

DATED 31 July 2014

BROADLAND DISTRICT COUNCIL

- and -

GRAHAM RICHARD WOODFORD

- and -

JOHN GORDON CRISP

- and -

PHYLLIS SWANN

AGREEMENT
Under Section 106 of the
Town and Country Planning Act 1990
relating to the development of land at the
Rear of 44 – 46 High Street Marsham Norfolk

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

THIS DEED OF AGREEMENT ("this Deed") is made the 31 day of July 2014

BETWEEN:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council"); and
- (2) GRAHAM RICHARD WOODFORD of Cedar House 105 Carrow Road Norwich Norfolk NR1 1HP and JOHN GORDON CRISP of 1 Well Street Thetford Norfolk IP24 2BL ("the Owners")
- (3) PHYLLIS SWANN of Churchfield Hungate Street Aylsham Norwich NR11 6JZ ("the Applicant")

together "the Parties"

RECITALS

- (1) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (2) The Owners are the freehold owners of the Site registered at H M Land Registry under title number NK362280.
- (4) The Applicant has submitted the Application to the Council and the Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	The Town and Country Planning Act 1990 as amended
"Application"	The application validated on 26 th February 2014 for outline planning permission for residential development on the Site in accordance with the plans and particulars submitted to the Council and allocated reference number 20140362
"Commencement"	The date on which any material operation as defined in Section 56(4) of the Act forming part of the Development begins to be carried out other than operations consisting of site clearance demolition

	work archaeological investigations or investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commenced" shall be construed accordingly
"Development"	The Development of the Site to be carried out pursuant to the Planning Permission
"Director"	The Council's Chief Executive or other officers of the Council acting under his hand
"Dwelling"	Any residential unit to be constructed on the Site pursuant to the Planning Permission as part of the Development whether an Affordable Housing Unit or an Open Market Dwelling
"Index Linked"	Means index linked from the date of this Agreement until such time that payment of any sum specified in this Deed is made such index linking to be equivalent to any increase or decrease in such sums in proportion to the increase or decrease in the Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine)
"Occupation"	Occupation of any building or part of the Site [as a residential dwelling] or for any purposes authorised by the Planning Permission but excluding occupation for the purposes of construction internal and external refurbishment decoration fitting-out marketing or any other activity preparatory to the use of the Site for the purposes as authorised by the Planning Permission and the words "Occupy and Occupied" shall be construed accordingly
"Plan"	The plan attached to this Deed at the First Schedule
"Planning Permission"	The planning permission to be granted subject to conditions by the Council or on appeal to the Secretary of State (or the successor in title to his statutory functions) pursuant to the Application for the Development
"Practical Completion"	The issue of a certificate of practical completion by or on behalf of the Owner and Practically Complete

shall be construed accordingly

"Secretary of State"

The Secretary of State or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the Act

"Site"

The land known as the rear of 44 – 46 High Street Marsham Norfolk shown edged red on the Plan and comprising 0.35 hectares or thereabouts against which this Deed may be enforced

2. CONSTRUCTION OF THE DEED

- 2.1 Where in this Deed reference is made to any clause paragraph schedule or recital such reference unless the context otherwise requires is a reference to a clause paragraph schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless an express provision indicates otherwise.
- 2.5 A reference to an Act of Parliament shall include any later modification extension or re-enactment of that Act of Parliament and shall include all statutory instruments orders and regulations made under that Act of Parliament or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any persons deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 Any approval consent certification direction or permission to be or made by the Council shall not be unreasonably made withheld or delayed

3. LEGAL BASIS

3.1 This Deed is made pursuant to Section 106 of the Act and in so far as any provision contained herein is not a planning obligation it is made pursuant to section 111 of the Local Government Act 1972 and all other enabling powers.

3.2 The covenants restrictions and requirements contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council

4. COVENANTS

4.1 With effect from Commencement of the Development the Owners and the Applicant covenants with the Council to comply with the obligations and restrictions contained in this Deed.

