

DATED 16th June 2015

BROADLAND DISTRICT COUNCIL

- and -

MR JOHN ALBERT WILSON

DEED OF VARIATION

Of an Agreement under Section 106 of the
Town and Country Planning Act 1990
relating to the development of land at Hillside Farm,
Reedham Road, Acle, Norfolk

Broadland District Council
Thorpe Lodge
1 Yarmouth Road
Norwich
NR7 0DU

THIS DEED OF VARIATION is made the 16th day of June 2015

BETWEEN:-

- (1) **BROADLAND DISTRICT COUNCIL** ("the Council") of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU and
- (2) **MR JOHN ALBERT WILSON** ("the Owner") of The Orchard, Reedham Road, Acle, Norfolk, NR13 3DF

WHEREAS:-

- (1) This Deed is supplemental to a Deed dated 23 February 2015 ("the Original Agreement") made under Section 106 of the Town and Country Planning Act 1990 (as amended) and made between the Council (1) and the Owner (2) containing planning obligations enforceable by the Council.
- (2) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) ("the Act") for the area within which the Site is located
- (3) The Owner is the freehold owner of the Site which is registered at the HM Land Registry under title number NK257093
- (5) The Site is as defined in the Original Agreement
- (6) The Council and the Owner have agreed to vary the original Agreement to delete the "Green Infrastructure Contribution" and substitute this with an "Open Space Contribution" in the Original Agreement and also to include provision of the management of the on-site Open Space.
- (7) Terms used in this Deed have the meaning ascribed to them in the Original Agreement save as amended herein

NOW THIS DEED WITNESSES as follows:

1. This Deed is supplemental to the Original Agreement;
2. The terms and conditions of the Original Agreement shall remain in full force and effect except as varied by this Deed and shall henceforth be fully applicable to the Development and binding on the Site as varied by this Deed
3. The parties hereto agree to vary the Original Agreement as follows:
 - 3.1 The definition of "Green Infrastructure Contribution" in the Original Agreement shall be deleted;
 - 3.2 Clause 1 of the Third Schedule in the Original Agreement shall be deleted and replaced with the Third Schedule annexed to this Deed of Variation.
 - 3.3 Clause 1 of the Fourth Schedule with reference to Green Infrastructure Contribution shall be deleted in its entirety.
 - 3.4 The numbering of the clauses between pages 9 and 11 in the Original Agreement shall be re-numbered from clauses 2 to 19 as follows:

"2 General Provisions Applicable to this Agreement

2.1 The covenants given by the Owner in this Agreement are given under Section 106 of the Act and where they do not fall within Section 106 of the Act they are given pursuant to Section 1 of the Localism Act 2011 and the covenants given by the Council in this Agreement are given pursuant to Section 1 of the Localism Act 2011 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 enforceable by the Council against the Owner and its respective successors in title and assigns

2.3 The provisions of this Agreement are conditional upon the grant of the Planning Permission and the Commencement of Development save as otherwise indicated in this Agreement in which case those provisions shall come into effect immediately upon completion of this Agreement

2.4 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn before Commencement

2.5 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

2.6 In the event that this Agreement or any provision of it comes to an end the Council if so requested by the Owner will procure that a note thereof shall be registered on the Council's Register of Local Land Charges

3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

4. No Fetter of Discretion

4.1 Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of their functions as Local Planning Authority and Highway Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Agreement

5 Invalidity or Unenforceability of any of the Terms of this Agreement

5.1 If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

6. No Waiver

6.1 No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

7. Liability for Breach

7.1 No party shall be liable under this Agreement for any breach of the covenants restrictions or obligations contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any subsisting breach occurring prior to the parting with such person's interest in the Site or any part thereof in respect of which any such breach has taken place

8. Notices

8.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

8.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council	The Director, Broadland District Council, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk, NR7 0DU
The Owner	Mr J Wilson , Hillside Farm Reedham Road, Acle, NR13 3DF

8.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

9. Third parties

9.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

10 Costs

10.1 The Owner shall on completion of this Agreement pay the Council's reasonable legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

11. Payment of Interest

11.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

12. VAT

12.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable

12.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

13. Jurisdiction

13.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

14. Title Warranty

14.1 The Owner hereby warrants to the Council that they are the freehold owner of the Site and have full power to enter in to this Agreement and that the Site is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Site other than as notified in writing to the Council's Head of Law prior to the date hereof

15. Disputes

15.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same

15.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution

15.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR Procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.

