

SECTION 106 AGREEMENT DATED 16<sup>th</sup> July 2018

BETWEEN :

(1) DAVID ERIC SMITH

-and-

(2) BROADLAND DISTRICT COUNCIL

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Made pursuant to Section 106 Town and Country Planning Act 1990  
relating to the development of the land to the rear of  
Lower Street, Salhouse, Norwich

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Flint Buildings  
1 Bedding Lane  
Norwich  
NR3 1RG  
Ref: JZM/221949.3

THIS DEED is dated

16<sup>th</sup> July

2018

**BETWEEN**

**(1) DAVID ERIC SMITH** of The Old Maltings, Anchor Street, Coltishall, Norwich, Norfolk, NR12 7AQ ("Owner"); and

**(2) BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU ("District Council")

#### **RECITALS**

- 1 The District Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- 2 The Owner is the freehold owner of the Site registered at HM Land Registry under title number NK315364.
- 3 The Owner and the District Council has agreed to discharge the Original Unilateral Undertaking and the Deed of Variation so that the obligations under these documents are of no further effect from the date specified in this Deed and subject to the Owner entering into this Deed in order to secure the planning obligations contained herein.
- 4 The Owner has agreed to pay to the Parish Council the Financial Contribution for the Parish Council to spend on the delivery and provision of community and/or sports facilities at the Thieves Lane Recreation Ground as it sees fit, in compliance with the terms of the Parish Council's lease from Salhouse United Charities Trust, any other agreement between Salhouse Parish Council and Salhouse United Charities Trust and for the benefit of the Community. This Financial Contribution shall be paid by the Owner in lieu of the Owner constructing the Pavilion Building as agreed in the Unilateral Undertaking as amended by the Deed of Variation.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**OPERATIVE PROVISIONS**

**1 DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	the Town and Country Planning Act 1990.
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence Development" shall be construed accordingly.
"Deed of Variation"	means the Deed of Variation to the Unilateral Undertaking dated 19 August 2016 between the Owner and the District Council.
"Development"	the development of four self-build/custom houses on the Site pursuant to the Planning Permission.
"Dwellings"	the residential dwellings to be constructed on the Site as part of the Development and "Dwelling" shall be construed accordingly.
"Financial Contribution"	the sum of £65,000.
"Occupation" and "Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation

by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and the "Occupy" shall be construed accordingly.

"Parish Council"

Salhouse Parish Council.

"Planning Permission"

the planning permission granted by the District Council dated 2 October 2015 reference 20151129.

"Plot"

means a relevant part of the Site required for the construction and provision of one Dwelling.

"Self/Custom Build Houses"

a house or group of houses which is commissioned by an individual or group of individuals from a builder contractor or package company and is built by an individual either by themselves or with the assistance of appropriate tradesmen

"Site"

the land to the rear of Lower Street, Salhouse, Norwich NR13 6RB and shown for identification purposes only on the plan edged red attached to this Deed at Schedule 1 and registered at the Land Registry under title number NK315364.

"Thieves Lane Recreation Ground"

Salhouse Recreation Field, Thieves Lane Salhouse Norwich NR13 6RF.

"Unilateral Undertaking"

the Unilateral Undertaking given by the Owner to the District Council dated 1 October 2015 as varied by the Deed of Variation.

## **2 CONSTRUCTION OF THIS DEED**

2.1 Where in this Deed reference is made to any clause or Schedule such reference (unless the context otherwise requires) is a reference to a clause or schedule in this Deed and any reference in a Schedule to a paragraph or Part shall be a reference (unless the context otherwise requires) to a paragraph or Part of that Schedule.

- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and references to the District Council shall include the successors to its statutory functions.
- 2.7 The headings are for reference only and shall not affect the construction of this Deed.

### **3 LEGAL BASIS**

- 3.1 This Deed is made pursuant to Section 106 of the Act and to the extent that it does not contain planning obligations Section 111 of the Local Government Act 1972 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements undertaken by the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the District Council as local planning authority.
- 3.3 With effect from the date of this Deed the Unilateral Undertaking and the Deed of Variation shall be discharged and have no further force nor effect.

#### **4        CONDITIONALITY**

This Deed is conditional upon the Commencement of Development, save for the provisions of Clauses 3.3, 6.10, 9 and 10 which shall come into effect immediately upon completion of this Deed.

#### **5        THE COVENANTS**

5.1     The Owner covenants with the District Council for himself and his successors in title to observe and perform the obligations and stipulations contained in this Deed.

#### **6        MISCELLANEOUS**

6.1     No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.

6.2     This Deed shall be registrable as a local land charge.

6.3     Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

6.4     This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the written consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.

6.5     No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT the reservation of any rights or the inclusion of any covenants in any transfer shall not constitute an interest for the purposes of this clause.

6.6     This Deed shall not be enforceable against statutory undertakers or the owners and occupiers of the Dwellings.

- 6.7 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission other than the Planning Permission.
- 6.8 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the District Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as local authority.
- 6.9 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
- 6.10 On completion the Owner will pay the District Council's reasonable legal costs in connection with this Deed

## **7 WAIVER**

No waiver (whether expressed or implied) by the District Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the District Council from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

## **8 NOTICE**

The Owner agrees to notify the District Council and the Parish Council within 7 days of:

- 8.1 the date of Commencement of Development;
- 8.2 any other date or event which acts as a trigger for the performance by the Owner of any obligation owed to the District Council.