4.2 The Owners further covenant that they are the freehold owners of the Site and have full power to enter into this Deed and that the Site is free from mortgages charges or other encumbrances and that there is no person having any interest in the Site other than as notified in writing to the Councils solicitors prior to the date hereof.

4.3 The Council covenants to comply with the obligations and restrictions contained within the Fifth Schedule to this Deed.

5. LIABILITY

5.1 No person shall be liable for any breach or non-performance of the covenants contained herein in respect of the whole or any part of the Site in which they no longer have a legal interest save in respect of any prior subsisting breach.

5.2 The Council shall not be liable to any person under this Agreement after that person has parted with all interest in the Site save in respect of any liability arising prior thereto.

5.3 Save for the obligations contained in the Second Schedule which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Housing Units subject to the provisions contained therein the covenants, restrictions and requirements contained in this Deed shall not be enforceable against:

5.3.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Planning Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or

lease of the Dwelling or has entered into a binding contract for such purchase or lease

- 5.3.2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site.
- 5.5 In the event of the Planning Permission being quashed revoked or withdrawn before the Commencement of Development or expiring and not being renewed without the Development having been Commenced or in the event of the revocation of the Planning Permission the obligations under this Deed shall cease absolutely
- 5.6 in the event of determination of this Deed under Clause 5.5 above the Council shall upon request procure that any entry referring to this Deed in the Register of Local Land Charges shall be removed
- 5.7 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 which shall continue in full force and effect.
- 5.8 No waiver (whether express or implied) by the Council of any breach or default by the Applicant or the Owner or their successors in title in performing or observing any of its obligations under this Deed shall constitute a continuing waiver or prevent the Council from enforcing those obligations or from acting upon any subsequent breach or default

6. DISPUTES

- 6.1 Wherever there is a dispute between the Parties arising from the terms of this Deed which shall not be resolved within two months of any of the Parties having notified the others that any such dispute exists then any of the Parties may require the dispute to be determined by a professional person having at least ten years professional standing in a relevant professional discipline ("the Professional") which Professional shall be agreed between the Parties or in default of agreement appointed by the President for the time being of the Royal Institution of Chartered Surveyors and:
- 6.1.1 the Professional shall act as an expert;
- 6.1.2 the Professional shall afford the Parties to the dispute an opportunity promptly to make representations in writing and if they so direct to make submissions on one another's representations;

- 6.1.3 the Professional shall be able to stipulate periods of time for the making of such submissions and representations;
 - 6.1.4 the Professional shall be bound to have regard to the said submissions and representations;
 - 6.1.5 the Professional shall have the power to award the costs of the determination in favour of any of the Parties at the expense of any other Party in the event that the Professional 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;
 - 6.1.6 the Professional shall be limited in his findings to the determination of the dispute put by any Party;
 - 6.1.7 the findings of the Professional shall save in the case of manifest material error be final and binding on the Parties save that the Parties retain the right to refer to the Courts on a matter of law; and
 - 6.1.8 the Professional shall be required to issue his decision as soon as reasonably practicable.
- 6.2 If for any reason the Professional shall fail to make a decision and give notice thereof within two months of the deadline for submissions and representations given by the Professional in clause 6.1.3 above any of the Parties may apply to the President or the Vice President for the time being of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place which procedure may be repeated as many times as necessary;
- 6.3 Nothing in this clause 6 shall be taken to fetter the ability of the Council to carry out their statutory functions as local planning authority with powers to enforce breaches of planning control arising from any breach of any of the obligations entered into by the Owner in this Deed or any other planning breach in respect of the Site.
- 6.4 no party shall be obliged by virtue of this clause 6 to engage in the resolution envisaged by this clause 6 where the issue relates to the non-payment of financial contributions; and
- 6.5 the Parties shall comply in full with any award decision or direction made by the Professional including any as to costs.