15.4 Nothing in Clauses 15.1 15.2 and 15.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

16. Covenants

16.1 The Owner hereby covenants with the Council to carry out and comply with the obligations and restrictions on its part set out in Schedules 1, and 2 and 3 of this Agreement

16.2 The Council covenants with the Owner to comply with the provisions of Schedule 4 of this Agreement

17. Compensation

17.1 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Agreement are hereby waived

18. Issue of Approvals

18.1 Where any approval, consent, agreement, expression of satisfaction or the like is required to be given by the Council pursuant to the terms of this Agreement it shall be in writing and shall not be unreasonably withheld or delayed

19. Limitation of Liability

19.1 Save for the obligations contained in Schedule 1 which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Housing Units subject to the provisions contained therein the covenants, restrictions and requirements contained in this Agreement shall not be enforceable against any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site."

- 3.5 Clause 16.1 as re-numbered in this Deed of Variation shall be amended to include "and 3" after the words Schedule 1 and 2.
- 3.6 Reference to "Clauses 11.1, 11.2 and 11.3" in the re-numbered Clause 15.4 shall be deleted and substituted to read "Clauses 15.1, 15.2 and 15.3"
- 3.7 In all other respects the contents of the Original Agreement are confirmed and agreed.
4. The Owner hereby agrees to pay on or before the date of this Deed the Council's costs in connection with this Deed
5. This Deed is a Local Land Charge and shall be registered as such.

Third Schedule Open Space

1. In this Schedule the following expressions have the following meanings:

Approved on-site Open Space Scheme	<p>A scheme for the provision of the open space comprising plans and details of:</p> <ul style="list-style-type: none"> a) An area of land within the site of 0.33 hectares of open space b) The layout, location and design of the on-site Open Space c) The on-going 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 and approved by the Council / Nominated Officer
On-site Maintenance Sum	A sum to be used for the repair, maintenance and management of the On-site Open Space, calculated in accordance with the Councils standard charges upon commencement of the development as Index Linked.
Management Company	A company set up to manage and maintain the On-site Open Space in perpetuity.
Nominated Body	The Council, the Parish Council, Management Company or other body, as notified by the Council to the Landowners
Nominated Officer	The Councils Head of Development Management or other officer of the Council notified to the Owner
"On-site Open Space"	Means a minimum area of 0.33 hectares comprising of areas of equipped children's space, formal recreational space and informal open space calculated in accordance with Council's standards
Open Space Contribution	<p>A financial contribution to be used for the acquisition, layout and maintenance of Open Space in Acle and where appropriate the Norwich Policy Area calculated in accordance with the formula laid out in the Development Management DPD Open Spaces Policy.</p> <p>The final amount will be determined by the final housing mix and amount of open space provided on-site.</p>
Standard Terms	<ul style="list-style-type: none"> a) The On-site Open Space only to be used as public open space b) The consideration to be £1 c) The transfer to be of the Unencumbered freehold estate with full title guarantee and with all rights for services and access

	d) To pay the reasonable legal fees of the transferee
Unencumbered	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

1. The Owner covenants with the Council as follows:

- 1.1 Not to Commence the Development until the Approved On-site Open Space Scheme is approved.
- 1.2 Not to Occupy or allow Occupation of more than 90% of the Dwellings until the open space has been laid out in accordance with the Approved On-site Open Space Scheme.
- 1.3 To pay the On-site Maintenance Contribution prior to the transfer of the On-site Open Space to the Nominated Body
- 1.4 To maintain and manage the On-site Open Space to the satisfaction of the Nominated Officer until and in accordance with the Approved On-site Open Space Scheme until the On-site Open Space has been transferred to the Nominated Body

2. Open Space Contribution

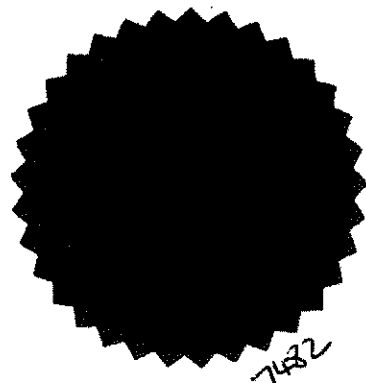
- 2.1 Not to Occupy or allow Occupation of any Dwelling on site unless or until the Open Space Contribution has been paid to the Council

3. The Council Covenants

- 3.1 The Council hereby covenants with the Owner that it will deposit the 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
- 3.2 In the event that the Open Space Contribution has not been committed by (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.

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written

THE COMMON DEAL of)
BROADLAND DISTRICT COUNCIL)
Was hereunto affixed)
In the presence of)



Authorised Officer

M. M. M. M.
Head of Democratic Services and
Monitoring Officer

SIGNED as a DEED by
JOHN ALBERT WILSON
In the presence of:

Witness:

Witness Signature:

G. G. R. R.

[Handwritten signature of John Albert Wilson]

MR JOHN ALBERT WILSON.