

DATED 11<sup>th</sup> April 2019

**PLANNING OBLIGATION UNDER SECTION 106 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990 RELATING TO LAND OFF SOUTH MARSH  
ROAD, STALLINGBOROUGH, GRIMSBY**

between

**NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL**

and

**EP SHB LIMITED**

THIS DEED is dated 11<sup>th</sup> April 2019  
between

- (1) **NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL** of Municipal Offices  
Town Hall Square Grimsby North East Lincolnshire (**Council**).
- (2) **EP SHB LIMITED** (Company Registration Number 02571241) of Berger  
House, 36-38 Berkeley Square, London W1J 5AE (**Owner**).

#### **BACKGROUND**

- (A) The Council is the local planning authority for the purposes of the TCPA for the area in which the Property is situated and the highway authority for the purposes of the Highways Act 1980.
- (B) The Owner is the freehold owner of that part of the Property registered at the Land Registry with Title Absolute under Title Number HS239444.
- (C) The Owner has submitted the Planning Application and the Council has resolved to grant the Planning Permission subject to the planning obligations contained in this Deed being secured, and the parties have agreed to into this Deed in order to do so.
- (D) The Property is within the South Humber Bank mitigation zone and the Development will impact land which is functionally linked to the Humber Estuary Special Protection Area / Ramsar site, and therefore pursuant to the South Humber Gateway Ecological Mitigation Delivery Plan (September 2016) a contribution is required to mitigate the Development's impacts. The Habitat Contribution is to be spent by the Council in delivering mitigation at the Habitat Mitigation Site. At the date of this Agreement the Council has already completed works there to deliver sufficient mitigation land for the Development.

#### **AGREED TERMS**

##### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this deed:

##### **1.1 Definitions:**

**Base Rate:** the base rate from time to time of Barclays Bank plc.

**Commencement of Development:** the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA but disregarding for the purposes of this deed and for no other purpose, the following operations: demolition works; site clearance; ground investigations; remedial works in respect of any contamination or other adverse ground conditions; diversion and laying of services; site survey

works; temporary access construction works; archaeological investigation; temporary display of site notices; and erection of any fences and hoardings around the Property, and **Commence** and **Commences** shall be construed accordingly.

**Commencement Date:** the date the Development Commences.

**Default Interest Rate:** 2% per annum above the Base Rate.

**Development:** the development of the Property authorised by the Planning Permission or any further planning permission that is issued as a variation of the Planning Permission under section 73 or 73A of the TCPA.

**Habitat Contribution:** £105,378.00 (one hundred and five thousand and three hundred and seventy eight pounds).

**Habitat Mitigation Site:** means the site known as Cress Marsh on South Marsh Road, Stallingborough, Grimsby, North East Lincolnshire at which the Council is carrying out and will maintain habitat which is designed to support species which use the Humber Estuary Special Protection Area / Ramsar Site

**Index Linked:** increased in accordance with the following formula:

Amount payable = the payment specified in this deed x (A/B) where:

A= the figure for the Retail Prices Index (All Items) that applied immediately preceding the date the payment is due.

B= the figure for the Retail Prices Index (All Items) that applied when the index was last published prior to the date of this deed.

**Occupation:** occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, commissioning, fitting out, decoration, or occupation for marketing or display or occupation in relation to security operations or any other activity preparatory to the use of a building for the purposes authorised by the Planning Permission and **Occupy** shall be construed accordingly.

**Plan:** the plan attached as Annex A.

**Planning Application:** the application for FULL Planning permission registered by the Council under reference number DM/1070/18/FUL.

**Planning Permission:** the planning permission to be granted by the Council in respect of the Planning Application

**Property:** the land at rear of Power Station, South Marsh Road, Stallingborough, North East Lincolnshire shown edged green on the Plan being part of the land registered at HM Land Registry with absolute title under title number HS239444.

**TCPA** Town and Country Planning Act 1990.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

**Working Day:** any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and in the case of the Council the successors to its respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include fax or email.
- 1.11 A reference to **this deed** or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of this deed.
- 1.13 An obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.15 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

## **2. STATUTORY PROVISIONS**

2.1 This deed constitutes a planning obligation for the purposes of section 106 of the TCPA and is also entered into pursuant to section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

2.2 The covenants, restrictions and obligations contained in this deed on the part of the Owner are planning obligations for the purposes of section 106 of the TCPA and are entered into by the Owner with the intention that they bind the interests held by those persons in the Property and their respective successors and assigns.

