

Dated 24th May 2012

(1) BROADLAND DISTRICT COUNCIL

- AND -

(2) NORFOLK COUNTY COUNCIL

- AND -

(3) TAYLOR WIMPEY UK LIMITED

-AND-

(4) OLD CATTON PARISH COUNCIL

AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990

relating to the development of land
at Spixworth Road Old Catton Norwich Norfolk

Broadland District Council
Thorpe Lodge
1 Yarmouth Road
Thorpe
Norwich
NR7 0DU

THIS AGREEMENT is made the 24th day of May 2012
BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU (hereinafter called "The Council")
2. NORFOLK COUNTY COUNCIL (hereinafter called "The County Council") of County Hall Martineau Lane Norwich NR1 2DH
3. TAYLOR WIMPEY UK LIMITED of Gate House Turnpike Road High Wycombe Buckinghamshire HP12 3NR (hereinafter called "the Owner")
4. OLD CATTON PARISH COUNCIL (hereinafter called the "Parish Council") of The Pavilion Recreation Ground Church Street Norwich NR6 7DS

1. INTERPRETATION AND DEFINITIONS

- 1.1 In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"2009 Agreement"	an agreement made under s106 of the Act dated 28 th September 2009 made between (1) the Council (2) the County Council (3) David Fullman and Others and (4) The Parish Council relating to planning permission reference 20070962 for development of inter alia the Site
"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market

"Affordable Housing
Provider" ("AHP")

either:

- (i) a registered provider as defined by S.80 of the Housing and Regeneration Act 2008; or
- (ii) another body whose object is or contains the provision and/or operation of affordable housing and which has been approved by the District Council for the provision and/or operation of affordable housing within the administrative area of Broadland or has otherwise been approved by the District Council for the purposes of this Agreement

"Affordable Housing Units"

Dwellings to be provided as Affordable Housing in accordance with Schedule 1 and consisting of seven Affordable Rental Units and six Shared Ownership Units

"Affordable Rental Units"

seven Affordable Housing Units to be constructed or provided as part of the Development and to be let for a rent by or on behalf of an AHP in accordance with the AHP's normal letting policy

"Application"

the application for detailed planning permission registered on 11 November 2011 for residential development comprising a maximum of 40 Dwellings on the Site with associated access roads, car parking, amenity space, landscaping and a cycle/footway link bearing reference

number 20111703

"Car Park"	the area outlined in blue on the Plan for use as a car parking area and to provide 29 car parking spaces
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government dated December 2006
"County Council's Monitoring Fee"	the sum of six hundred pounds (£600) Index Linked payable by the Owner to the County Council
"Development"	the development permitted by the Planning Permission
"Director"	the District Council's Chief Executive or other officers of the Council acting under his hand
"District Council's Monitoring Fee"	the sum of Six hundred and thirty eight pounds (£638) Index Linked payable by the Owner to the District Council
"Dwelling"	any unit of residential occupation being a self-contained house maisonette bungalow or flat constructed as part of the Development and "Dwelling" shall be constructed accordingly
"HCA Standards"	the "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Communities Agency

"Implementation"	the carrying out on the Site pursuant to the Planning Permission of a Material Operation
"Index Linked"	means that any sum payable under the terms of this Deed which is expressed to be Index Linked shall be increased from the date of this Agreement until the date of payment in proportion to the increase in the Royal Institution of Chartered Surveyors Building Cost Information Service All In Tender Index (or if such index ceases to be published such other index as the County Council shall reasonably determine)
"Inflation Provision"	the increase (if any) in the BIS (Department for Business Innovation and Skills) Output Price Index for New Construction (2010) : All New Construction between 30 th September 2006 and the date upon which a payment of the Open Space Contribution is made pursuant to this Agreement
"Library Contribution"	the sum of two thousand four hundred pounds (£2,400) such sum to be Index Linked
"Material Operation"	a material operation as defined in Section 56(4) of the Act
"Open Space Contribution"	the sum of one hundred and twenty three thousand four hundred and forty pounds (£123,440) for the future provision and maintenance of Open Space in the Parish of Old Catton such sum to be subject to the

	Inflation Provision
"Open Market Dwellings"	dwellings erected or provided on the Site as part of the Development other than for the provision of Affordable Housing
"the Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs contained in the Council's policies relating to housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002)
"School Contribution"	the sum of One hundred and twenty four thousand three hundred and five pounds (£124,305) such sum to be Index Linked
"Shared Ownership Dwellings"	six Affordable Housing Units to be let to Qualifying Occupiers on Shared Ownership Leases to be provided on the Site as part of the Development

