

DATED 3RD APRIL **2013**

BROADS AUTHORITY
and
GRAHAM MARTIN DACRE

AGREEMENT

Pursuant to Section 106

Town and Country Planning Act 1990

Relating to land at

Brundall Gardens Marina, Postwick Lane

Brundall, Norfolk

Broads Authority

Yare House

62-64 Thorpe Road

Norwich

NR1 1RY

THIS AGREEMENT is made by Deed the 3RD day of APRIL
Two Thousand and Thirteen

BETWEEN:-

- (1) **THE BROADS AUTHORITY** of Yare House, 62-64 Thorpe Road, Norwich NR1 1RY ("the Broads Authority") and
- (2) **GRAHAM MARTIN DACRE**, of Tithe Barn, Station Road, Attlebridge, Norwich, Norfolk, NR9 5AA ("the Owner").

Together "the Parties"

RECITALS

- (1). The Broads Authority is the Local Planning Authority within the meaning of the Act for the purposes of this Deed for the area within which the Site the Blue Land and the Green Land is situated.
- (2). The Owner is the registered proprietor of the Site the Blue Land and the Green Land which is registered at the HM Land Registry under title numbers NK158009, NK395527, NK395530 and NK138712.
- (3). The Owner has submitted the Planning Application to the Broads Authority for planning permission to carry out the Development.
- (4). The Broads Authority have resolved to grant the Planning Permission subject to completion of this Deed

NOW THIS DEED witnesses as follows:-

DEFINITIONS AND INTERPRETATION

1 In this Deed:-

1.1. The following words have the following meanings unless in the context it would not be appropriate:

"the Act"	the Town and Country Planning Act 1990 or any statutory modification or re-enactment thereof
"the Blue Land"	the area edged blue on the Plan
"the Boat Wash Down Facility"	a facility for washing vessels where all wash down water is passed through an interceptor prior to discharge to any water course and is to be provided on the Green Land.
"Commencement"	the initiation of the Development by the carrying out of a material operation within the meaning of section 56(4) of the Act and "Commence" and "Commenced" shall be interpreted in accordance with this definition
"Design Scheme"	a detailed scheme and plans for the construction of the Boat Wash Down Facility to include future maintenance plans in perpetuity
"the Development"	the development of the Site by renewal of existing quay heading to the east of an existing basin, extension of the basin to the north west with new quay heading, renewal of the central jetty, extension to the south

western side of the basin with new quay heading and jetty, retention of a vehicle entrance barrier, construction of a boat washdown facility and the construction of a 25 metre length of visitor moorings

"the Green Land"

the area edged green on the Plan

"the Plan"

the plan attached to this Deed and marked 'the Plan'

"the Planning Application"

the application for full planning permission dated 3.4.12 for permission to develop the Site in accordance with the forms plans and particulars deposited with the Broads Authority and given reference number BA/2012/0121/FUL

"the Planning Obligations"