2.3 The covenants, restrictions and obligations contained in this deed are enforceable by the Council in accordance with section 106 of the TCPA.

2.4 Except for the planning obligations contained in this deed specifically regulating the use of land or buildings after construction (if any), no planning obligations contained in this deed shall be binding on any freehold or leasehold owners or occupiers of individual dwellings constructed pursuant to the Planning Permission (or their respective mortgagees) or land held by any statutory utility or statutory undertaker for their operational purposes.

## **3. ENFORCEABILITY**

3.1 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.

## **4. COVENANTS TO THE COUNCIL**

The Owner covenants with the Council to observe and perform the covenants, restrictions and obligations contained in Schedule 1.

**5. COVENANTS BY THE COUNCIL**

The Council covenants with the Owner to observe and perform the covenants, restrictions and obligations contained in Schedule 2.

**6. INDEXATION**

6.1 All financial contributions payable to the Council shall be Index Linked.

6.2 Where reference is made to an index and that index ceases to exist or is replaced or rebased then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this deed) or in the event the index is not replaced, to an alternative reasonably comparable basis or index as the Council shall advise the Owner in writing.

**7. RELEASE**

No person shall be liable for any breach of a covenant, restriction or obligation contained in this deed after parting with all of its interest in the Property, except in respect of any breach subsisting prior to parting with such interest and relating to that part of the Property of which such person was the registered proprietor at the time of the breach.

**8. DETERMINATION OF DEED**

The obligations in this deed (with the exception of clause 10) shall cease to have effect if before the Commencement of Development, the Planning Permission:

- (a) expires;
- (b) is revoked or otherwise withdrawn; or
- (c) is quashed following a successful legal challenge.

**9. LOCAL LAND CHARGE**

This deed is a local land charge and shall be registered as such by the Council.

**10. COUNCIL'S COSTS**

The Owner shall pay to the Council on or before the date of this deed the Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and

registration of this deed not exceeding £750 (seven hundred and fifty pounds).

**11. INTEREST ON LATE PAYMENT**

If any sum or amount has not been paid to the Council by the date it is due, the Owner shall pay the Council interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

**12. OWNERSHIP**

12.1 The Owner warrants that no person other than the Owner has any legal or equitable interest in the Property other than any matters which are recorded against title number HS239444.

12.2 Until the covenants, restrictions and obligations in Schedule 1 have been complied with, the Owner will give to the Council within ten Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Property (other than in respect of individual Dwellings):

- (a) the name and address of the person to whom the disposition was made; and
- (b) the nature and extent of the interest disposed of.

**13. REASONABLENESS**

13.1 Any approval, consent, direction, authority, agreement or action to be given by the Council under this deed shall not be unreasonably withheld or delayed.

**14. CANCELLATION OF ENTRIES**

14.1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged (and subject to the payment of the Council's reasonable and proper costs) the Council will issue a written confirmation of such performance or discharge.

14.2 Following the performance and full satisfaction of all the terms of this agreement or if this deed is determined pursuant to clause 8 (and subject to the payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Owner note on the local land

charges register that the obligations in respect of this deed have been complied with.

## **15. DISPUTES**

- 15.1 In the event of any dispute between the parties to this Deed any party may invite any other party to resolve the dispute by mediation in such manner as the parties may agree.
- 15.2 Without prejudice to clause 15.1 in the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to a person with not less than ten years' recent and relevant experience of the matter in dispute whose identity will be agreed between the parties or in the absence of an agreement by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert (hereinafter the "**Expert**") whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 15.3 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to clause 15.2 or as to the appropriateness of the professional body then such question may be referred by either party to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute such solicitor acting as an expert and his decision shall be final and binding on all parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 15.4 The Expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received any file or written representation.
- 15.5 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten working days.



- 15.6 The provisions of this clause shall not affect the ability of the Council to apply for and be granted any of the following: declaratory relief, injunction, specific performance, payment of any sum, damages, any other means of enforcing this Deed and consequential and interim orders and relief.

