Affordable Housing Mix (such proposal to reflect the Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Council) including the types of Intermediate Housing and Rented Housing;</li> <li>- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme</li> </ul>
"Affordable Rented Dwellings"	<p>dwellings to be let by a Registered Provider with an appropriate agreement with the HCA for the provision of affordable rents being controls that limit the rent to no more than 80 per cent of local market rents including any service charges or as otherwise agreed with the Council in writing and subject to nominations by the Council in accordance with Part 2 of this Schedule</p>
"Approved Affordable Housing Scheme"	<p>the Affordable Housing Scheme approved by the Council in accordance with paragraph 1.1 of this Schedule including any amendment, revision or substitution approved by the Council in writing</p>
"Complete"	<p>a stage of construction such that a Dwelling has a complete roof and all windows and external doors installed and where further works do not ordinarily</p>



	amount to “development” for the purposes of section 55(1) of the Act and “Complete” and “Completed” shall be construed accordingly.
“Design & Quality Standards”	the Level One Space Standards as specified by the Homes and Communities Agency or its successor or such other construction standards as may be agreed
“Eligible Household”	a person or persons in need of accommodation who are unable to rent or buy on the local open market nominated by the Council in accordance with Part 2 of this Schedule and determined in accordance with the Council’s housing allocation policy or as otherwise approved by the Council
“HCA”	the Homes & Communities Agency or its successor body or other appropriate body as the Council may nominate
“Intermediate Dwellings”	dwellings for sale at prices below local market price that Eligible Households can afford as determined by the Council acting reasonably including low cost homes (but not including low cost market housing), shared ownership, shared equity and equity loan products as approved by the Council
“Intermediate Housing”	one or more of Intermediate Dwellings, Shared Ownership Dwellings, Shared Equity Dwellings and Intermediate Rented Dwellings
“Intermediate Rented Dwellings”	dwellings at rents above those of Social Rented Dwellings but below local market rents that Eligible Households can afford (which shall be no more than 80% of local market rents including any service charges and shall not exceed the local housing allowance for that area) as determined by the Council

"Open Market Dwelling"	any Dwelling constructed as part of the Development which is not an Affordable Dwelling
"Practically Complete"	completion of the construction of the Affordable Dwellings in accordance with this Deed subject only to the existence of minor defects and / or omissions at the time of inspection which are capable of being made good without materially interfering with the beneficial use and enjoyment of the Affordable Dwellings and which it would be reasonable to include in a schedule of minor snagging items and "Practically Completed" shall be construed accordingly
"Provider"	either:  (i) a Registered Provider; or  (ii) another organisation that owns the Affordable Dwellings and has been approved in writing by the Council
"Public Subsidy"	funding provided by the Council, the HCA or any other public body or successor body towards the provision of Affordable Housing
"Registered Provider"	as defined in the Housing and Regeneration Act 2008
"Rented Housing"	one or more of Affordable Rented Dwellings and Social Rented Dwellings as agreed with the Council
"Shared Equity Dwellings"	dwellings purchased on a shared equity basis whereby not more than 75% of the equity is sold to the purchaser with power to increase their

	percentage of ownership up to 100% after five years of acquisition of the initial share and upon a payment equating to the additional equity being purchased payable to the Council or the Provider as the case may be (or such other body as the Council may reasonably elect). Such payment to be based on the actual market value as at the date of acquisition of the additional equity such scheme to be secured by a mechanism and in a form agreed with and approved by the Council (or such other body as the Council may reasonably elect)
"Shared Ownership Dwellings"	dwellings purchased on a Shared Ownership Lease
"Shared Ownership Lease"	<p>a lease in a form approved by the HCA or where there is no such form in a form approved by the Council such lease to provide for the following:</p> <ul style="list-style-type: none"> <li>- not more than 75% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Provider</li> <li>- power to the purchaser to increase their ownership up to 100% if they so wish</li> <li>- an initial rent not exceeding 2.75% of the value of the equity retained by the Provider subject to annual increases not exceeding any increase in the Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of the HCA</li> </ul>



"Social Rented Dwellings"	dwellings owned or managed by a Provider let at rents not exceeding the Target Rent
"Target Rent"	The rent for Social Rented Dwellings as determined by the national rent regime published by the HCA or any subsequent replacement or where there is no such replacement at a rent determined by the Council

The Owners hereby covenant with the Council as follows:

- 1.1 Not to Commence the Development until the Affordable Housing Scheme has been submitted to and approved by the Council in writing
- 1.2 Not to Occupy or allow Occupation of the first Open Market Dwelling until an exchanged unconditional contract for the sale of the Affordable Dwellings to a Provider has been supplied to the Council SAVE THAT where the Council agrees that the Affordable Dwellings are not to be transferred this obligation shall not apply
- 1.3 Not to construct or procure the construction operation or provision of the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales and details set out therein.
- 1.4 Not to Occupy or allow the Occupation of more than 50% of the Open Market Dwellings until all of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme are Practically Complete and have been transferred to the approved Provider (or where no transfer is required their ongoing provision has been secured) in accordance with and subject to the following terms:

