

DATED 6th February 2015

CHEVRON AEROSPACE LIMITED (1)

and

ASHFIELD DISTRICT COUNCIL (2)

PLANNING AGREEMENT

Section 106 of the Town and Country Planning Act 1990
relating to proposed residential development
on land at The Royal Foresters Public House, Coronation Street,
Sutton in Ashfield



**MARRONS
SHAKESPEARES**

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THIS AGREEMENT is made as a Deed the 6th day of February
Two Thousand and Fifteen

BETWEEN:

1. **CHEVRON AEROSPACE LIMITED** (Company Registration Number 04708776) whose registered office is situate at 2 The Paddock, Attenborough, Nottingham NG9 6AR ("the Owner")
2. **ASHFIELD DISTRICT COUNCIL** of Urban Road, Kirkby in Ashfield, Nottingham NG17 8DA ("the District Council")

RECITALS:

- A. By means of the Planning Application planning permission is sought by the Owner from the District Council to carry out the Development
- B. The District Council is the Local Planning Authority for the purposes of the Act for the area within which the Land is situated
- C. The District Council is a Principal Council within the meaning of the Local Government Act 1972
- D. The Owner is the freehold owner of the Land registered at HM Land Registry with title absolute under title number NT251030
- E. The District Council has resolved to grant the Planning Permission for the Development subject to certain conditions and the completion of this Agreement
- F. The Owner has agreed to enter into this Agreement with the intent that their interest in the Land shall be subject to the covenants and obligations contained herein and with the intention that those covenants and obligations should create planning obligations pursuant to Section 106 of the Act

G. The District Council is satisfied that the provisions of this Agreement and the planning obligations contained herein comply with their respective policies in relation to Section 106 of the Act and are sufficient in respect thereof

OPERATIVE PROVISIONS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:

“Act” the Town & Country Planning Act 1990 as amended

“Commencement of Development” means the earliest date on which any of the material operations (as defined by Section 56(4) of the Act) pursuant to the implementation of the Development is begun save that irrespective of the provisions of Section 56(4) of the Act none of the following operations shall constitute a material operation for the purposes of constituting Commencement of Development

- i. trial holes or other operations to establish the ground conditions of the Land, site survey work, or works of remediation
- ii archaeological investigations on the Land
- iii any works of demolition or site clearance
- iv any structural planting or landscaping works
- v. ecological or nature conservation works associated with the Development
- vi. construction of site compounds boundary fencing or hoardings
- vii. construction of access or highway works or provision of services (including drainage and media)
- viii. any other preparatory works agreed in writing with the District Council

and "Commencement Date" shall be interpreted accordingly

"Cowpasture Recreation Ground" means the Cowpasture Lane Recreation Ground, The Twitchell, Sutton-in-Ashfield, NG17 5DW

"Development" means the development described in the Planning Application and to be carried out pursuant to the Planning Permission

"Dwelling/s" means a dwelling built pursuant to the Planning Permission

"Index Linked" means the application to the sum concerned of the indexation set out in the Schedule hereto

"Land" means the land shown with a dashed red on the Plan

"Occupation" means in relation to the Development beneficial occupation of any part of it for residential purposes but shall not include

i) daytime occupation by workmen involved in the erection fitting out or decoration of any part of the Development; or

ii) the use of any Dwelling for the marketing of the Development; or

iii) the storage of plant and materials

and "Occupy" and "Occupied" shall be construed accordingly

"Off Site Open Space Contribution" means the sum of Fourteen Thousand Pounds (£14,000.00) Index Linked payable by the Owner to the District Council in accordance with the provisions of clause 3.1 for the provision of sports facilities and general improvements at the Cowpasture Recreation Ground

"Plan" means the plan attached hereto (drawing number 4467 (20) 201 Revision L)

"Planning Application" means the planning application submitted to the District Council and allocated reference number V/2014/0565 applying for planning permission for the demolition of the existing public house and

the erection of 14 dwellings and associated access parking landscaping at The Royal Foresters Public House, Coronation Street, Sutton in Ashfield

“Planning Permission” means the planning permission granted pursuant to the Planning Application

“Public Realm Contribution” means the sum of Twenty Eight Thousand Pounds (£28,000.00) Index Linked payable by the Owner to the District Council in accordance with the provisions of clause 3.2 for the provisions of public realm improvements in Sutton in Ashfield Town Centre

1.2 Words in this Agreement importing the singular meaning shall where the context so admits include the plural meaning and vice versa

1.3 Words in this Agreement of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa

1.4 References in this Agreement to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force

1.5 Where in this Agreement reference is made to a Clause Schedule or plan such reference (unless the context otherwise requires) is a reference to a Clause or Schedule of or in the case of a plan attached to this Agreement