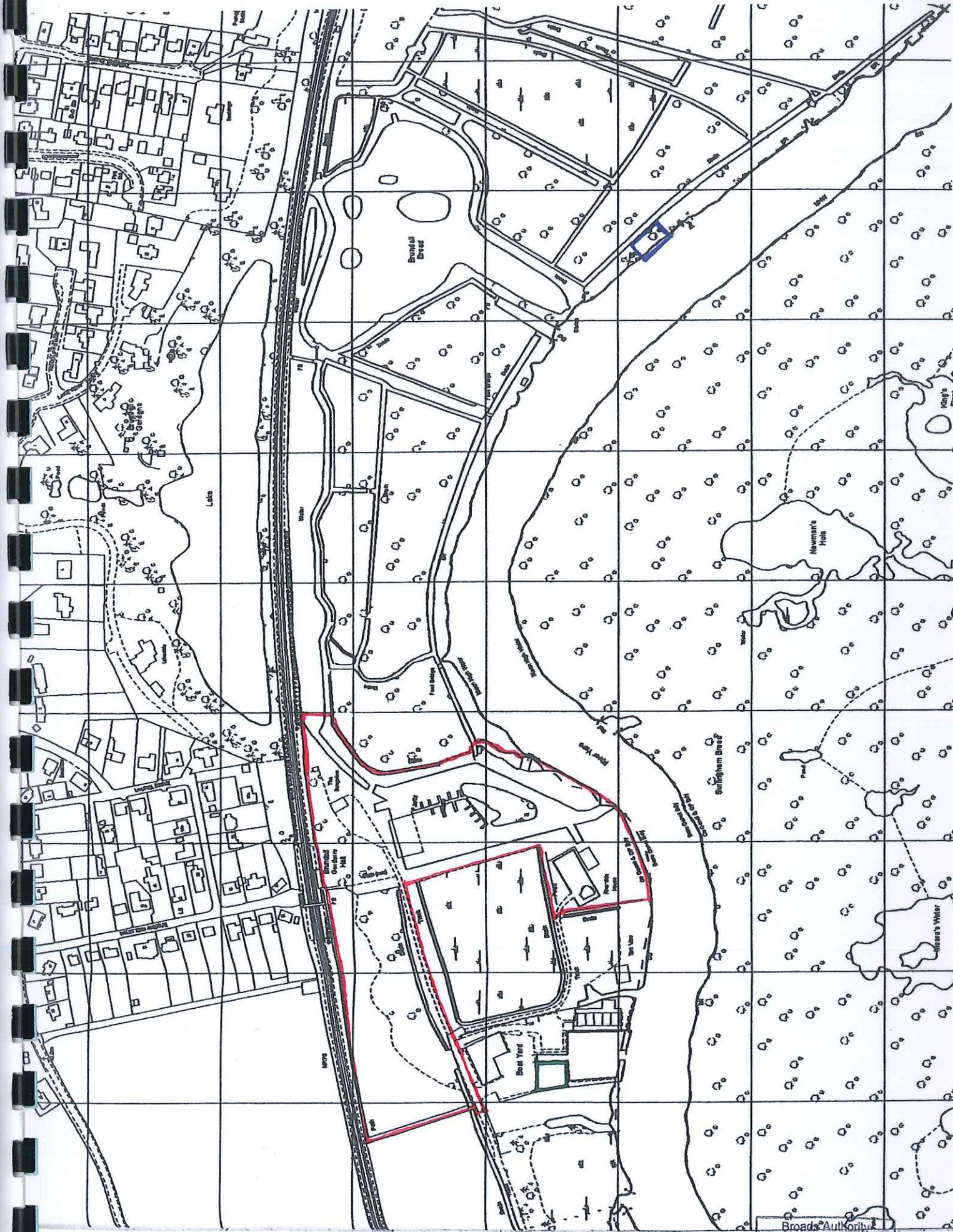
the obligations specified in the Schedule to this Deed

"the Planning Permission"

the full planning permission granted pursuant to the Planning Application for the Development on the Site

"the Signage"

a single sign made to the specifications as identified in Appendix 1 to this Deed and to be erected in a location visible from the river within the Blue Land, for the purpose of identifying to the public the location of the Visitor Moorings



THE PLAN

Broads Authority
Planning and Strategy
15 MAR 2013

"the Site" means the freehold property known as Brundall Gardens Marina Postwick Lane Brundall Norfolk which is the site for the purposes of the Planning Application and shown edged red on the Plan

"the Visitor Moorings" a 25 metre length of quay heading to be constructed on the Blue Land in accordance with the specification as identified in Appendix 2 to this deed.

2. INTERPRETATION

- 2.1 One gender includes all others
- 2.2 The singular includes the plural and vice versa
- 2.3 The Parties to this Deed include their respective successors in title
- 2.4 Headings in this Deed are for ease of reference only and cannot be taken into account in its construction or interpretation
- 2.5 A reference to a paragraph or clause in the Schedule to this Deed is a reference to a paragraph or clause in that part of the Schedule
- 2.6 the expressions "the Owner" and "the Broads Authority" shall include their respective successors in title and assigns and/or any successor body
- 2.7 where two or more people form a party to this Deed, the obligations they undertake may be enforced against them all jointly or against each of them individually

- 2.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Deed is to be unaffected.

ENABLING POWERS

3. The Planning Obligations and covenants hereinafter contained in this Deed are made with the Broads Authority and are enforceable by the Broads Authority pursuant to section 106 of the Act (and to the extent to which the said covenants and Planning Obligations are capable of being entered into thereunder they shall constitute planning obligations for the purposes thereof) and any other power thereby enabling

PLANNING OBLIGATIONS

- 4 The Owner covenants with the Broads Authority so as to bind the Site the Green Land and the Blue Land that they will observe and perform the Planning Obligations set out in the Schedule to this Deed.
5. The Owner covenants with the Broads Authority so as to bind his interest in the Site the Green Land and the Blue Land and to notify the Broads Authority in writing within 21 days of the following;
- 5.1. Commencement of the Development
 - 5.2. first use of the basin referred to in the Development

