

Dated 26<sup>th</sup> January 2018

Broadland District Council

-and-

Yarmouth Rd Project Ltd,

- and -

Castle Trust Capital PLC

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

relating to land at 27 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk

**THIS DEED** is dated

26<sup>th</sup> January

2018

**PARTIES:**

- (1) BROADLAND DISTRICT COUNCIL, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU (referred to as "the Council")
- (2) YARMOUTH RD PROJECT LTD (Company number 10388248) whose registered office is at Taxassist Accountants, 1 Exchange Street, Attleborough, Norfolk NR17 2AB (referred to as "the Owner")
- (3) CASTLE TRUST CAPITAL PLC incorporated and registered in England and Wales with company number 07454474 whose registered office is at 10 Norwich Street, London EC4A 1BD (referred to as "the Mortgagee" which expression shall include its successors in title and assignees)

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is a local planning authority for the area within which the Site is located
- (B) The Owner has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (D) The Owner owns the freehold of the Site
- (E) The Mortgagee has a registered charge over the Site

**1. DEFINITIONS**

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990
Commencement	The date on which a material operation as defined in Section 56(4) of the Act is first carried out, except 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 Owner

Index Linked                      The increase if any in the RICS Build Cost  
Information Service All In Tender Price Index  
between 1<sup>st</sup> January 2015 and the date upon which a  
payment of each and any of the Contributions  
referred to in the Second, Third, Fourth and Fifth  
Schedules is made pursuant to this Agreement (or if  
such index ceases to be published, another 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 part demolition, part conversion and addition of two floors to existing office to provide 25 flats with associated car parking and landscaping and allocated reference number 20170811 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

**Site** The land known as 27 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0EE and registered at H M Land Registry under title number NK466409 shown edged red on the Plan

**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 Section 111 of the Local Government Act 1972 and 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 any obligation contained within this Deed which sets out how a 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 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 Owner covenants with the Council for himself and his successors in title to observe and perform the obligations and stipulations contained in this Deed

3.2 The Council covenant with the Owner to comply with their respective requirements 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 Owner confirms that he is the owner of the Site with full power to enter into this Deed and that there is no person or body (other than the Mortgagee) 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 Owner will pay the Council's reasonable legal costs in connection with this Deed
- 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

## **5. DISPUTES**

- 5.1 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
- 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 Owner 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 Owner disposes of his 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

## **8. MORTGAGEE CONSENT**

- 8.1 The Mortgagee consents to this Deed so that its interest in the Site is bound by the obligations contained in this Deed and agrees that its security over the Site takes effect subject to the provisions of this Deed PROVIDED THAT the Mortgagee shall have no personal liability for any breach of the obligations in this Deed unless committed and continuing at a time when the Mortgagee is in possession of all or any part of the Site. (For the avoidance of doubt any person acquiring title to all or part of the Site as a result of the Mortgagee enforcing its security will be bound by the terms of this Deed.)

- 8.2 The Mortgagee shall not be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Site except for any breach committed at a time when the Mortgagee was in possession of all or any part of the Site.

## FIRST SCHEDULE

### The Site

The land known as 27 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0EE and registered at the Land Registry under title number NK466409 and shown edged red on the Plan

## SECOND SCHEDULE

### Affordable Housing Commuted Sum

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

Affordable Housing	Housing to be provided to Eligible Households whose needs are not met by the market
Affordable Housing Commuted Sum	The sum of £192,000 Index Linked to be paid by the Owner to the Council in lieu of the provision of any Affordable Housing on the Site.
Eligible Households	A person or persons in need of accommodation who are unable to rent or buy on the local open market determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council

1. The Owner hereby covenants with the Council as follows:
  - 1.1 Not to Occupy or allow Occupation of more than 30% of the Dwellings until the Affordable Housing Commuted Sum has been paid to the Council.
2. The Council hereby covenants with the Owner as follows:
  - 2.1 To deposit the Affordable Housing Commuted Sum in an interest bearing

account and apply the capital and any interest accrued solely towards the provision of Affordable Housing within the Council's administrative area

- 2.2 In the event that the Affordable Housing Commuted Sum has not been committed (by way of contract or expenditure of monies) within 10 years of receipt of payment to refund any unspent balance of the contribution to the payer together with any interest accrued.

### THIRD SCHEDULE

#### Green Infrastructure Commuted Sum

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

Green Infrastructure Commuted Sum	The commuted sum to be calculated in accordance with and by reference to Table 1, Table 2 and Table 3 at paragraph 3 below and Index Linked.
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1. The Owner hereby covenants with the Council as follows:
  - 1.2 Not to Occupy or allow Occupation of any Dwelling until the Green Infrastructure Commuted Sum has been paid to the Council.
2. The Council hereby covenants with the Owner as follows:
  - 2.1 To deposit the Green Infrastructure Commuted Sum in an interest bearing account and apply the capital and any interest accrued towards the Dussindale allotments and the Hillside allotments
  - 2.2 In the event that the Green Infrastructure Commuted Sum has not been committed (by way of contract or expenditure of monies) within 10 years of receipt of payment to refund any unspent balance of the contribution to the payer together with any interest accrued.

