

DATED _____ **2009**

**SOUTH CAMBRIDGESHIRE DISTRICT (1)
COUNCIL**

and

CAMBRIDGESHIRE COUNTY COUNCIL (2)

and

HEXCEL COMPOSITES LIMITED (3)

PLANNING AGREEMENT

**made pursuant to section 106 Town
and Country Planning Act 1990
re: Hexcel, Duxford**

MILLS & REEVE

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THIS AGREEMENT is made on

2009 **BETWEEN:**

- (1) **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** of South Cambridgeshire Hall Cambourne Cambridge CB3 6EA (“**the Council**”); and
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall Castle Hill Cambridge (“**the County Council**”); and
- (3) **HEXCEL COMPOSITES LIMITED** whose registered office is at Duxford Cambridge CB22 4QD (Co. Regn. No. **3069887**) (“**the Owner**”); and

WHEREAS:

- (A) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Property is situated and by whom the obligations contained in Schedule 4 of this deed are enforceable.
- (B) The County Council is the Local Highway Authority for the relevant area and also a Local Planning Authority by whom the obligations contained in Schedule 3 of this deed are enforceable.
- (C) The Owner is the registered proprietor at the Land Registry of the Property subject to the matters recorded on the Register for title number [] but otherwise free from encumbrances.
- (D) The Owner has submitted the Application.
- (E) The Council has decided to grant the Permission in accordance with the Application but having regard to relevant development plan policies the Council is unwilling to approve or conditionally approve the Application without first having entered into this deed.

NOW THIS DEED WITNESSES as follows:

1 Definitions and interpretation

- 1.1 In this deed where the context so admits the following expressions shall have the following meanings:

“**Application**” means the application for planning permission relating to the Property dated 4 September 2006 submitted to the Council and registered under reference number S/1749/06/O relating to the Development;

“**Cycleway Contribution**” means the sum of £35,000 for the purposes of contributing towards the cost of constructing a cycleway between Duxford and Ickleton along Ickleton Road;

“**Development**” means the building and other works defined in Schedule 2 of this deed;

“**First Occupation**” means the first day on which there shall be Occupation;

“**Implementation**” means the date on which a material operation is carried out as defined in section 56(4) of the 1990 Act comprised in the Development provided that for the purposes of this deed the following shall be deemed not to amount to Implementation: works of excavation or investigation; preliminary site works; site clearance; providing services and statutory undertakers equipment diversions; soil and ground investigations; the erection of any hoardings and fences or other site security measures and “**Implemented**” shall be construed accordingly;

“**Index**” means the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Price Index and “**Indexation**” shall be construed accordingly in light of the operation of clause 10.5;

“**Interest**” means the Bank of England Base Rate for the relevant time from the date of receipt by the County Council of the relevant contribution to the date of any refund in accordance with Schedule 5;

“**Junction Safety Assessment**” means the written report of an assessment to be carried out by or on behalf of the Owner for the purposes of assessing the operation in road safety terms of the junction of Hunts Road and Ickleton Road such assessment to satisfy the following;

- a) it shall be carried out at a cost to the Owner not exceeding £15,000 (unless with the agreement of the Owner) and
- b) it shall be carried out by a suitable competent and qualified person to a

methodology and brief developed in consultation with the County Council before the assessment is carried out;

“Occupation” means beneficial occupation (excluding for the purposes of construction, fitting out and testing) of the full extent of the Development following its completion and **“Occupy”** shall be construed accordingly;

“Permission” means a planning permission to be issued by the Council pursuant to the Application;

“Plan” means the plan attached to this deed;

“Property” means the land edged red on the Plan and described in Schedule 1;

“School Warning Sign Contribution” means the sum of £25,000 for the purposes of installing at appropriate locations in the vicinity of Duxford primary school 2 flashing warning signs displaying to oncoming drivers “20” at times to coincide with those times when children might be expected to be walking to and from school;

“Speed Warning Contribution” means the sum of £34,500 for the purposes of installing three flashing speed warning signs one at each entrance to the village of Duxford on Hunts Road, Ickleton Road and Moorfield Road;

“1990 Act” means the Town and Country Planning Act 1990;

1.2 Interpretation

1.2.1 The expression **“the Council”** and **“the County Council”** shall include successors to their respective statutory functions under the 1990 Act.

1.2.2 The expressions **“Owner”** includes those deriving title from the Owner including where the context so admits its successors and assigns.

1.2.3 Titles and headings to the clauses and paragraphs in this deed and its schedules are for convenience only and shall not be construed in or affect the interpretation of this deed.