AGREEMENTS AND DECLARATIONS

6. The Parties agree and declare as follows:

- 6.1 No waiver (whether express or implied) by the Broads Authority of any breach or default by the Owner or their successors in title in performing or observing any of its obligations under this Deed shall constitute a continuing waiver or prevent the Broads Authority from enforcing those obligations or from acting upon any subsequent breach or default
- 6.2 This Deed shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn before the date upon which the Development is Commenced
- 6.3 The Planning Obligations contained in the Schedule to this Deed shall only come into effect on the date of the Planning Permission unless otherwise specifically indicated in this Deed or to construe otherwise would be inconsistent with the requirements of any such covenants or provisions
- 6.4 Without prejudice to the enforcement of restrictions and obligations against successors in title no person shall be liable for any breach of this Deed if at the time the breach occurs they have no interest in the Site, the Green Land and the Blue Land
- 6.5 The Broads Authority shall not be liable to any person under this Deed after that person has parted with all interest in the Site, the Green Land and the Blue Land but without prejudice to any liability arising prior thereto
- 6.6 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site the Green Land or the Blue Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

DISPUTE RESOLUTION

- 7.1 The Parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the Parties who have authority to settle the same.
- 7.2 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.
- 7.3 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.
- 7.4 Nothing in this clause shall apply to the recovery of liquidated sums or prevent the Parties from commencing or continuing court proceedings.

TITLE

8. The Owner covenants that he is the freehold owner of the Site, the Green Land and the Blue Land and has the full power to enter into this Deed and that the Site, the Green Land and the Blue Land is free from all mortgage charges or other encumbrances and that there is no other person having an interest in the Site, the Green Land and the Blue Land whose consent is required to make this Deed binding on the Site, the Green Land and the Blue Land and all estates and interests in it.

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

9. Subject to Clause 2.3 no person shall derive any benefit or have any right entitlement or claim in relation to this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999

NOTICES

- 10.1 Any notice or other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 10.2 Any notice or other communication served is to be sent to the address of the relevant party set out at the beginning of this Deed or to such other address as may be notified in writing.

JURISDICTION

11. This Deed is to be governed by and interpreted in accordance with the law of England

LOCAL LAND CHARGE

12. This Deed is a local land charge and will be registered as such by the Broads Authority.

SCHEDULE
The Planning Obligations

- 1 To submit to the Broads Authority for approval within six months of the date of the Planning Permission the Design Scheme for the Boat Wash Down Facility
- 2 Not to Commence the Development until the Design Scheme for the Boat Wash Down Facility has been submitted to and approved in writing by the Broads Authority. Upon receipt of the Design Scheme the Broads Authority shall determine whether or not the Design Scheme is acceptable and inform the Owner of their decision in writing without reasonable delay and in any event within 6 weeks of receipt of the Design Scheme.
3. Within twelve months of the Commencement of the Development to provide the Boat Wash Down Facility on the Green Land in accordance with the Design Scheme approved by the Broads Authority and to maintain in perpetuity the Boat Wash Down Facility in accordance with the approved Design Scheme.
- 4 Prior to first use of the basin referred to in the Development the Owner shall construct the Visitor Moorings and erect the Signage.
- 5 Not to use the basin referred to in the Development for the mooring of boats until the Visitor Moorings are completed and open and available to the public and the Signage erected.
- 6 The Owner shall at their expense ensure that the Visitor Moorings and Signage are maintained to a reasonable standard.
7. The Owner shall at their expense undertake such work to maintain to a reasonable standard the Visitor Moorings and the Signage as requested by the Broads Authority in writing, this standard not exceeding that originally approved in the design and specification as submitted with the Planning Application.

8. The Owner shall keep the Visitor Moorings open and available at any time to the public save for when temporarily closure is necessary in order for the carrying out of necessary maintenance and repair works and then in such case the closure shall be limited to that amount of time reasonably required for the carrying out of such necessary works
9. The Owner shall not restrict reasonable public access by prior appointment to and use of the Boat Wash Down Facility.
10. The Owner shall inform the Broads Authority in writing 14 days prior to any proposed temporary closure referred to in paragraph 8 of this Schedule

IN WITNESS whereof the Parties hereto have executed this instrument as their deed and it is the Parties' intention that this deed be delivered and it is hereby delivered on the date first before written

THE COMMON SEAL of
THE BROADS AUTHORITY
was hereunto affixed
in the presence of:-

*Alena
for the Solicitor*



EXECUTED as a DEED by
Graham Martin Dacre
In the presence of:

Graham Martin Dacre

Witness

Name..... Carolyn Hucknall
Address..... 11 Church Field, Attlebridge, Norwich
Occupation..... P.A.
Signature..... *C Hucknall*