

Dated 27 DECEMBER 2017

**BROADLAND DISTRICT COUNCIL**

-and-

DANIELS PROPERTIES  
~~AYLSHAM PLANT HIRE LIMITED~~

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

relating to land west of Old Norwich Road, Marsham, Norfolk, NR10 5PS

THIS DEED is dated 27 DECEMBER

2017

**PARTIES:**

- (1) **BROADLAND DISTRICT COUNCIL**, Thorpe Lodge, 1 Yarmouth Road, Norwich, Norfolk, NR7 0DU (referred to as "the Council")
- (2) ~~AYLSHAM PLANT HIRE LIMITED~~, (company number ~~01097851~~) whose registered office is at Unit A, Aylsham Industrial Estate, Aylsham, Norwich, Norfolk, NR11 6SS (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) Richard Pike Associates applied on behalf of the Developer for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (D) The Owner owns the freehold of the Site free from financial charge
- (E) The Council in resolving to approve the Application is satisfied that the planning obligations sought under the provisions of this Deed meets the test set out in the Regulation 122 of the Community Infrastructure Regulations 2010

## 1. DEFINITIONS

In this Deed the following expressions have the following meanings:

"Act"	the Town and Country Planning Act 1990
"Application"	the application for full planning permission received by the District Council on the 28 <sup>th</sup> June 2016 for the Development and allocated reference number 20161103
"Commencement"	<p>the date on which a material operation as defined in Section 56(4) of the Act forming part of the Development is first carried out, except operations consisting of:</p> <p>site clearance</p> <p>demolition</p> <p>archaeological investigations</p> <p>ground surveys</p> <p>removal of contamination</p> <p>erection of temporary fences</p> <p>and 'Commence' and 'Commenced' will be construed accordingly</p>
"Development"	the Development of the Site by the demolition of existing buildings and the erection of 6 residential dwellings in accordance with the Permission
"Dwelling"	any dwelling (including a house bungalow flat or maisonette) to be on the Site constructed pursuant to the Permission as part of the Development
"Inflation Provision"	BIS (Department for Business Innovation & Skills) Output Price Index for New Construction (2010): All New Construction. Between September 2006 and the date

upon which the payment of the open space commuted sum is made pursuant to this agreement

“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
- security operations

and ‘Occupy’ and ‘Occupied’ will be construed accordingly

“Permission” the full planning permission to be granted by the Council pursuant to the Application 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

“Planning Obligations” the obligations set out in Schedule Two Schedule Three and Schedule Four

“Site” the land situated west of Old Norwich Road, Marsham, and at Marsham Depot, Marsham Norfolk, NR10 5PS shown edged red on the Plan and registered at HM Land

Registry under title number NK171855 and part of title number NK107366

“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 This Agreement will take effect on the date hereof save for the Planning Obligations which shall take effect on Commencement
- 2.4 Covenants given by more than one party can be enforced against them individually or jointly
- 2.5 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
- 2.6 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done

- 2.7 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 (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 other 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 This Deed shall not be enforceable against owner-occupiers or tenants or mortgagees of the Dwellings and against those deriving title from them
- 4.5 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed

- 4.6 This Deed is a Local Land Charge and shall be registered as such by the Council
- 4.7 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 4.8 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions
- 4.9 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
- 4.10 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 Permission) granted (whether or not on appeal) after the date of this Deed
- 4.11 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development
- 4.12 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith on the written request of the Owner mark accordingly all entries made in the Register of Local Land Charges in respect of this Deed.
- 4.13 The headings are for reference only and shall not affect construction.

## **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 seven days in advance of each anticipated date
- 7.2.2 actual Triggers within seven 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 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site



## **SCHEDULE ONE**

### **Plan**

The land situated west of Old Norwich Road, Marsham, and at Marsham Depot, Marsham Norfolk, NR10 5PS shown edged red on the Plan and registered at HM Land Registry under title number NK171855 together with part of the land registered at Land Registry under title number NK107366

Head of Democratic Services and  
Monitoring Officer

## **SCHEDULE TWO**

### **Equipped Play Space**

#### **Part 1**

**1. In this Schedule the following expression has the following meaning:**

"Equipped Play Space Contribution"	the sum of £1,436.62 subject to the Inflation Provision to be paid to the Council towards the provision of land, equipment and maintenance and improvements to the play area at George Edwards Close in the parish of Marsham
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**2. The Owner covenants with the Council as follows:**

Not to Occupy or allow Occupation of any Dwelling until the Equipped Play Space Contribution has been paid to the Council.

