

Dated 24th October

2018

BROADLAND DISTRICT COUNCIL

-and-

JOHN CHARLES BURRAGE

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

relating to land at  
94 Fakenham Road, Drayton, NR8 6PY

**THIS DEED** is dated 24th October

2018

**PARTIES:**

- (1) BROADLAND DISTRICT COUNCIL Thorpe Lodge, 1 Yarmouth Road, Norwich, NR7 0DU (referred to as "the Council")
- (2) JOHN CHARLES BURRAGE, Mandalay 94 Fakenham Road, Drayton, Norwich, NR8 6PY (referred to as "the Owner")

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
- (C) The Owner owns 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
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

Inflation Provision                The increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service All in Tender Price Index linked from the committee date 4<sup>th</sup> July 2018 to the date upon which payment is made pursuant to this Agreement (or if such index ceases to be published such other index as the Council shall reasonably determine)

Nominated Officer                The senior officer of the Council responsible for development management or other officer of the Council notified to the Owner

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 20180598 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 94 Fakenham Road, Drayton, NR8 6PY and registered at H M Land Registry under title number NK474129 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 or if he no longer has an interest in part of the Site to which the breach relates (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 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 ten working days in advance of each anticipated date

7.2.2 actual Triggers within ten working 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 ten working days of the name and address of the new owner and sufficient details to identify the Site or part of the Site