3. Calculation of the Green Infrastructure Commuted Sum

3.1 Table 1 – Cost per Dwelling for land purchase

Property	Cost per Dwelling
1 bed	£600
2 bed	£800
3 bed	£1,000
4 bed	£1,200
5+ bed	£1,400

Plus

Table 2 – Cost per dwelling for equipping

Property	Cost per Dwelling
1 bed	£429
2 bed	£572
3 bed	£715
4 bed	£858
5+ bed	£1001

Plus

Table 3 – Cost per dwelling for maintenance

Property	Cost per Dwelling
1 bed	£253
2 bed	£338
3 bed	£422
4 bed	£506
5+ bed	£591

## FOURTH SCHEDULE

### Equipped Play Space Commuted Sum

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

Equipped Play Space Commuted Sum	The commuted sum to be calculated in accordance with and by reference to Table 1, Table 2 and Table 3 at paragraph 3 below and Index Linked.
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1. The Owner hereby covenants with the Council as follows:
  - 1.3 Not to Occupy or allow Occupation of any Dwelling until the Equipped Play Space Commuted Sum has been paid to the Council.
2. The Council hereby covenants with the Owner as follows:
  - 2.1 To deposit the Equipped Play Space Commuted Sum in an interest bearing account and apply the capital and any interest accrued towards the Laundry Lane Park Play Area
  - 2.2 In the event that the Equipped Play Space Commuted Sum has not been committed (by way of contract or expenditure of monies) within 5 years of receipt of payment to refund any unspent balance of the Contribution to the payer together with any interest accrued.

### 3. Calculation of the Equipped Play Space Commuted Sum

#### 3.1 Table 1 – Cost per Dwelling for land purchase

Property	Cost per Dwelling
1 bed	£51
2 bed	£68
3 bed	£85
4 bed	£102
5+ bed	£119

Plus

#### Table 2 – Cost per dwelling for equipping

Property	Cost per Dwelling
1 bed	£89
2 bed	£119
3 bed	£148
4 bed	£178
5+ bed	£207

Plus

#### Table 3 – Cost per dwelling for maintenance

Property	Cost per Dwelling
1 bed	£30
2 bed	£41
3 bed	£51
4 bed	£61
5+ bed	£72

## FIFTH SCHEDULE

### Sports Provision Commuted Sum

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

Sports Provision Commuted Sum	The commuted sum to be calculated in accordance with and by reference to Table 1, Table 2 and Table 3 at paragraph 3 below and Indexed Linked.
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1. The Owner hereby covenants with the Council as follows:
  - 1.4 Not to Occupy or allow Occupation of any Dwelling until the Sports Provision Commuted Sum has been paid to the Council.
2. The Council hereby covenants with the Owner as follows:
  - 2.1 To deposit the Sports Provision Commuted Sum in an interest bearing account and apply the capital and any interest accrued towards improvements to sports changing rooms at Fitzmaurice pavilion, Dussindale Park.
  - 2.2 In the event that the Sports Facilities Commuted Sum has not been committed (by way of contract or expenditure of monies) within 5 years of receipt of payment to refund any unspent balance of the Contribution to the payer together with any interest accrued.

### 3. Calculation of the Sports Provision Commuted Sum

#### 3.1 Table 1 – Cost per Dwelling for land purchase

Property	Cost per Dwelling
1 bed	£252
2 bed	£336
3 bed	£420
4 bed	£504
5+ bed	£588

Plus

#### Table 2 – Cost per dwelling for equipping

Property	Cost per Dwelling
1 bed	£288
2 bed	£385
3 bed	£481
4 bed	£577
5+ bed	£674

Plus

#### Table 3 – Cost per dwelling for maintenance

Property	Cost per Dwelling
1 bed	£303
2 bed	£404
3 bed	£504
4 bed	£605
5+ bed	£707

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:



*M. Mue*

Head of Democratic Services and  
Monitoring Officer

Authorised Signatory:

EXECUTED AS A DEED by )  
Yarmouth Rd Project Ltd )  
By Benjamin James Smith )  
director )  
in the presence of: )

*B. J. Smith*  
Director

Witness *David Skelton*  
Name INORIS SLADDEN  
Address Wishing Well  
Spice Avenue  
Chesty St Margaret  
NR29 3RQ

EXECUTED AS A DEED by )  
Castle Trust Capital PLC )  
By SEAN OGDEN, director )  
in the presence of: )