## **9 JURISDICTION**

This Deed is governed by and interpreted in accordance with the law of England and Wales and the Owners submit to the non-exclusive jurisdiction of the courts of England and Wales.

10     **DELIVERY**

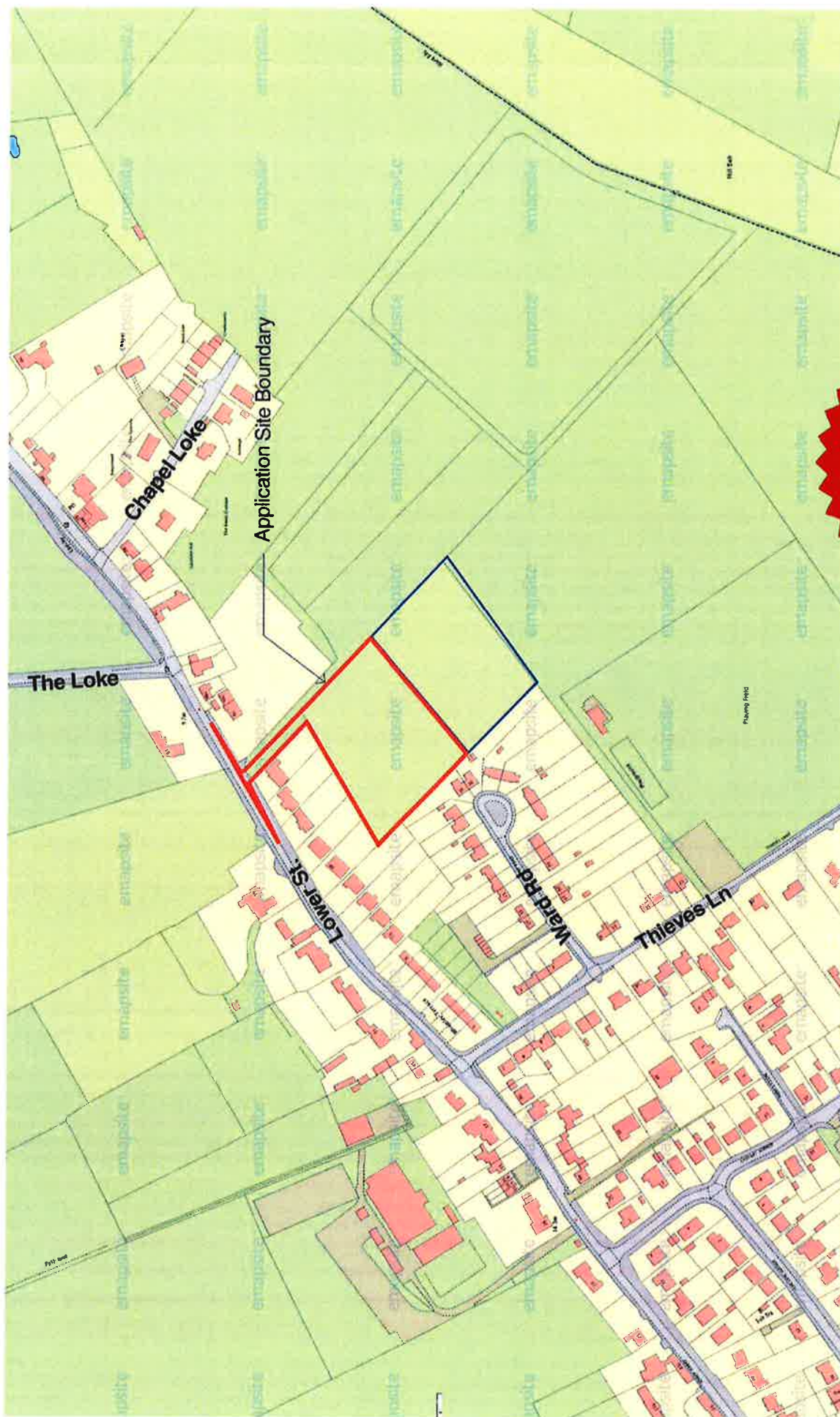
The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

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



**FIRST SCHEDULE**

**Site Plan**



# LOCATION MAP

-  Application Site Boundary
-  Land ownership Boundary

**BROADLAND  
DISTRICT COUNCIL**  
08 July 2015  
20151129  
**PLANNING CONTROL**



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

7860

## **SECOND SCHEDULE**

### **The Owners covenants with the District Council**

- 1 The Owner covenants with the District Council as follows:
  - 1.1 Not to sell, lease, transfer or otherwise dispose of any Plot until the Financial Contribution has been paid to the Parish Council; and
  - 1.2 All Dwellings shall only be constructed as Self/Custom Build Houses in accordance with the terms of this Deed and of the Planning Permission .

SIGNED as a deed by **DAVID ERIC SMITH** in the presence of:

 )

Signature of Witness:



Name of Witness:

*William Simon White*

Address of Witness:

COZENS-HARDY LLP  
CASTLE CHAMBERS  
OPIE STREET  
NORWICH NR1 3DP

THE COMMON SEAL OF **BROADLAND DISTRICT COUNCIL**

Was affixed in the presence of:



Authorised Signatory:



Head of Democratic Services and  
Monitoring Officer