1.6 Covenants made hereunder on the part of the District Council shall be enforceable against the District Council and any statutory successor to it as Planning Authority

1.7 The expression “the Owner” shall where the context so admits include its respective successors and assigns

2. GENERAL PROVISIONS

Statutory Authority

2.1 This Agreement and each of the covenants given by the Owner contained herein is a planning obligation and is made pursuant to Section 106 of the Act

2.2 The covenants by the Owner contained herein shall be enforceable by the District Council

Liability

2.3 The covenants given by the Owner contained herein are made with the intent that the covenants will bind its interest in the Land and be binding on and enforceable against their respective successors in title or assigns and subject to clause 2.5 those deriving title under the Owner PROVIDED THAT without prejudice to the enforcement of covenants against successors in title no person shall be liable for any breach or non-performance of the covenants contained herein or for the performance of any obligations which arise from the carrying out of the Development on and in respect of any land of which he is no longer seised save in respect of any prior subsisting breach

2.4 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission as defined herein or any renewal thereof) granted (whether or not on appeal) after the date of this Agreement in respect of which development this Agreement will not apply PROVIDED THAT the obligations in this Agreement can be applied to any planning permission granted subsequent to the grant of the Planning Permission as herein defined by agreement between the Owner and the District Council as evidenced by a memorandum endorsed on this Agreement

- 2.5 The covenants contained in this Agreement shall not be enforceable against individual purchasers or lessees of Dwellings on the Land constructed pursuant to the Planning Permission or against statutory undertakers in relation to any parts of the Land acquired by them for electricity sub-stations gas governor stations or pumping stations or against anyone whose only interest in the Land or any part of it is in the nature of the benefit of an easement or covenant
- 2.6 In the event that the Owner disposes of its interest in the Land or any part thereof (other than a disposal to a purchaser of a Dwelling) it shall within twenty-eight days of such disposal give written notice of the name and address of its successors in title to the District Council together with sufficient details of the land included in the disposal to allow its identification

Contingencies

- 2.7 The obligations in this Agreement shall be conditional upon the issuing of the Planning Permission and the Commencement of Development and save for this clause and clauses 2.9, 2.13, 2.15 and 3.3 which shall come in to effect upon completion of this Agreement then until such time all other provisions not herein specified shall be of no effect
- 2.8 In the event of the Planning Permission expiring or in the event of the revocation of the Planning Permission the obligations under this Agreement shall cease absolutely and the District Council shall upon written request from the Owner procure that any entry referring to this Agreement in the Register of Local Land Charges shall be removed forthwith upon request of the Owners
- 2.9 Where this Agreement is released in part by a future agreement, the District Council shall upon written request from the Owner place a note against the entry made in the Register of Local

Land Charges stating which obligations no longer have effect

- 2.10 If the Owner makes a request in writing for the District Council to place a note against the entry made in the Register of Local Land Charges stating which obligations under this Agreement have been discharged and complied with, the District Council will place such a note against the entry to the extent which such obligations are deemed by the District Council to have been discharged and complied with under the terms of this Agreement

Commencement of Development

- 2.11 The Owner shall give the District Council seven days' notice in advance of the Commencement of Development and the date on which Commencement of Development has taken place shall be confirmed by exchange of correspondence between the Owner and the District Council PROVIDED THAT default in giving notice or confirming the date by exchange of correspondence shall not prevent Commencement of Development occurring

Determination by Expert

- 2.12 Notwithstanding any specific provision in this Agreement in the event of any dispute between the Owner and the District Council concerning this Agreement including any dispute as to whether or not an obligation has been performed or matter to be agreed under any of the provisions of this Agreement the matter may at the written option of any relevant party (notice of which shall be given to the other party or parties) be referred to such expert as they may agree or (in default of agreement within 20 working days of the date of giving of the notice) appointed by the Chairman for the time being of the Planning and Environment Bar Association whose appointment shall be conducted on the following terms

- 2.12.1 The person to be appointed pursuant to Clause 2.12 shall if possible be a person having ten years or more relevant post-qualification experience of the issue in dispute and projects comprising works of the scale and nature of the Development and of the particular issue in dispute
- 2.12.2 The reference to the expert shall be on terms that:
- 2.12.2.1 the expert shall afford the parties to the dispute an opportunity to make representations to him/her in writing and if he/she so directs to make submissions on one another's representation;
- 2.12.2.2 the expert shall be able to stipulate periods of time for the making of such submissions and representations;
- 2.12.2.3 the expert shall be bound to have regard to the said submissions and representations;
- 2.12.2.4 the expert shall have the power to award the costs of the determination in favour of either party at the expense of the other in the event that the expert shall consider that the said other party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
- 2.12.2.5 the expert shall be limited in his findings to the proposals put by either party or a proposal falling between both of them; and
- 2.12.2.6 the findings of the expert shall save in the case of manifest material error be final and binding on the Owner and the District Council save that the parties retain the right to refer to the Courts on a matter of law