1.2.4 Any references to a particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also include any regulations or orders made in pursuance of it.

2 Statutory powers

- 2.1 This deed is made pursuant to s106 of the 1990 Act and constitutes a planning obligation for the purposes of the 1990 Act enforceable by the Council and the County Council according to the terms hereof and covenants given by the Council and the County Council are given pursuant to s111 of the Local Government Act 1972, s2 of the Local Government Act 2000 and all other enabling powers.
- 2.2 Nothing in this deed shall prejudice or affect the rights, powers, duties and obligations of the Council or the County Council in the exercise of their respective statutory functions.

3 Commencement

The entry into force of the provisions of this deed (other than clauses 4 and 5 which are conditional upon the Permission being granted and Implemented) have effect immediately upon delivery of this deed.

4 Covenants by the Owner

- 4.1 The Owner hereby covenants with the County Council that it shall carry out and comply with the restrictions provisions and obligations contained in Schedule 3.
- 4.2 The Owner hereby covenants with the Council that it shall carry out and comply with the restrictions provisions and obligations contained in Schedule 4.

5 Covenants by the Council and the County Council

- 5.1 The Council and County Council hereby covenant with the Owner to observe and perform those matters contained in Schedule 5.

6 Registration as local land charge

It is hereby agreed and declared between the parties hereto that this deed shall forthwith be registered as a local land charge for the purposes of the Local Land Charges Act 1975.

7 Costs of this deed

The Owner shall pay the Council's and County Council's reasonable legal costs in connection with the preparation completion and registration of this deed.

8 Successors in title

- 8.1 This deed shall be enforceable against the Owner and any person for the time being deriving title from the Owner as provided in section 106(3) of the 1990 Act.
- 8.2 In accordance with section 106(4) of the 1990 Act neither the Owner nor any person deriving title from the Owner shall have any further liability under this deed (but without prejudice to the rights of the Council in respect of any antecedent breach) in respect of any period during which the Owner (or as the case may be such other person) no longer has an interest in the Property.

9 Disputes

- 9.1 Without prejudice to the other rights of the Owner and the Council or County Council where any dispute or difference shall arise in connection with this deed any party shall be entitled to have the matter referred to the determination of an expert planning and development surveyor ("**the Appointed Expert**") having not less than ten years' relevant experience in the field of the matter in dispute and being a member of the Royal Institution of Chartered Surveyors the identity of such person in default of agreement being an appointment made on the application of any party to such dispute at any time by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors PROVIDED THAT in the absence of a direction by the Appointed Expert in accordance with clause 9.2.4 as to how the costs of the reference to the Appointed Expert should be borne as between the relevant parties the parties to such dispute shall bear their own costs and shall share equally the costs and charges of the appointed expert.
- 9.2 The Appointed Expert shall:
- 9.2.1 afford to each of the parties to the dispute an opportunity to make representations to him in writing and if he/she so directs submissions upon one another's representations;
 - 9.2.2 be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;
 - 9.2.3 be bound to have regard to such representations together with the terms hereof;

- 9.2.4 have the power of making directions as to the responsibility for the costs of his/her award (including both the costs of the relevant parties and the costs and charges of the Appointed Expert) to be met by any party behaving unreasonably;
- 9.2.5 in the making of his/her award not be liable save to the extent in law as provided in relation to the decisions of an expert;
- 9.2.6 make awards which are final and conclusive as between the parties to such dispute (except that such awards shall not remove the parties' rights of appeal on matters of law); and
- 9.2.7 be replaced by a fresh appointee in the event of his/her becoming at any time unable or unwilling for any reason to proceed to discharge his/her function such fresh appointee to be appointed in the manner prescribed in clause 9.1 of this clause 9.

10 Use of Contributions and Indexation

- 10.1 The various works and improvements referred to in this deed for which contributions are due from the Owner may at the County Council's absolute discretion be commenced or provided (in whole or in part) at any time after the date of this deed notwithstanding that the trigger point for payment of the relevant contribution may not have arisen.
- 10.2 For the avoidance of doubt the Owner will pay the contributions at the time set out in Schedule 3. If the relevant works or improvements have at that point already been commenced or provided then such payment will be regarded as reimbursement of the costs incurred in providing the same.
- 10.3 Nothing in this clause 10 shall require the Owner to pay any such contribution;
 - 10.3.1 Before the date upon which or before the trigger point by which they are due as set out in Schedule 3; or
 - 10.3.2 At all if the said trigger point is not reached; or
 - 10.3.3 In a sum greater than that provided for in Schedule 3 and by reference to the relevant defined term.

