

Dated 23 July

2021

Broadland District Council

-and-

Elemento (Rackheath) Limited

-and-

Lyell Trading Limited

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

relating to land at Salhouse Road, Rackheath

THIS DEED OF VARIATION is dated 23 July 2021

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL, of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, NR7 0DU (referred to as "the Council")
- (2) ELEMENTO (RACKHEATH) LIMITED of Swiss House, Beckingham Street, Tolleshunt Major, Essex, United Kingdom, CM9 8LZ, Company number 12779126 (referred to as "the Owner")
- (3) LYELL TRADING LIMITED of 1350 - 1360 Montpellier Court, Brockworth, Gloucester, England, GL3 4AH Company number 08747022 (referred to as "the Mortgagee")

Each a Party and 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 owns the freehold of the Site
- (C) The Council has approved an amendment to the trigger for the delivery of the Affordable Dwellings subject to the Parties entering into this Deed
- (D) The Council has agreed that there will be no Open Space provided within the Site subject to the Parties entering into this Deed for the provision of an Off-Site Open Space Contribution
- (E) The Mortgagee has a charge over the Site
- (F) The expressions in this Deed have the meaning ascribed to them in the Original Agreement save as expressly provided in this Deed

1. DEFINITIONS

In this Deed the following expressions have the following meanings:

Original Agreement	An agreement dated 27 October 2016 made under
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Section 106 of the Act between the Council (1) and Dennis John Jeans and Patricia Ann Jeans the Owner (2) containing planning obligations enforceable by the Council relating to planning permission numbered 20150726

2. LEGAL BASIS

- 2.1 This Deed is supplemental to the Original Agreement and 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 The terms and conditions of the Original Agreement shall remain in full force and effect except as varied by this Deed

3. VARIATION

- 3.1 With effect from the date of this Deed the Parties agree to vary the Original Agreement as set out in the Schedule to this Deed.
- 3.2 In all other respects the contents of the Original Agreement are confirmed and agreed and shall continue to bind the Site as varied by this Deed

4. OTHER PROVISIONS

- 4.1 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed
- 4.2 The Owner warrants that he has full power to enter into this Deed and there is no other person whose consent is necessary to make this Deed binding on the Site

5. MORTGAGEE CONSENT

The Mortgagee consents to this Deed so that its interest in the Site is bound by the obligations contained in this Deed and agree that its security over the Site takes effect subject to the provisions of this Deed PROVIDED THAT the Mortgagee is not required to observe or perform the obligations in this Deed unless they take possession 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 their security will be bound by the terms of this Deed.)

Schedule Variation

- 1 The Parties agree to vary the Original Agreement as follows:
- 1.1 In Schedule 2 paragraph 1.4, the number "30" is deleted and replaced with "71"
- 1.2 Schedule 4 is deleted and replaced in full with a new Schedule 4 which reads as follows

Schedule 4

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:

"Inflation Provision"	The increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service All in Tender Price Index between January 2015 and 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)
"Off-Site Open Space Contribution"	A sum of £27,052.96 required in accordance with the Councils current Open Space Policies at the date of this Deed such sum to be comprised of a contribution for play of £1900.91, a contribution for sport of £11,434.55, a contribution for allotments of £280.39 and a contribution for green infrastructure of £13,437.11 and increased in line with the Inflation Provision and applied towards the provision of Open Space serving the parish of Rackheath
"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 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

THE COMMON SEAL OF Broadland District Council
was affixed in the presence of:



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