Time Periods

- 2.13 It is agreed between the parties that any of the periods specified in the Agreement may be extended by mutual agreement in

writing between the Owner and the District Council

Approvals

- 2.14 For the purposes of this Agreement where a party is required to make a request, give confirmation, approval or consent, express satisfaction with, agree to vary, or to give notice of any matter, such request, confirmation, approval, consent, expression of satisfaction, agreement to vary, or notice shall be deemed to have not been given or expressed unless given or expressed in writing and shall not be unreasonably withheld or delayed

Notices

- 2.15 The service of notices and communications pursuant to this Agreement shall be sent to the addressee at the address stated in this Agreement or at such other address as the addressee shall have notified to the others in writing
- 2.16 Notices and communications under this Agreement may be sent by personal delivery or by First Class Post (recorded delivery) and any notice or communication sent by First Class Post (recorded delivery) and correctly addressed shall be conclusively deemed to have been received by the addressee on the second business day following the date of posting

Exclusion of the Contracts (Rights of Third Parties) Act 1999

- 2.17 Nothing herein contained or implied shall give or be construed as giving rights, privileges, powers or enforceability other than to the specific parties executing this document and their successors (if any) as defined herein and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise therefrom are expressly excluded to the intent that no third party within the meaning of that Act shall

have any rights of enforcement in respect of any matter herein contained

Void Provisions

- 2.18 If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the remaining provisions of this Agreement shall continue in full force and effect and the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality provided that any party may seek the consent of the other or others to the termination of this Agreement on such terms as may in all the circumstances be reasonable if the effect of the forgoing provisions would be to defeat the original intention of the parties

Application of this Agreement

- 2.19 If the District Council agrees pursuant to an application under Section 73 of the Town and Country Planning Act 1990 to any variation or release of any condition contained in one or either of the Planning Permission the covenants or provisions of this Agreement shall be deemed to bind the varied permission and to apply in equal terms to the new planning permission

No Fetter of Discretion

- 2.20 Save as permitted by law in equity nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the District Council in its rights powers duties and obligations under all public and private statutes bylaws and regulations which may be as fully and effectually exercised as if the District Council were not a party to this Agreement

Effect of any Waiver

- 2.21 No waiver (whether express or implied) by the District Council of any breach or default by the Owner in performing or observing any of the terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District Council (as relevant) from enforcing any of the said terms or conditions or from acting upon any subsequent breach or default in respect thereof by the Owner

General Requirement to Co-operate

- 2.22 Without prejudice to its statutory duties the District Council and the Owner shall act in good faith and shall co-operate with each other to facilitate the discharge and performance of the obligations of the other contained within this Agreement within the timescales specified

Interest

- 2.23 If any payment due to the District Council under this Agreement is paid late interest will be payable from the date the payment is due to the date of payment at 8% above the Bank of England base lending rate prevailing at the time

3. THE OWNER'S OBLIGATIONS TO THE DISTRICT COUNCIL

Off Site Open Space Contribution

- 3.1 The Owner covenants with the District Council to pay the Off Site Open Space Contribution as follows:
- a. 50% of the Off Site Open Space Contribution prior to the first Occupation of the third Dwelling to be Occupied; and

- b. The remaining 50% of the Off Site Open Space Contribution prior to the first Occupation of the seventh Dwelling to be Occupied.

Public Realm Contribution

3.2 The Owner covenants with the District Council to pay the Public Realm Contribution as follows:

- a. 50% of the Public Realm Contribution prior to the first Occupation of the third Dwelling to be Occupied; and
- b. The remaining 50% of the Public Realm Contribution prior to the first Occupation of the seventh Dwelling to be Occupied.

District Council's Legal Costs

3.3 The Owner covenants with the District Council to pay the District Council's reasonable legal costs up to a maximum of £2,000 in respect of the preparation of this Agreement on its execution

4. DISTRICT COUNCIL'S COVENANTS TO THE OWNER

4.1 The District Council covenants with the Owner as follows:

Off Site Open Space Contribution

4.1.1 To use the Off Site Open Space Contribution solely towards the provision of sports facilities and general improvements at the Cowpasture Recreation Ground and for no other purpose whatsoever

Public Realm Contribution

4.1.2 To use the Public Realm Contribution solely towards the provision of public realm improvements in Sutton in Ashfield town centre and for no other purpose whatsoever