7. LATE PAYMENTS

If any payment of any sum referred to in this Deed shall have become due from the Owner to the Council but shall remain unpaid for a period exceeding 28 days, the Owner shall pay on demand to the Council interest thereon (at a rate of four percent above the base rate of HSBC Bank from time to time in force) until payment of the outstanding sum has been paid.

8. MISCELLANEOUS

- 8.1 Immediately on completion of this Deed the Applicant shall pay the Council's reasonable legal costs properly incurred in connection with the negotiation preparation and execution of this Deed.
- 8.2 The Owners shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising pursuant to this Deed has been performed or observed.
- 8.3 In the event that the Owners dispose of its interest in the Site or any part thereof it shall within twenty eight days of such disposal give written notice of the name and address of its successors in title to the Council together with sufficient details of the part of the Site included in the disposal to allow its identification.
- 8.4 The Owners agree to give the Council notice in writing no later than 28 days prior to the anticipated Commencement of Development, first Occupation of the Development and the reaching of any other Occupation or completion threshold or trigger relating to the obligations contained in this Deed PROVIDED THAT default in giving the requisite notice shall not prevent Commencement of Development occurring or the triggering of obligations contained herein.
- 8.5 Subject to Clause 2.6 above no provisions of this Deed shall be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999 and any third party rights as may be implied by law or are deemed to be enforceable by the Contracts (Rights of Third Parties) Act 1999 are hereby excluded to the fullest extent permitted by law.
- 8.6 Save as provided for below any notice or communication to be given pursuant to this Deed shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service. The address for service on the Parties shall be those stated in this Deed or such other address in England for service as the Party to be served may have previously notified the other Parties in writing.
- 8.7 This Deed shall be registered as a local land charge by the Council.
- 8.8 This Deed is governed by and interpreted in accordance with the law of England



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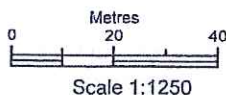
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BROADLAND COUNCIL

26 FEB 2014

PLANNING CONTROL

FIRST SCHEDULE

the Plan(s)

SECOND SCHEDULE

Affordable Housing

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

"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 to be owned and/or managed by an AHP
"Affordable Housing Provider" "AHP"	(i) A registered provider as defined by s80 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 Council for the provision and/or operation of affordable housing within the administrative area of Broadland or has otherwise been approved by the Council for the purposes of this Deed
"Affordable Housing Provision"	the provision as Affording Housing Units of twenty per cent (20%) of the total number of Dwellings of the mix type and tenure pursuant to the agreed Affordable Housing Scheme
"Affordable Housing Scheme"	a detailed scheme submitted to and approved by the Council securing the Affordable Housing Provision on the Site to include: - The number and type of Affordable Housing Units in accordance with the Affordable Housing Provision - The location of such Affordable Housing Units - a timetable and programme for it's

	implementation which shall include for a mix and type of Affordable Housing Units (such proposal to reflect the Council's up to date strategic housing market assessment and having regard to specific local needs as determined and agreed by the Council) in accordance with the Affordable Housing Provision
"Affordable Housing Units"	individual units of residential accommodation constructed or provided as part of the Development as Affordable Housing
"Affordable Rental Units"	Affordable Housing Units to be constructed or provided as part of the Development pursuant to the Affordable Housing Provision and the Affordable Housing Scheme and to be let by an AHP on a weekly or monthly tenancy basis at affordable rents (being not more than 80% of local open market rental prices inclusive of service charge) to be let by or on behalf of an AHP in accordance with the requirements of Schedule 2
"Dwelling"	any unit of residential occupation being a self-contained house maisonette bungalow or flat constructed as part of the Development and "Dwellings" shall be construed accordingly
"HCA Standards"	the "Housing Quality Indicators" and "Design & Quality Standards" (as replaced or revised) specified by the Homes and Communities Agency or its successors or such other standards as the Council may agree with the Affordable Housing Provider
"Intermediate Rental Units"	Affordable Housing Units to be constructed or provided as part of the Affordable Scheme and to be available for rent at rents not more than 80% of local