10.4 The County Council shall be entitled to use all interest accrued on the contributions specified in Schedule 3 from the date of actual payment thereof to the County Council until the date when such monies are spent for the purpose intended and provided for in this deed.

10.5 Each of the contributions specified in Schedule 3 shall be linked to the Index so as to reflect movements in the Index from the date of this deed to the actual payment of each of the same.

11 Third party rights

Save as to allow any successor to the Owner to enforce covenants given by the Council or County Council as the case may be the parties intend that no person who is not a party to this deed is to have the benefit of or be capable of enforcing any term of this deed as a result of the Contracts (Rights of Third Parties) Act 1999.

12 Service of notices

12.1 Any notice request demand or other written communication to or upon the respective parties hereto pursuant to this deed shall be deemed to have been properly given or made if it contains reference to this deed and its date and the Permission together with the reference given to the Permission by the Council and if it is dispatched by first class letter to the party to which such notice request demand or other written communication is to be given or made under this deed and addressed as follows (or to such other address as may be notified in accordance with this clause):

12.1.1 if to the Council: South Cambridgeshire District Council South
Cambridgeshire Hall Cambourne Cambridge CB3
6EA

attention: Head of Planning

12.1.2 if to the County Council: Cambridgeshire County Council Shire Hall Castle
Hill Cambridge

attention: []

12.1.3 if to the Owner: Hexcel Composites Limited, Duxford Cambridge
CB22 4QD

attention: European Counsel

IN WITNESS whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

Schedule 1

The Property

The land off Ickleton Road Duxford registered at the Land Registry under title number [] the registered proprietor of which is the Owner and which is outlined in red on the Plan.

Schedule 2

The Development

Construction of a Carbon Fibre Precursor (CFP) plant at land off Ickleton Road Duxford

Schedule 3

The Obligations enforceable by the County Council

- 1 No later than Implementation the Owner shall pay the Cycleway Contribution, the Speed Warning Contribution and the School Warning Sign Contribution to the County Council.

Schedule 4

The Obligations enforceable by the Council

- 1 The Owner shall ensure that it is a contractual term of employment for all day time staff employed in the Development that their daily start time is no later than 8am unless the start time is also later than 9am.
- 2 No later than the first anniversary of First Occupation to provide the Council with a Junction Safety Assessment
- 3 Following approval by the Council of the feasibility study required by condition 8 (imposed on the Permission) in relation to the land shown hatched blue on the Plan not to Occupy until a contract has been let for the planting of the said land in accordance with the said approved study.

Schedule 5

Covenants given by the Council and the County Council as set out

- 1 The County Council shall use any contribution paid by the Owner under this deed for no purposes other than as set out in the relevant defined term relating to that contribution.
- 2 As soon as reasonably practicable following the carrying out of each of the said works or improvements (for which contributions are due under this deed) the County Council shall provide the Owner with a detailed note of the costs associated with the relevant works or improvements and to the extent that the said works cost less than the relevant contribution shall at the same time as the said note is due refund any difference between the cost of the said works or improvement and the said contribution to the Owner with Interest.
- 3 If at the expiry of five years from the date of payment of any contribution due under this deed all or part of the relevant contribution (including any sum paid by way of Indexation) shall be unspent for the relevant purpose the County Council shall refund any unspent sum to the Owner with Interest provided that if before the expiry of the relevant five year period there is or are a contract or contracts in existence committing the County Council to pay for the relevant works or improvements (whether or not the relevant works or improvements are to be completed within the five year period) any refund to the Owner in accordance with this Schedule 5 shall be made following the payment of the final account of any and all contracts (relating to the relevant works or improvements) and the sum to be refunded shall be less all costs incurred and/or paid to provide the said improvements pursuant to such contract or contracts.
- 4 On receipt of the Junction Safety Assessment from the Owner the Council shall provide the County Council with a copy of the same.
- 5 The Council shall not unreasonably refuse or delay approval of the scheme referred to in paragraph 3 of Schedule 4

Executed as a deed by affixing the common)
seal of **SOUTH CAMBRIDGESHIRE**)
DISTRICT COUNCIL in the presence of:)

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Executed as a deed by affixing the common)
seal of **CAMBRIDGESHIRE COUNTY**)
COUNCIL in the presence of:)

.....

Executed as a deed by affixing the common)
seal of **HEXCEL COMPOSITES LIMITED** in)
the presence of:)

.....

Director

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Director/Secretary

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