- a) for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed;
- b) free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Dwellings as Affordable Housing;
- c) with the benefit of all necessary easements, rights and utilities; and
- d) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme

1.5 Not to use or allow the Affordable Dwellings to be used for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme PROVIDED THAT the obligations contained in this Schedule shall not be binding upon:

- 1.5.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire;
- 1.5.2 an Eligible Household who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or by a person who has acquired 100% of a Shared Equity Dwelling
- 1.5.3 a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (a "Receiver") of the whole or any part of the Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT it has first complied with the following:



- a) such mortgagee or chargee or Receiver shall first give notice to the Council of its intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; and
- b) if such disposal has not been completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwellings free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Dwellings

## Part 2

### Local Letting Policy: Local Connection Eligibility Criteria

1. Unless otherwise agreed in writing up to one third (or such other amount as the Council shall reasonably require) of the Affordable Rented Dwellings (as chosen by the Council) shall be let on first occupation in accordance with the local lettings policy set out below:
  - a. first allocations shall be made to people living in the Parish of Rackheath
  - b. If there is no suitable person in paragraph 1.1a allocations will be made to people who work in the Parish of Rackheath; and

- c. If there are no suitable persons in paragraphs 1.1a and/or 1.1b allocations will be made to people who need to move to the Parish to give or receive support to or from close family
- d. If there are no suitable persons in paragraph 1.1a and/or 1.1b and/or 1.1c above, allocations will be made to households living in the Broadland District in accordance with the Council's policies relating to housing allocation or where no such persons are available to an Eligible Household

#### Administrative Procedure for Nominations

- 2. To grant to the Council nomination rights to 100% of the Affordable Rental Dwellings unless otherwise agreed in writing
- 3. The administrative procedure for nominations shall be in accordance with the Council's housing allocations policy as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.

## Schedule 3 Open Space

### Part 1

In this schedule the following expressions have the following meanings:

Open Space	equipped play, sports pitches, allotments, green infrastructure (as that term is Defined the Glossary of terms at Appendix 1 (page 62) of the Council's Development Management DPD (2015)) and general amenity open space.
On-Site Open Space Scheme	<p>a scheme for the provision of Open Space comprising of applicable plans and details of:</p> <ul style="list-style-type: none"> <li>a) the layout, location and design of the Open Space including details of any play equipment, sports pitches, allotments, amenity open space, drainage features, access arrangements, street furniture and fencing.</li> <li>b) the ongoing management and maintenance of the Open Space until the Open Space is transferred to the nominated body to a standard suitable for use by members of the public.</li> </ul>
On-Site Maintenance Contribution	any financial contribution to be used for the maintenance of the On-Site Open Space will be calculated in accordance with the Council's standard charges as attached at Part 3 subject to Inflation Provision.
Inflation Provision	The increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service; All Construction TPI: All new construction. Between January 2015 and the date upon which the payment of the Open

	Space contribution is made pursuant to this agreement.
Management Company	a company set up for the purposes of managing and maintaining the Open Space in perpetuity
Nominated Body	<ul style="list-style-type: none"> <li>a) The Council,</li> <li>b) The Parish/Town Council,</li> <li>c) A Management Company or</li> <li>d) Such other appropriate body as the Council may reasonably notify to the Owners</li> </ul>
Off-Site Open Space Contribution	<p>a financial contribution (if any) to be used for the acquisition, layout and maintenance of Open Space in the Parish of Rackheath and for green infrastructure where appropriate District wide.</p> <p>The contribution will be calculated in accordance with the Council's standard charges as defined in the Recreational Provision in Residential Development Supplementary Planning Document attached at Part 2 and subject to Inflation Provision .</p> <p>The final Off-Site Open Space Contribution will be determined by the final housing mix and identified need at Reserved Matters.</p>
Standard Terms	<ul style="list-style-type: none"> <li>a) The On-site open space only to be used as public open space</li> <li>b) The transfer to be the unencumbered freehold estate with full title guarantee and with all rights and services for access.</li> <li>c) The consideration to be £1.00</li> <li>d) To pay the nominated body's reasonable legal fees in connection with the transfer</li> <li>e) Vacant possession to be given</li> </ul>



Unencumbered	Is free from financial charges, adverse rights, easements, restrictions or other encumbrances which would interfere with the use of or result in any additional cost or liability not normally associated with the use of the Open Space as public open space.
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The Owners covenant with the Council as follows:

#### On-Site Open Space

1. Not to Commence the Development until the On-Site Open Space Scheme is approved by the Council (such approval not to be unreasonably withheld or delayed).
2. Not to Occupy more than 75% of the Dwellings until the On-Site Open Space Scheme has been laid out in accordance with the approved On-Site Open Space Scheme.
3. Not to Occupy more than 80% of the Dwellings until the On-Site Maintenance Contribution has been paid to the Nominated Body.
4. To maintain and manage the Open Space on the Site for 12 months to the satisfaction of the Nominated Officer and in accordance with the approved On-Site Open Space Scheme until the Open Space has been transferred to the Nominated Body subject to the Standard Terms and Unencumbered.