"Shared Ownership Lease" a lease of a Shared Ownership Unit which lease shall include arrangements enabling the lessee to acquire up to 80% (eighty per cent) of the legal and equitable interest in the Shared Ownership Dwelling initially with the balance at some future date or dates

"Site" the land at Spixworth Road Old Catton Norwich shown for the purposes of identification only edged red on the Plan

1.2 In this Agreement unless the context otherwise requires:

- (a) references to any party shall include the successors in title and assigns of that party
- (b) references to clauses and schedules are references to clauses in and schedules to this Agreement
- (c) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument
- (d) headings in this Agreement shall not form part of or affect its construction

WHEREAS:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated and the County Council is the relevant Highway Authority and is also a Local Planning Authority for the purposes of the Act
- B. The Owner is the freehold owner of the Site which is registered at the Land Registry under Title Number NK356089 free from incumbrances
- C. The Owner submitted the Application and the Council has resolved to grant the Planning Permission subject to the entering into of this Agreement

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers
- 2.2 The obligations of the Owner hereunder are planning obligations enforceable by the Council and the County Council and the Parish Council against the Owner and its successors in title and assigns
- 2.3 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn or the Planning Permission shall expire without having been implemented
- 2.4 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges
- 2.5 In the event that this Agreement comes to an end the Council if so requested by the Owner will execute a deed of release (or partial release) from the relevant provisions of this Agreement and procure that a note thereof shall be registered on the Council's Register of Local Land Charges

- 2.6 Upon Implementation the Site shall be released in its entirety from the obligations and conditions contained in the 2009 Agreement and insofar as such obligations and conditions bind the Owner the Owner shall be released from any liability in respect thereof

3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of the Council or the County Council in the exercise of their functions as Local Planning Authority and Highway Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council or the County Council were not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

No waiver (whether express or implied) by the Council or the County Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council from enforcing any of

the covenants or from acting upon any subsequent breach or default in respect thereof

- 3.4 No occupier of a Dwelling shall be liable under this Agreement for any breaches of the covenants contained in this Agreement provided that at the time of their first occupation there are no breaches of the Agreement. The obligations contained in this Agreement relating to the occupation of Dwellings as Affordable Housing Units will notwithstanding this provision bind occupiers of the Affordable Housing on the Site
- 3.5 No party shall be liable under this Agreement for any breach of the covenants contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any person's interest in the Site or any part thereof in respect of which any such breach has taken place
- 3.6 Save as expressly provided in this Agreement the County Council shall not be liable to any person under this Agreement after that person has parted with all interest in the Site but without prejudice to any liability arising prior thereto



Head of Democratic Services and Monitoring Officer

Scale	1:1250 @ A3	Date	April 2012
Drawn by	MDC	Checked by	
Rev	416/173	Rev	-
☐ Preliminary ☐ Tender ☐ Construction ☐ As-built			

Taylor Wimpey
 Taylor Wimpey East Angles
 The Old Rectory, 100 St Edmunds Road, Ipswich, Suffolk IP1 1AA
 Tel: 01473 221111 Fax: 01473 221112
 Web: www.taylorwimpey.co.uk

Spixworth Road, Old Catton

Section 106
 Plan

Site Name

Drawing Title

Rev.	Description	Int.	Date

4. NOTICES

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter

4.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

4.2.1 The Council Head of Planning
Thorpe Lodge
Yarmouth Road
Thorpe St Andrew
Norwich NR7 0DU

4.2.2 The Owner Taylor Wimpey UK Limited
Gate House
Turnpike Road
High Wycombe
Buckinghamshire
HP12 3NR

4.2.3. The County The Head of Library and Information Service
Council or The Director of Children's Services as the case
may be:
County Hall
Martineau Lane
Norwich
NR1 2DH

4.2.4 The Parish Parish Clerk
Council The Pavilion
Recreation Ground
Church Street
Norwich
Norfolk
NR6 7DS

4.3 Any notice or other written communication to be given by the Council or County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or County Council by a duly authorised officer

5. THIRD PARTIES

- 5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

6. COSTS

- 6.1 The Owner shall on completion of this Agreement pay the Council's and the County Council's legal costs incurred in the preparation negotiation and completion of this Agreement

7. PAYMENT OF INTEREST

- 7.1 The Owner shall pay interest at the rate of 4% above Barclays Bank Plc base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

8. VAT

- 8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. JURISDICTION

- 9.1 This Agreement is to be governed by and interpreted in accordance with the law of England and Wales

10. COMPENSATION

- 10.1 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived

11. TITLE WARRANTY

- 11.1 The Owner hereby warrants that it is the freehold owners of the Site which is registered at the Land Registry under title number NK356089 ("the Registered Land") and has full power to enter in to this Agreement and that the Registered Land is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Registered Land other than as notified in writing to the Council and the County Council's Head of Law prior to the date hereof

12. DISPUTES

- 12.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 12.2 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

12.3 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 Royal Institution of Chartered Surveyors who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties.