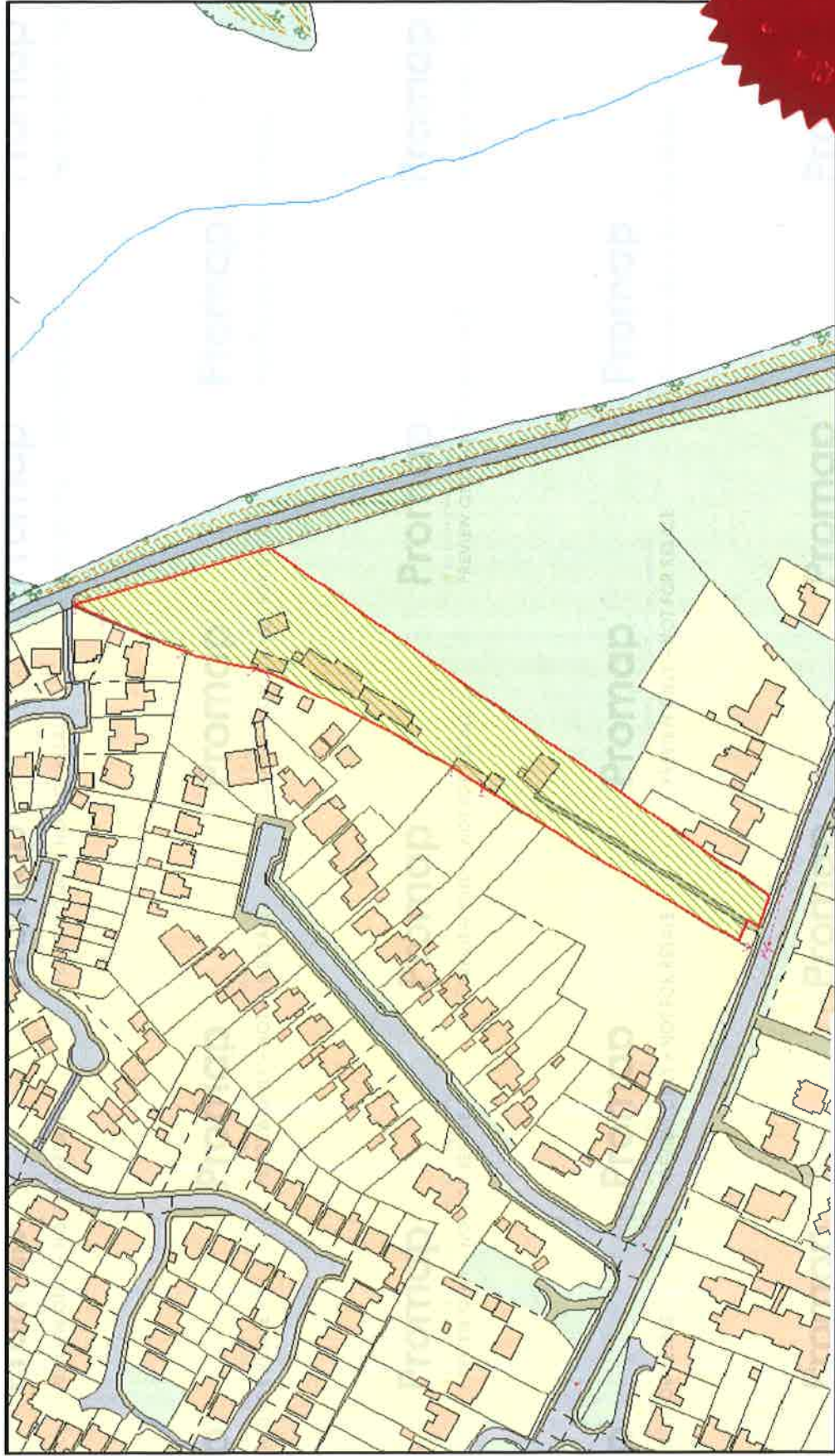
## **Schedule 1**

### **The Plan**



Land at 94 Fakenham Road, Drayton, Norfolk

S106 Agreement Plan



7885



*M. J. M. J.*

Head of Democratic Services and  
Monitoring Officer

## **Schedule 2**

### **Open Space**

#### **Part 1 Owner Obligations**

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

"Green Infrastructure Contribution"	Means that part of the Off-Site Open Space Contribution allocated to the provision and maintenance of green infrastructure as detailed in Part 3 of this Schedule
"Off-Site Open Space Contribution"	A sum in lieu of any deficiency in the amount or type of Open Space being provided compared to that required in accordance with the Council's current Open Space Policies at the date of this Deed such sum to be calculated in accordance with Part 3 of this Schedule and increased in line with the Inflation Provision and applied towards the provision of Open Space serving the Development in the Parish of Drayton.
"Open Space"	Land to be set aside and used as public open space which may include areas for sports, play, allotments, green infrastructure and other recreational facilities in line with Open Space Policies
"Open Space Policies"	Means the policies contained in the Council's Development Management Development Plan Document including policy EN1 biodiversity & habitats, EN3 green infrastructure & RL1 provision of formal recreation space or such replacement policies or documents as the Council may specify (or any amendment or revision therefore) relating to the provision of open space, recreation, sport, allotments, green infrastructure and other similar types of amenity land and facilities

The Owner hereby covenants with the Council as follows:

1. OPEN SPACE

- 1.1 Where the Nominated Officer has agreed to a deficiency in the amount of Open Space within the Site to pay the Off-Site Open Space Contribution prior to first Occupation of any Dwelling

Part 2

Council Obligations

The Council covenants with the Owner as follows:

- 2.1 to hold any contribution received under this Schedule in an interest bearing account and apply the same (together with any interest accrued) towards the purposes for which they were paid and in the event that the contributions have not been committed (by way of contract or expenditure of the monies) within 5 years of receipt of the total amount of the relevant contribution (or in the case of the Green Infrastructure Contribution within 10 years of receipt) to repay the unspent balance to the payer together with any interest accrued

### Part 3

Extract from the Council's Open Space Policies detailing the cost per dwelling for the Provision and Maintenance of Open Space. Index as of July 4<sup>th</sup> 2018 (313)

#### Purchase of Off Site Open Space

##### Land purchase

Property	Sports	Play	Green Infrastructure	Allotments		Total
1 bed	£292	£60	£696	£28		£1,076
2 bed	£390	£79	£928	£37		£1,434
3 bed	£487	£99	£1,159	£46		£1,791
4 bed	£584	£118	£1391	£56		£2,149
5 + bed	£682	£137	£1623	£65		£2,507

#### Equipping of Off Site Open Space

##### Equipping

Property	Sports	Play	Green Infrastructure	Allotments		Total
1 bed	£334	£103	£498	£17		£952
2 bed	£446	£138	£663	£22		£1,269
3 bed	£557	£172	£829	£28		£1,586
4 bed	£668	£206	£995	£33		£1,902
5 + bed	£781	£240	£1160	£39		£2,220

## Maintenance of Off-Site and On-Site Open Space

### Maintenance

Property	Sports	Play	Green Infrastructure			Total
1 bed	£351	£34	£293			£678
2 bed	£468	£47	£392			£907
3 bed	£585	£60	£490			£1,135
4 bed	£702	£71	£587			£1,360
5 + bed	£820	£84	£686			£1,590

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. Murrel*

Head of Democratic Services and  
Monitoring Officer

EXECUTED AS A DEED by John Charles Burrage  
in the presence of:

*J. Burrage*

Signature of Witness:

*T. James*

Name of Witness:

6 UPPER KING ST, NORMICH  
NR3 1HA.

Witness Address:

THOMAS JAMES. JAMES.