**16. NO FETTER OF DISCRETION**

Nothing (contained or implied) in this deed shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

**17. WAIVER**

No failure or delay by the Council or the Owner to exercise any right or remedy provided under this deed or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**18. FUTURE PERMISSION**

- 18.1 Nothing in this agreement shall prohibit or limit the right to develop any part of the Property in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

**19. AGREEMENTS AND DECLARATIONS**

The parties agree that:

- (a) nothing in this deed constitutes a planning permission or an obligation to grant planning permission; and
- (b) nothing in this deed grants planning permission or any other approval, consent or permission required from the Council in the exercise of any other statutory function.

**20. NOTICES**

- 20.1 Any notice to be given under this deed must be in writing and must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service.

- 20.2 Any notice to be given under this deed must be sent to the relevant party as follows:

- (a) to the Council at Municipal Offices, Town Hall Square, Grimsby, DN31 1HU marked for the attention of Director of Economy & Growth
- (b) to the Owner at EP UK Investments Ltd, Ground Floor, Paradigm Way, 3175 Century Way, Thorpe Park, Leeds LS15 8ZB marked for the attention of James Crankshaw, Head of Engineering

or as otherwise specified by the relevant party by notice in writing to each other party.

20.3 Any notice given in accordance with clause 20.1 and clause 20.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day; or
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

20.4 A notice given under this deed shall not be validly given if sent by e-mail or fax.

20.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **21. THIRD PARTY RIGHTS**

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

## **22. VALUE ADDED TAX**

22.1 Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this deed is exclusive of VAT (if any).

22.2 If any VAT is at any time chargeable on any supply made by the Council or the Owner under or pursuant to this deed, the party making the payment shall pay the other an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.

**23. GOVERNING LAW**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **Schedule 1   Covenants to the Council**

### **1.      Notice of Commencement Date**

- 1.1      To give at least ten Working Days' written notice to the Council of the intended Commencement Date.

### **2.      Notice of completion of the Development**

- 2.1      To give written notice to the Council upon completion of the Development.

### **3.      Habitat Contribution**

- 3.1      Not to Occupy (nor permit or allow the Occupation of) the Development until the Habitat Contribution has been paid to the Council.

## **Schedule 2 Covenants by the Council**

### **1. Issue of Planning Permission**

- 1.1 To issue the Planning Permission within two Working Days of the date of this Deed.

### **2. Details of Expenditure**

- 2.1 To provide to the Owner such evidence as the Owner shall reasonably require to confirm that the Council has used the sums paid by the Owner under this Deed for the purposes provided for in this deed.

### **3. Evidence of Discharge**

- 3.1 To supply the confirmations referred to in clause 14 of the main body of this deed promptly in accordance with the provisions of clause 14.

### **4. Habitat Contribution**

- 4.1 To apply the Habitat Contribution and any accumulated interest solely towards the reimbursement of monies already expended on the centralised off-site mitigation project in the South Humber Bank Mitigation Zone to offset the Property being used for the Development being the habitat creation and maintenance works at the Habitat Mitigation Site.

## Annex A. Plan



FOR LOCAL AUTHORITY PLANNING PURPOSES ONLY

LEGEND

- LAND CONTROLLED BY APPLICANT
- PLANNING APPLICATION BOUNDARY
- MAIN DEVELOPMENT AREA

VICTORIA PEARSON

DIRECTOR

ANTONIA STOCKTON

DIRECTOR

REV.	DETAILS OF REVISION	AD	TO	20.12.18
R1	FOR APPROVAL	AD	TO	20.12.18



**FICHTNER**  
CONSULTING ENGINEERS LIMITED

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Website: www.fichtner.co.uk

CLIENT:	EP UK INVESTMENTS LTD
SITE:	SOUTH HUMBER BANK
PROJECT:	SOUTH HUMBER BANK ENERGY CENTRE
TITLE:	SITE CONTEXT PLAN

DRAWING STATUS:	FOR APPROVAL
DRAWN BY:	AD
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REVISION:  
R1

The common seal of NORTH EAST  
LINCOLNSHIRE BOROUGH COUNCIL  
was affixed to this document in the  
presence of:

Authorised signatory



8347



EXECUTED as a Deed  
(but not delivered until dated) by  
**EP SHB LIMITED**  
acting by a director in the presence of:

)  
)  
)  
)  
)

Director

.....  
Signature of witness

.....  
VICTORIA PEARSON  
Name of witness

..  
Address

.....  
ACCOUNTANT  
Occupation

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