12.4 Nothing in Clauses 12.1 12.2 and 12.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

13. PLANNING OBLIGATIONS

13.1 The Owner hereby covenants with the Council to carry out and comply with the obligations and restrictions set out in Schedules 1, 2, 3 and 4 to this Agreement

13.2 The Owner hereby covenants with the County Council to carry out and comply with the obligations and restrictions set out in the Schedules 5, 6 and 7 to this Agreement

13.3 The Owner and the Parish Council hereby covenant with each other to carry out and comply with their respective obligations and restrictions set out in Schedule 8 to this Agreement

13.4 The Owner hereby covenants with the Council and the County Council to notify the Council and the County Council of the reaching of any of the occupational or completion thresholds contained in this Agreement such notification to be given within 15 working days of reaching such threshold

14. INFLATION PROOFING

14.1 It is declared for the avoidance of doubt that the Open Space Contribution shall not be Index Linked but shall be subject to the Inflation Provision

15. COUNCIL COVENANT

- 15.1 The Council covenants with the Owner that if the Council has not applied any part of the Open Space Contribution towards the provision and maintenance of open space in the Parish of Old Catton and/or towards the provision and maintenance of additional recreational facilities on open space in the Parish of Old Catton within 5 years from the date of receipt of the same to repay to the Owner (here meaning the party named as the Owner on page 1 of this Agreement but not their successors in title to the Site) on demand the Open Space Contribution or unexpended part thereof together with interest at the base lending rate of Barclays Bank PLC from the date of receipt until the date of payment.

16. COUNTY COUNCIL COVENANT

- 16.1 The County Council covenants with the Owner that if the County Council has not applied any part of the Library Contribution or the School Contribution towards their respective purposes within 5 years from completion of the Development to repay to the Owner (here meaning the party named as the Owner on page 1 of this Agreement and not their successor in title to the Site) on demand the Library Contribution or School Contribution or unexpended part thereof together with interest at the base lending rate of Barclays Bank PLC from the date of receipt until the date of payment

SCHEDULE 1

1. AFFORDABLE HOUSING

- 1.1 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission and the Code and in respect of the Affordable Rental Units only in accordance with the HCA Standards
- 1.2 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units and/or Shared Ownership Dwellings
- 1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.4 The Owner shall not dispose of its freehold interest in the Affordable Housing Units (except by way of mortgage or where the disposal is of the final tranche of equity of a Shared Ownership Unit) other than to an AHP
- 1.5 Paragraphs 1.2 and 1.3 and 1.4 above shall not be binding upon:
 - (a) any mortgage in possession of the Affordable Housing Units or part thereof nor
 - (b) any receiver or manager (including an administrative receiver) for such mortgagee nor
 - (c) any of the Affordable Housing Units where the Owner shall be required to dispose of such units pursuant to a right to buy under Part 5 of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right or statutory right which may be applicable nor

- 1.6 No more than ten (10) Open Market Dwellings shall be Occupied until the Owner has entered into a contract with an AHP approved by the Council (such approval not to be unreasonably withheld or delayed) for the provision of Affordable Housing on the site to an AHP
- 1.7 No more than 40% of the Open Market Dwellings shall be Occupied prior to the completion of the construction of 5 of the Affordable Housing Units on the Site pursuant to the Planning Permission and no more than 95% of the Open Market Dwellings shall be occupied prior to the completion of the construction of the remainder of the Affordable Housing Units on the Site pursuant to the Planning Permission so that each Affordable Housing Unit is ready and available for Occupation in accordance with the provisions of this Agreement (which shall be deemed to have occurred on the issue of a cover note from NHBC or the equivalent from any other building warranty provider.)

