

DATED 23rd. August 2016

BROADLAND DISTRICT COUNCIL

-and-

NORFOLK COUNTY COUNCIL

-and-

BERLIET LIMITED

SECOND SUPPLEMENTAL AGREEMENT
UNDER SECTIONS 106 & 106A OF
THE TOWN AND COUNTRY PLANNING ACT 1990

relating to the development of land
at Pinebanks, Yarmouth Road, Thorpe St Andrew, Norwich
and land at Griffin Lane, Thorpe St Andrew, Norwich

THIS AGREEMENT is made the 23rd day of August 2016

BETWEEN:

1. **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Thorpe St. Andrew, Norwich, NR7 ODU (the "Council")
2. **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, NR1 2DH (the "County Council")
3. **BERLIET LIMITED** of 44 Esplanade, St Helier, Jersey, JE4 9WG ("the Owner")

WHEREAS

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which Site 1 and Site 2 are situated and the County Council is the relevant Highway Authority, Education Authority and Library Service Provider and is also a Local Planning Authority for the purposes of the Act
- B. The Owner is the freehold owner of Site 1 and Site 2 being the land edged red and blue respectively on the Plan
- C. On 28 June 2013, the Council granted an outline planning permission under reference number 20130649 in respect of Site 1 ("the First Site 1 Permission"), and an outline planning permission under reference number 20130650 in respect of Site 2 ("the Site 2 Permission")
- D. On 28 June 2013 the parties entered into an agreement under section 106 of the Act in connection with the First Site 1 Permission and the Site 2 Permission ("the Main Agreement")
- E. On 11 August 2015 the Council granted planning permission (under section 73 of the Act) in respect of Site 1 under reference number 20150094 ("the Second Site 1 Permission") the parties previously having entered into an agreement on 30 July 2015 under section 106 of the Act in connection with the Second Site 1 Permission ("the First Supplemental Agreement")
- F. The Owner has submitted two further planning applications (under section 73 of the Act) to the Council the first in respect of Site 1 under reference number 20160237, ("the Third Site 1 Application") and the second in respect of Site 2 under reference number 20160243 ("the Second Site 2 Application")

- G. The Council proposes to grant planning permission pursuant to the Third Site 1 Application ("the Third Site 1 Permission") and the Second Site 2 Application ("the Second Site 2 Permission") after the completion of this Agreement
- H. The Owner intends to implement the First Site 1 Permission or the Second Site 1 Permission or the Third Site 1 Permission in respect of Site 1 and intends to implement either the First Site 2 Permission or the Second Site 2 Permission in respect of Site 2. The provisions of this Agreement are to ensure (a) that the requirements of the Main Agreement will apply whichever planning permission is implemented in respect of Site 1 and Site 2 and (b) that certain provisions are complied with if the Second Site 1 Permission or Third Site 1 Permission is implemented
- I. In addition this Agreement ensures that the requirements of this Agreement and the Main Agreement will apply in the event that any further planning permissions are granted pursuant to Section 73 of the Act either in relation to Site 1 (a Further Site 1 Permission) or in relation to Site 2 (a Further Site 2 Permission)

OPERATIVE PROVISIONS

1. INTERPRETATION AND DEFINITIONS

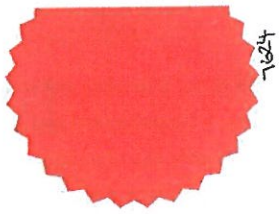
- 1.1 This Agreement is supplemental to the Main Agreement as varied by the First Supplemental Agreement and unless the context otherwise requires:
- 1.1.1 words and expressions defined in the Main Agreement have the same meanings when used in this Agreement, and
- 1.1.2 references to the Main Agreement in this Agreement are to the Main Agreement as amended by the First Supplemental Agreement
- 1.2 The provisions regarding interpretation contained in clause 1.2 of the Main Agreement shall apply to this Agreement
- 1.3 Except as varied by this Agreement, the Main Agreement shall remain in full force and effect