#### Off-Site Open Space Contributions

1. Not to Occupy or allow Occupation of more than 50% of Dwellings on the Site unless and until the Off-Site Open Space Contribution has been paid to the Council.



## The Council's Covenants

1. The Council hereby covenants with the Owners that it will deposit the Off-Site Open Space Contribution into an interest bearing account and will apply the capital and any interest accrued wholly and exclusively towards the provision and maintenance of Open Space.
2. In the event that any Off-Site Open Space Contribution has not been committed (by way of contract or expenditure of monies) within 5 years of receipt of payment (10 years in the case of any payment applied or to be applied for Green Infrastructure works) to refund any unspent balance of the Off-Site Open Space Contribution to the Owners together with any interest accrued.

## Part 2

### Off- Site Open Space Contributions

Table 1 – Cost per dwelling for Open Space land purchase (where required)

Land purchase					
Property	Sports	Play	Green Infrastructure	Allotments	Total

1 bed	£252	£51	£600	£24	£927
2 bed	£336	£68	£800	£32	£1,236
3 bed	£420	£85	£1,000	£40	£1,545
4 bed	£504	£102	£1,200	£48	£1,854
5 + bed	£588	£119	£1,400	£56	£2,163

Table 2 – Cost per dwelling for equipping Open Space (where required)

Equipping					
Property	Sports	Play	Green Infrastructure	Allotments	Total
1 bed	£288	£89	£429	£15	£821
2 bed	£385	£119	£572	£19	£1,095
3 bed	£481	£148	£715	£24	£1,368
4 bed	£577	£178	£858	£29	£1,642
5+ bed	£674	£207	£1001	£34	£1,916

Table 3 – Cost per dwelling for maintenance of Open Space (where required)

<b>Maintenance</b>				
Property	Sports	Play	Green Infrastructure	Total
1 bed	£303	£30	£253	£586
2 bed	£404	£41	£338	£783
3 bed	£504	£51	£422	£977
4 bed	£605	£61	£506	£1,172
5+ bed	£707	£72	£591	£1,370

### Part 3

#### On- Site Maintenance contributions

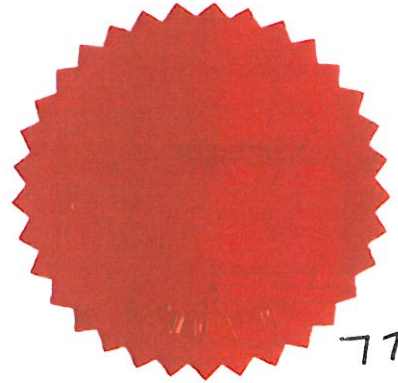
Table 1 – Cost per dwelling for maintenance of On-Site Open Space (where required)

<b>Maintenance</b>				
Property	Sports	Play	Informal On-site Open Space	Total
1 bed	£303	£30	£253	£586
2 bed	£404	£41	£338	£783
3 bed	£504	£51	£422	£977
4 bed	£605	£61	£506	£1,172
5+ bed	£707	£72	£591	£1,370

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 in the presence of:

)  
)



Authorised Signatory:

*M. Murre*

Head of Democratic Services and  
Monitoring Officer

7715

SIGNED AS A DEED by Paul Stephen Dunthorne)

in the presence of:

) *P. Dunthorne*

Witness' Signature:

*Denis Costello*

Witness' Name:

Witness' Address:

Witness' Occupation:

*DENIS COSTELLO*

Mills & Reeve LLP  
1 St James Court  
Whitefriars  
Norwich  
NR3 1RU

*Solicitor*

EXECUTED AS A DEED by )  
R. DUNTHORNE LIMITED )  
in the presence of )

Director:

*R. Dunthorne*

Director/Secretary:

*J Dunthorne*

SIGNED AS A DEED by Sandra Riches )  
in the presence of: )

*S. Riches*

Witness' Signature:

*[Signature]*

Witness' Name: DANIEL FIDDES

Witness' Address: 29 SHEARWATER DRIVE, BRADJELL, CT YARMOUTH,  
NORFOLK, NR31 9UL

Witness' Occupation: ELECTRICIAN