	open market rental prices inclusive of service charge
"Market Rent"	The estimated price or premiums for which a property should lease on the date of valuation between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction after proper marketing where the parties had acted knowledgeably prudently and without compulsion
"Open Market Dwellings"	Dwellings other than Affordable Housing Units
"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) or where such persons have been exhausted any person as nominated by the Council on the Broadland Housing Register which the AHP owning or managing the Affordable Housing Units on the Site is entitled to house within its rules
"Shared Ownership Dwellings"	Affordable Housing Units to be constructed or provided as part of and in accordance with the Affordable Housing Scheme and to be let on a Shared Ownership Lease
"Shared Ownership Lease"	a lease or sublease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 50% (fifty per cent) of the equity is granted on first purchase of the equitable interest in the Shared

	Ownership Dwelling and is paid by the tenant upon completion of such lease or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to purchase the freehold of a Shared Ownership Dwelling and acquire up to 100% of the legal and equitable interest by instalments at some future date or dates and allows a rental premium to be charged on the remainder of the equitable interest not exceeding housing corporation target rents (being 2.75% of the value of the equity retained by the Affordable Housing Provider, such rent not to be increased by more than the percentage increase in the Retail Price Index (or such other index as the Council may determine) plus 0.5% of the current annual rent from time to time
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The Owners hereby covenant with the Council as follows:

- 1.1 Not to Commence or allow Commencement of Development unless and until the Affordable Housing Scheme has been submitted to and approved by the Director
- 1.2 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission and the Affordable Housing Scheme and the timescales therein and to current HCA Standards as at the time of construction
- 1.4 Save as otherwise provided in this Agreement not to use or allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Unit, Shared Ownership Dwelling or Intermediate Rental Dwelling (as the case may be) or such other form of tenure as may be agreed between the Owner and the Council
- 1.5 Save as otherwise provided in this Agreement not to use or allow or permit the Affordable Housing Units to be Occupied other than by Qualifying Occupiers in accordance with the Affordable Housing Scheme.

- 1.6 Save as otherwise provided in this Agreement the Owner shall not dispose of its freehold interest in the Affordable Housing Units (with the exception of the Shared Ownership Dwellings) other than to an AHP
- 1.7 Paragraphs 1.4 and 1.5 and 1.6 above shall not be binding upon:
- (a) subject to paragraph 1.8 any mortgagee in possession of the Affordable Housing Units or part thereof or successors in title to the mortgagee in possession; nor
 - (b) subject to paragraph 1.8 any receiver or manager (including an administrative receiver) for such mortgagee; nor
 - (c) any individual owner occupier of the Affordable Housing Units (or their mortgagee or chargee) who has purchased the Affordable Housing Unit pursuant to a statutory right to buy or acquire; nor
 - (d) successors in title to all of the above
 - (e) by a person who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold of the Shared Ownership Dwelling
- 1.8 Any mortgagee (or any administrator or receiver) in possession of the Affordable Housing Units shall benefit from paragraph 1.7 above PROVIDED THAT it has first complied with the following:
- a) the restrictions and obligations contained in Sections 144 to 159 of the Housing and Regeneration Act 2008 and provided copies of all notices served and any proposals received together with updates as to progress
 - b) given the Council the option to purchase the relevant Affordable Housing Units or nominate another AHP to purchase the relevant Affordable Housing Units for a period commencing on the date that the affordable housing mortgagee gives the Council notice ("the Mortgagee Notice") and ending on the later of two calendar months after the date of the Mortgagee Notice or the end of the moratorium period (as defined and arising under either Section 145 or 147 of the Housing and Regeneration Act 2008) and the Council (or its nominated AHP) shall be entitled to complete the purchase of the Affordable Housing Units at any time up to one calendar month after expiry of the moratorium period.
 - c) or, in the event of any statutory amendment resulting in the removal or lapse of the relevant provisions of the Housing and