SCHEDULE 2

1. DISTRICT COUNCIL'S MONITORING FEE

- 1.1 The District Council's Monitoring Fee which is required for checking Implementation and compliance with the terms of this Agreement shall be paid to the District Council prior to Implementation

SCHEDULE 3

1. COMMUTED SUM FOR OPEN SPACE PROVISION AND MAINTENANCE

- 1.1 Not to commence construction of any Dwellings on the Site until the Open Space Contribution as increased by the Inflation Provision has first been paid to the Council as a financial contribution for open space provision and maintenance and/or provision and maintenance of additional recreational facilities

SCHEDULE 4

1. Prior to the commencement of any works on the Site in association with the implementation of the Planning Permission the Owner shall submit to the Council for approval a scheme for the future repair, replacement and ongoing maintenance of the surface water drainage scheme for the Development. No work to implement the Development shall commence until the scheme has been approved in writing by the Council such approval to be not unreasonably withheld or delayed

SCHEDULE 5

1. SCHOOL CONTRIBUTION
- 1.1 The School Contribution shall be paid to the County Council in its capacity as Education Authority prior to the occupation of 30% of all Dwellings erected on the Site

SCHEDULE 6

1. LIBRARY CONTRIBUTION
- 1.1 The Library Contribution shall be paid to the County Council prior to occupation of 30% of all Dwellings erected on the Site

SCHEDULE 7

1. COUNTY COUNCIL'S MONITORING FEE
- 1.1 The County Council's Monitoring Fee which is required for checking Implementation and compliance with the terms of this Agreement shall be paid to the County Council prior to Implementation

SCHEDULE 8

1. BENEFICIAL PROVISIONS FOR THE PARISH COUNCIL RELATING TO THE CAR PARK
 - 1.1 To transfer the freehold interest in the Car Park to the Parish Council prior to the Occupation of 50% of the Open Market Dwellings and the said land shall be transferred with limited title guarantee and with vacant possession.
 - 1.2 The Deed of Transfer relating to the transfer of the land to the Parish Council shall contain the following:-
 - (i) the grant for the benefit of the Car Park of a right of way with or without vehicles over such part of the new estate road as is hatched in brown on the Plan and
 - (ii) the reservation for the benefit of the Site of the right to install surface water drains soakaways and associated pipework in or under the Car Park and a right to free and uninterrupted use of the same
 - 1.3 The transfer will be completed in accordance with the standard conditions of sale (4th Edition) which shall be deemed to apply to any transfer under the provisions of this Schedule so far as they are applicable to the sale by private treaty and are not varied by or inconsistent with the express terms of this Agreement.
 - 1.4 Not to cause nor permit the Occupation of more than 30% of the Dwellings on the Site until (i) a link for vehicles has been constructed to the reasonable satisfaction of the Council on the area of land shown edged in orange on the Plan from the Car Park to the existing car parking area shown hatched lime green on the Plan and (ii) all works required for securing the closure of the vehicular access at the point shown coloured purple on the Plan to the existing car parking area have been duly completed PROVIDED THAT the above works shall be completed in accordance with the Planning Permission

- 1.5 The Parish Council agree to allow the works required for the closure of the vehicular access to the existing car park and the provision of the vehicular link between the existing and proposed car parking areas referred to in paragraph 1.4 of this Schedule 8 being carried out on land owned by the Parish Council before the vehicular access to the new car park is brought into use
- 1.6 Not to cause nor permit the Occupation of more than 50% of the Dwellings erected on the Site until the freehold title to the Car Park has been transferred to the Parish Council with vacant possession and with freehold interest and with limited title guarantee
- 1.7 The transfer of the Car Park will if so required by the Owners contain a covenant by the Parish Council restricting the use of the land transferred to the purpose of a car park and for no other use whatsoever

EXECUTED by the parties hereto as a deed on the date written above

THE COMMON SEAL of)
 BROADLAND DISTRICT COUNCIL)
 was hereunto affixed)
 in the presence of)



M. M. M. M. M.
 DEMOCRATIC
 Head of Corporate Services
 and Monitoring Officer

THE COMMON SEAL of)
 NORFOLK COUNTY COUNCIL)
 was hereunto affixed)
 in the presence of)

authorised to sign
 on behalf of:

Head of Law

[Handwritten signature]



THE COMMON SEAL of
OLD CATTON PARISH COUNCIL
was hereunto affixed
in the presence of

)
)
)
)



Chairman

DAVID THOMPSON

Clerk to the Council

SALLY BARBER



EXECUTED AS A DEED by
TAYLOR WIMPEY UK LIMITED
acting by its Attorneys:
and in the presence of

)
)
)
)



C. S. HAZELT

Attorney



L. J. DUNCAN

Witness

Witness Signature



Name of Witness

P. LEAD

Address

TAYLOR WIMPEY UK LIMITED
TARTAN HOUSE ETNA ROAD
BURY ST EDMUNDS IP33 1JF

Occupation

Legal Secretary