Monitoring

- 4.1.3 In the event that any of the Off Site Open Space Contribution and/or the Public Realm Contribution is not applied for the purpose specified within five years from the date of receipt of the final tranche of each respective contribution to refund to the Owner such unexpended contribution along with any interest accrued (if any) from the date of payment until the date of repayment following receipt of a written request from the Owner to do so
- 4.1.4 Following receipt of a written request from the Owner to produce full details of the expenditure of all monies paid pursuant to clauses 3.1 and 3.2 of this Agreement

THE SCHEDULE
INDEXATION PROVISIONS

1. In this Schedule:-

"Index" means the Retail Prices Index ("RPI") as published by the Office for National Statistics or any successor body or such other index as shall be agreed between the Owner and the District Council

"Base Index Date" means the date of this Agreement

"Base Index Figure" means the figure published in respect of the Index immediately prior to the Base Index Date

"Final Index Figure" means the figure published or otherwise agreed or determined in respect of the Index immediately prior to the respective dates upon which the relevant contribution is paid

2. The relevant contribution shall be increased by such sum, if any, in pounds sterling as shall be equal to the sum calculated according to the following formula:-

$$\text{Increased Sum} = \frac{A \times C}{B}$$

Where: "A" equals the relevant contribution

"B" equals the Base Index Figure

"C" equals the Final Index Figure

3. If after the Base Index Date there should be any change in the Base Index Figure by reference to which changes in the Index are calculated, the

figure taken to be shown in the Index after such change shall be the figure which would have been shown in the Index if the said Base Index Figure had been retained and the appropriate reconciliation shall be made

4. If any substitution for the said RPI or any index previously substituted therefore shall occur, the parties hereto shall endeavour to agree the appropriate reconciliation between the Index substituted on the one hand and the RPI or any index previously substituted therefore on the other hand



- NOTES**
1. THIS IS AN A1 DRAWING. IF REPRODUCED IN ANY OTHER FORMAT THE SCALE SHOWN WILL BE INCORRECT.
 2. ANY AMBIGUITIES, OMISSIONS AND ERRORS OR INCONSISTENCIES WITH OTHER DRAWINGS SHALL BE THE ARCHITECT'S RESPONSIBILITY. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY TO THE ARCHITECT BEFORE THE COMMENCEMENT OF WORKS.
 3. ALL DIMENSIONS ARE IN MILLIMETRES UNLESS OTHERWISE STATED. DIMENSIONS SHALL BE TO THE FACE OF UNFINISHED MASONRY WALLS OR TO THE FINISHED PLASTER FACE OF BRICK PARTITIONS.
 4. ALL DIMENSIONS ARE TO BE NOTED IMMEDIATELY TO THE ARCHITECT ON SITE. THE COMMENCEMENT OF WORKS SHALL BE TO THE FACE OF UNFINISHED MASONRY WALLS OR TO THE FINISHED PLASTER FACE OF BRICK PARTITIONS.
 5. THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL OTHER RELEVANT PROJECT AND APPARENT INCONSISTENCIES BROUGHT TO THE ATTENTION OF THE ARCHITECT.

NO	DATE	DESCRIPTION
1	22.01.2015	Plot 11 & 12 Updated
2	19.11.2014	Boundary line amended
3	07.11.2014	Minor amendments
4	23.10.2014	Site plan revised
5	03.10.2014	Site plan revised
6	17.07.2014	Site plan revised
7	10.07.2014	Site plan revised
8	12.05.2014	Site plan revised

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Project
 Royal Constans Housing

Drawing Title
 Proposed Site Plan

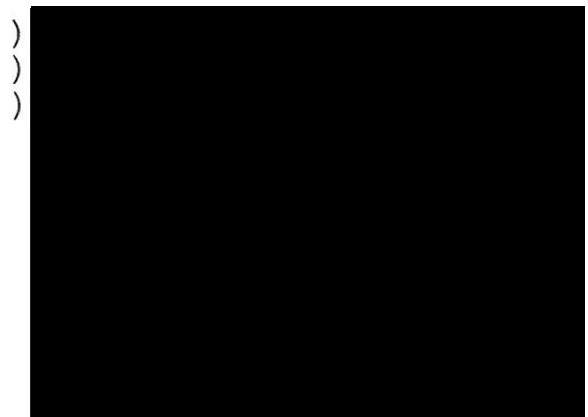
Scale 1:200 **Date** 08.05.14
Drawn SS **Checked** xx
Approved xx **Status** Planning

Drawing Number 4467 (2D) 201
Revision L

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IN WITNESS whereof the parties hereto have executed this Agreement as a Deed on the date first above written

SIGNED as a DEED by
CHEVRON AEROSPACE LIMITED
acting by: JOHN SWINSCOE



Director

Director/Secretary

THE COMMON SEAL OF
ASHFIELD DISTRICT COUNCIL
was hereunto affixed in the presence of: -

)
)
)



Chairman of the Council