  
Director

Witness 

Name NICHOLAS OAKLEY

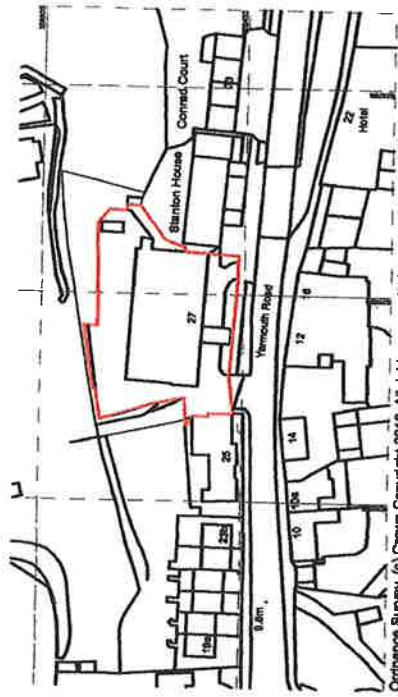
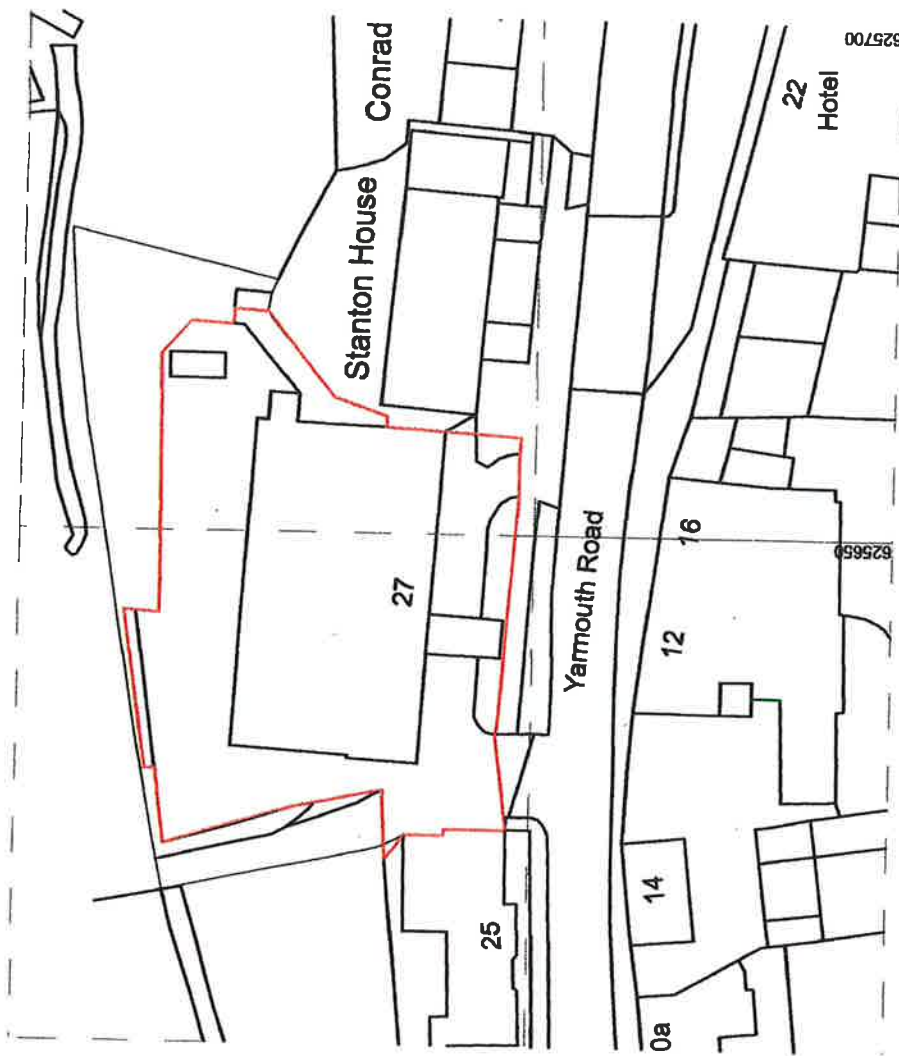
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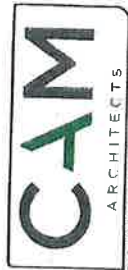
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Rev: A 1/1/2017 - 1/1/2017



1/1/2017 - 1/1/2017

Client	Estaducation		
Project Details	Redevelopment of Vacant Industrial Unit into Residential Flats		
Project Address	27 Yarmouth Road Norwich Norfolk NR7 0EE		
Drawing Title	Location Plans		
Job No	Drawing Number	OS1	
1411		Scale	Revision
Date	23/08/2017	1:500, 1:1000	A
Drawn	Checked	CSO Date	



M. Mue  
Head of Democratic Services and  
Monitoring Officer

AMENDED  
PLAN

BROADLAND  
DISTRICT COUNCIL  
23 Aug 2017  
20170811  
PLANNING CONTROL

See attached  
Jm