Regeneration Act 2008 referred to at paragraph 1.8(b) of this Schedule and without alternative provision to instead comply with the reasonable directions of the Council in relation to the disposal by giving not less than three months prior notice to the Council of any intention to dispose of any of the Affordable Housing Units and if the Council responds by written notice within three months from receipt of the affordable housing mortgagees notice setting out arrangements for the transfer of the Affordable Housing Units so as to maintain them as Affordable Housing then the affordable housing mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer but if the Council does not serve its response notice within the said three months or if having used its best endeavours the affordable housing mortgagee shall not have effected the transfer envisaged in the Council's response notice within 12 months of that notice then the affordable housing mortgagee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Agreement

- 1.9 Not to Occupy or allow Occupation of any Open Market Dwellings on the Site unless and until the approved Affordable Housing Scheme has been fully implemented and all of the Affordable Housing Units comprised within the Development are practically complete and have been transferred to the approved AHP in accordance with and subject to the provisions in clauses 1.10 to 1.10.2 below
- 1.10 Any transfer shall be for a consideration at a level which ensures that no public subsidy is required to enable the transaction to be completed and to enable the Affordable Housing Units to be let or sold as the case may be at a cost low enough for eligible persons to afford
 - 1.10.1 the transfer shall contain terms to secure any conditions and requirements of the approved Affordable Housing Scheme;
 - 1.10.2 a requirement that any proceeds from the disposal of subsequent equity in Shared Ownership Dwellings must be used for the provision or improvement of Affordable Housing within the administrative area of the Council where reasonably practicable.

THIRD SCHEDULE

Open Space

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

"Off-Site Open Space Contribution"	the sum calculated in accordance with the formula set out in Schedule 4 to this Agreement
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The Owners hereby covenant with the Council as follows:

1. Within fourteen days of the Commencement date to pay to the Council the Off-Site Open Space Contribution as Index Linked

SCHEUDLE 4

Open Space Contribution

For each 1 bedroom dwelling comprised in the Development	£2,752
For each 2 bedroom dwelling comprised in the Development	£3,672
For each 3 bedroom dwelling comprised in the Development	£4,590
For each 4 bedroom dwelling comprised in the Development	£5,508
For each 5 or more bedroom dwelling comprised in the Development	£6,426

FIFTH SCHEDULE

Council's Covenants

1. REPAYMENT OF CONTRIBUTIONS

- 1.1 To repay with any interest accrued to the Owners such amount of the Off Site Open Space Contribution which has not been committed (by way of expenditure of the monies or by way of contract) within five years of the date of receipt by the Council of such payment or where payments are made in instalments within five years of receipt of the final instalment.
- 1.2 The Council agrees with the Owners that the Off-Site Open Space Contribution shall be applied towards the provision of new open space in the Parish of Marsham towards the improvement and maintenance of existing open space in the Parish of Marsham.

2. MISCELLANEOUS

- 2.1 To hold any sums it receives pursuant to the obligations set out in this Deed in an interest bearing account.
- 2.2 To apply any financial contributions paid together with any interest accrued under this Deed wholly and exclusively for the purposes for which the contributions were paid.

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 affixed in the presence of:

)
)



M. Munn
Head of Democratic Services & Monitoring Officer:

7385

EXECUTED AS A DEED by
GRAHAM RICHARD WOODFORD
in the presence of:

G. R. Woodford

Witness: *SHARON DAVID*

Signature: *S. David*

11 BLENHEIM CRESSENT TITTLESHALL NORFOLK.

EXECUTED AS A DEED by
JOHN GORDON CRISP
in the presence of:

) *J. G. Crisp*
)

Witness: *JANET ARTHUR*

Signature: *J. Arthur*
(SOUTH LOPHAM, NORFOLK)

EXECUTED AS A DEED by
PHYLLIS SWANN
in the presence of:

P. J. Swann)
)

Witness: *BEN POWELL*

Signature: *B. Powell*