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

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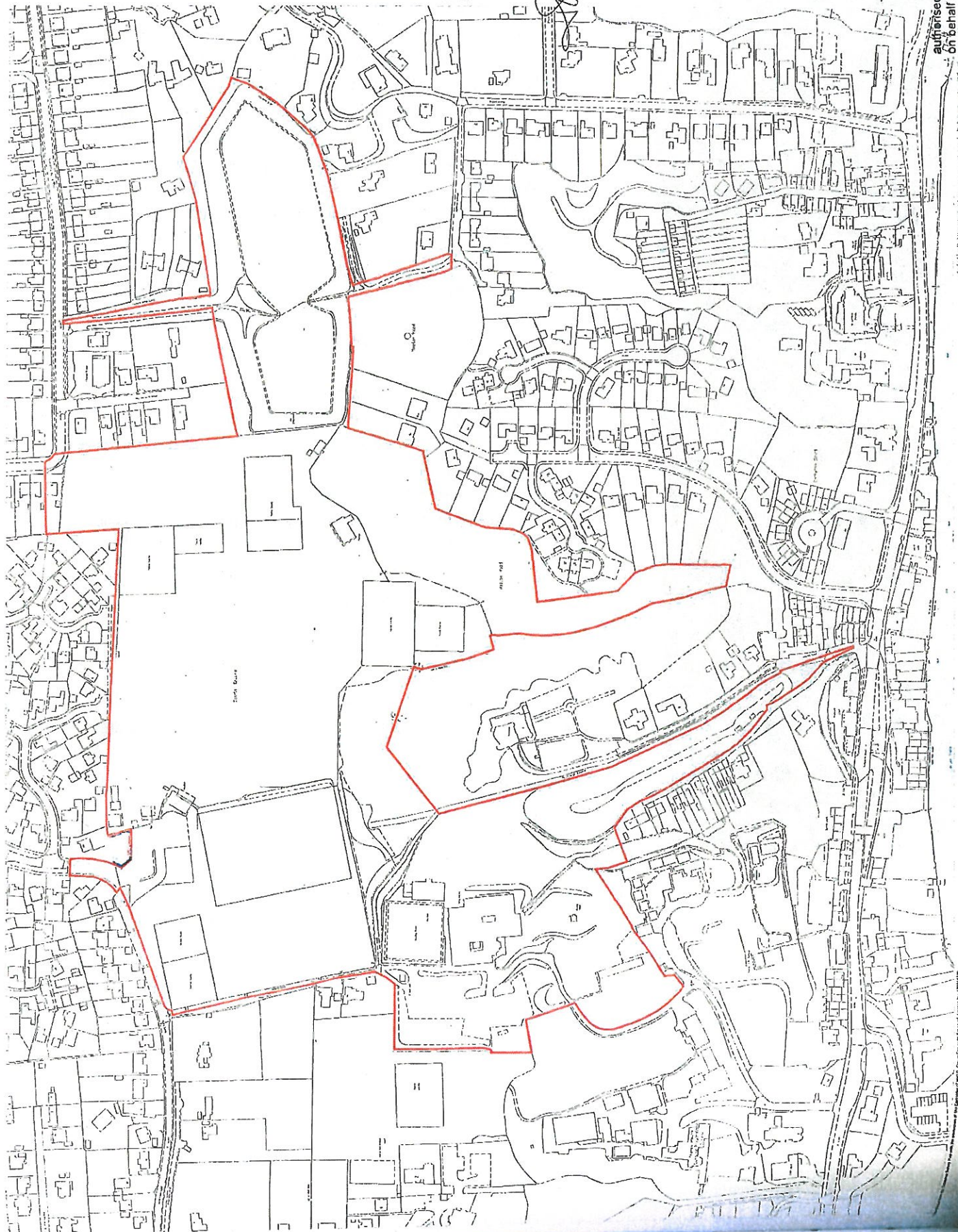
LEGEND

Site Boundary



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 Head of Democratic Services and
 Monitoring Officer

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Land at Pinebanks
 Norwich
 SITE LOCATION PLAN

Site	11135 P.A.	105
Area	23347	002
Scale	1:1000	C

**BARTON
 WILLMORE**

authorised to sign
 on behalf of: HEAD OF LAW

J. C. Hall 4/1/15



M. Mue

Head of Democratic Services and
Monitoring Officer



Application No: 20130650

Land at Griffin Lane, Thorpe St Andrew

Scale:
1:2500

Date:
15-May-13

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authorised to sign
on behalf of: HEAD OF LAW
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2.1 This Agreement is made under Sections 106 and 106A of the Act, Section 111 of the Local Government Act 1972 and all other enabling powers