#### **Part 2**

**1. The Council covenants with the Owner as follows:**

- 1.1 Upon receipt of the Equipped Play Space Contribution to deposit it in an interest bearing account and apply the capital and any interest accrued towards the provision of land, equipment and maintenance and improvements to the play area at George Edwards Close in the parish of Marsham
- 1.2 Not to use the Equipped Play Space Contribution for any purpose other than for the provision of land, equipment and maintenance and improvements to the play area at George Edwards Close in the parish of Marsham

## **2. REPAYMENT OF CONTRIBUTIONS**

- 2.1 To repay with any interest accrued to the Owner such amount (including the whole) of the Equipped Play Space Contribution which has not been committed (by way of expenditure of the monies or by way of contract) within five years of the receipt of the Equipped Play Space Contribution
- 2.2 The Council shall within 28 days of written request provide to the Owner written details of the expenditure of the Equipped Play Space Contribution

## **SCHEDULE THREE**

### **Sports Provision**

#### **Part 1**

**1. In this Schedule the following expression has the following meaning:**

“Sports Provision Contribution”	the sum of £7,324.98 subject to the Inflation Provision to be paid to the Council towards the provision of land, sports/recreation equipment and maintenance and/or provision of the sports/recreation facilities within the parish of Marsham.
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**2. The Owner covenants with the Council as follows:**

Not to Occupy or allow Occupation of any Dwelling until the Sports Provision Contribution has been paid to the Council.

#### **Part 2**

**1. The Council covenants with the Owner as follows:**

- 1.1 Upon receipt of the Sports Provision Contribution to deposit in an interest bearing account and apply the capital and any interest accrued towards the provision of land, sports/recreation equipment and maintenance and/or provision of the sports/recreation facilities within the parish of Marsham
- 1.2 Not to use the Sports Provision Contribution for any purpose other than the provision of land, sports/recreation equipment and maintenance

and/or provision of the sports/recreation facilities within the parish of Marsham.

## **2. REPAYMENT OF CONTRIBUTIONS**

- 2.1 To repay with any interest accrued to the Owner such amount (including the whole) of the Sports Provision Contribution which has not been committed (by way of expenditure of the monies or by way of contract) within five years of the receipt of the Sports Provision Contribution
- 2.2 The Council shall within 28 days of written request provide to the Owner written details of the expenditure of the Sports Provision Contribution

## **SCHEDULE FOUR**

### **Green Infrastructure**

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

“Green Infrastructure Contribution”	the sum of £11,111.62 subject to the Inflation Provision to be paid to the Council towards the provision, equipping and maintaining of public rights of way in the parish of Marsham
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**1. The Owner covenants with the Council as follows:**

Not to Occupy or allow Occupation of any Dwelling until the Green Infrastructure Contribution has been paid to the Council

### **Part 2**

**1. The Council covenants with the Owner as follows:**

- 1.1 To deposit the Green Infrastructure Contribution in an interest bearing account and apply the capital and any interest accrued towards the provision, equipping and maintaining of public rights of way in the parish of Marsham
- 1.2 Not to use the Green Infrastructure Contribution for any purpose other than the provision, equipping and maintaining of public rights of way in the parish of Marsham



## 2. REPAYMENT OF CONTRIBUTIONS

- 2.1 To repay with any interest accrued to the Owner such amount (including the whole) of the Green Infrastructure Contribution which has not been committed (by way of expenditure of the monies or by way of contract) within ten years of receipt of the Green Infrastructure Contribution
- 2.2 The Council shall within 28 days of written request provide to the Owner written details of the expenditure of the Green Infrastructure Contribution

**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 hereunto affixed

Authorised Signatory:

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)  
)  
)



*M. Murre*

Head of Democratic Services and  
Monitoring Officer

Executed as a deed by  
**AYLSHAM PLANT MACHINERY LIMITED**  
*DANIELS PROPERTIES*  
acting by a director

)  
)

*M. Daniels*

in the presence of

)

Name of Witness (in BLOCK CAPITALS):

)

*C P BURGESS*

Signature of witness

)

*CPB*

Address of Witness:

)

)

Chris Burgess  
Associate  
Hansells Solicitors  
13-14 The Close  
Norwich  
NR1 4DS