2.2 The covenants, restrictions, requirements and obligations arising hereunder are planning obligations pursuant to Section 106 of the Act and are binding on the Site 1 and Site 2 and are enforceable by the Council and the County Council against the Owner as owner of Site 1 and Site 2 and its successors in title and assigns in respect of their interests in Site 1 and Site 2

2.3 The provisions of this Agreement are conditional upon the grant of the Third Site 1 Permission and the Second Site 2 Permission and the carrying out of a Material Operation (and the term Material Operation, for the purposes of this Agreement, shall not include mineral extraction incidental to or access roads into the development authorised by the Second Site 1 Permission the Third Site1 Permission or a Further Site 1 Permission or a Further Site 2 Permission)

2.4 The parties agree that the Owner shall not be liable for a breach of any of its obligations under this Agreement or obligations relating to any part of the Site 1 or Site 2 after it shall have parted with all of its interests in Site 1 or Site 2 (as appropriate) or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches

2.5 This Agreement shall cease to have effect if the Third Site 1 Permission the Second Site 2 Permission and any further planning permissions granted pursuant to Section 73 of the Act either in relation to Site 1 or in relation to Site 2 shall lapse without having being implemented or if the Third Site 1 Permission the Second Site 2 Permission and any further planning permissions granted pursuant to Section 73 of the Act either in relation to Site 1 or in relation to Site 2 are varied or revoked otherwise than with the consent of the Owner or if the Third Site 1 Permission the Second Site 2 Permission and any further planning permissions granted pursuant to Section 73 of the Act either in relation to Site 1 or in relation to Site 2 are quashed following a successful legal challenge (in which case any money

paid to the Council or County Council pursuant to an obligation in this Agreement shall forthwith be returned to the Owner)

- 2.6 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges
- 2.7 In the event that this Agreement comes to an end, the Council and County Council will, if so requested by the Owner, execute a deed of release (or partial release) from the relevant provisions of this Agreement and procure that a note thereof shall be registered on the Council's Register of Local Land Charges
- 2.8 The parties to this Agreement do not intend that any of the covenants contained in this Agreement shall be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999
- 2.9 The Owner covenants with the Council and County Council to pay on completion of this Agreement, the Council's and the County Council's reasonable legal costs incurred in connection with the preparation, negotiation and completion of this Agreement, receipt of which the Council and County Council hereby acknowledge.

3. VARIATION TO THE MAIN AGREEMENT

- 3.1 The parties agree that Site 1 and Site 2 shall be subject to and bound by the terms and obligations contained in the Main Agreement as if the same were set out fully in this Agreement but with the following variations:

(a) The definition of "Planning Permissions" and the definition of "Second Site 1 Application" and clauses 17.2, 17.3, 17.4, 17.5 and 17.6 shall be deleted from the Main Agreement

(b) The following definitions shall be added to the Main Agreement:

"First Site 1 Permission" means the outline planning permission (ref 20130649) granted on 28 June 2013

"First Site 2 Permission" means the outline planning permission (ref 20130650) granted on 28 June 2013

"Further Site 1 Permission" means any further planning permission granted pursuant to Section 73 of the Act varying any conditions of any other Planning Permission relating to Site 1

"Further Site 2 Permission" means any further planning permission granted pursuant to Section 73 of the Act varying any conditions of any other Planning Permission relating to Site 2

"Planning Permissions" means the First Site 1 Permission the First Site 2 Permission the Second Site 1 Permission the Third Site 1 Planning Permission the Second Site 2 Planning Permission and any Further Site 1 Permission and any Further Site 2 Permission"

"Second Site 1 Permission" means the planning permission (ref 20150094) granted on 11 August 2015

"Second Site 2 Planning Permission" means the planning permission to be granted by the Council pursuant to the application made by the Owner under Section 73 of the Act and given Council reference number 20160243 seeking the variation of conditions attached to the outline planning permission (ref 20130650) granted on 28 June 2013

"Third Site 1 Planning Permission" means the planning permission to be granted by the Council pursuant to the application made by the Owner under Section 73 of the Act and given Council reference number 20160237 seeking the variation of conditions attached to the Second Site 1 Permission

(c) The following clauses 17.2, 17.3, 17.4, 17.5 and 17.6 shall be added to the Main Agreement:

"17.2 The Owner covenants with the Council and the County Council to give notice to each of them:

- (a) When it has decided whether to implement the First Site 1 Permission the First Site 2 Permission the Second Site 1 Permission the Third Site 1 Planning Permission the Second Site 2 Planning Permission or any Further Site 1 Permission or Further Site 2 Permission, stating which permission it intends to implement
- (b) Forthwith upon implementing the First Site 1 Permission the First Site 2 Permission the Second Site 1 Permission the Third Site 1 Planning Permission the Second Site 2 Planning Permission or any Further Site 1 Permission or Further Site 2 Permission, stating which permission has been implemented

17.3 If the Owner implements the Second Site 1 Permission the Third Site 1 Permission or a Further Site 1 Permission by the construction of a new vehicular access to the Site 1 Development from Hillcrest Road but not from Henby Way, the County Council covenants (subject to the relevant payment being made in accordance with Clause 17.5 below) to promote a traffic regulation order pursuant to the Road Traffic Regulation Act 1984 for parking restrictions in the vicinity of the Harvey Lane/Gordon Avenue junction ("the Parking TRO") and, if approved, to implement the Parking TRO. The precise extent of the Parking TRO shall be determined by the County Council

17.4 If the Owner implements the Second Site 1 Permission the Third Site 1 Permission or a Further Site 1 Permission by the construction of a new vehicular access to the Site 1 Development from Henby Way in addition to a new vehicular access from Hillcrest Road, the County Council covenants (subject to the relevant payment being made in accordance with Clause 17.5 below) to promote a traffic regulation order pursuant to the Road Traffic Regulation Act 1984

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for a 20 mph zone on the roads of the Henby Way estate adjoining Site 1 ("Henby Way TRO") in addition to the Parking TRO and, if approved, to implement them. The precise extent of the Henby Way TRO and Parking TRO shall be determined by the County Council

17.5 No Dwellings may be Occupied until:

- (a) if the circumstances described in clause 17.3 apply, the Owner has paid the County Council £10,000 (ten thousand pounds), being the County Council's estimate of the cost of promoting and implementing the Parking TRO; or
- (b) if the circumstances described in clause 17.4 apply, the Owner has paid the County Council £20,000 (twenty thousand pounds), being the County Council's estimate of the cost of promoting and implementing both the Parking TRO and the Henby Way TRO.

17.6 For the avoidance of doubt, the obligations contained in clauses 17.4 and 17.5 are alternative rather than cumulative or duplicative such that if the circumstances described in clauses 17.4 and 17.5 both apply, the County Council shall not be required to promote or implement two sets of Parking TRO's and the Owner's financial liability under clause 17.5 shall not exceed £20,000 (twenty thousand pounds)".

EXECUTED by the parties as a deed on the date written above

THE COMMON SEAL of
BROADLAND DISTRICT COUNCIL
was hereunto affixed
in the presence of

M. Muel

Head of Democratic Services and
Monitoring Officer



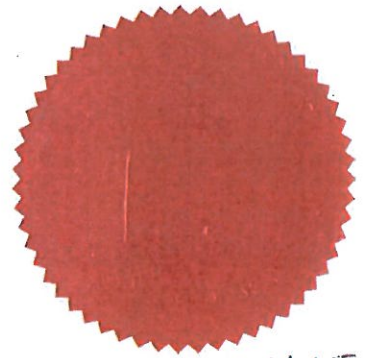
THE COMMON SEAL of
NORFOLK COUNTY COUNCIL
was hereunto affixed
in the presence of

Head of Law

Executed as a deed by
BERLIET LIMITED
acting by two directors

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)

J. G. Still
authorised to sign
on behalf of: HEAD OF LAW



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Signature *Barratt*

Name of Director

Signature *U*

Name of Director **Jon Barratt**
Alternate Director

