

DATED 22<sup>nd</sup> March 2006

BROADLAND DISTRICT COUNCIL

- and -

NORFOLK COUNTY COUNCIL

- and -

JOANNE MARGARET TILLET

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PLANNING OBLIGATION BY WAY OF  
A G R E E M E N T

Pursuant to Section 106 of the Town  
and Country Planning Act 1990  
relating to the development of land  
at Home Farm, Blue Boar Lane,  
Sprowston, Norfolk

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THIS AGREEMENT is made the 22<sup>nd</sup> day of March 2006

BETWEEN BROADLAND DISTRICT COUNCIL of Thorpe Lodge

Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU (hereinafter called "the Council") of the first part and NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich NR1 2SG ("hereinafter called the County Council") of the second part and JOANNE MARGARET TILLET of The Old Rectory Church Road Stratton Strawless Norwich Norfolk NR10 5LN (hereinafter called "the Owner") of the third part

(A) INTERPRETATION AND DEFINITIONS

(1) In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"the 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 to be owned and/or managed by a Registered Social Landlord
"Affordable Housing Units"	40% (forty per cent) of the Residential Units which are to be constructed or provided on the Site as part of the Development
"Affordable Rental Units"	those Affordable Housing Units to be constructed or provided on the Site as part of the Development and to be let for a rent upon either a weekly basis or monthly tenancy basis



	not exceeding housing corporation target rents (or if such targets cease to be set such other measures of affordable rents as the relevant District Council shall reasonably determine) and to be let by or on behalf of a Registered Social Landlord
"Application"	the outline planning application dated 14 <sup>th</sup> February 2005 for residential development on behalf of the Owner under reference number 20050227
"Development"	the re-development of the land shown for the purposes of identification only edged red on the Plan annexed hereto for purposes pursuant to the Permission
"Director"	the Council's Strategic Director (Community Services) or other officers of the Council acting under his hand
"the Education Contribution"	the sum of £173,506 (one hundred and seventy three thousand five hundred and six pounds) together with the sum of £4,620 for each Residential Unit being a house having two or more bedrooms and £2,310 for each Residential Unit being a flat or apartment having two or more bedrooms in excess of 67 Units which is the subject of any planning permission or reserved matters approved for the Site as





5664

*[Signature]*

HEAD OF CORPORATE SERVICES  
& MONITORING OFFICER



BROADLAND COUNCIL  
16 FEB 2005  
PLANNING CONTROL

*[Signature]*

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	increased in accordance with the Index-linked Provision
"Implementation"	implementation of the Permission by the carrying out of a material operation pursuant to Section 56 (4) of the 1990 Act comprised in the Development
"Index-linked Provision"	the increase (if any) in the RICS All In Tender Price Index between the date of this Agreement and the date upon which a payment of money is made pursuant to this Agreement
"Inflation Provision"	the increase (if any) in the RICS All In Tender Price Index between August 2003 and the date upon which a payment of money is made pursuant to this Agreement
"Library Contribution"	the sum of £3,350 (three thousand three hundred and fifty pounds) together with the sum of £50 for each Residential Unit in excess of 67 Units which is the subject of any planning permission or reserved matters approved for the Site as increased in accordance with the Index-linked Provision
"the Off-Site Open Space Contribution"	the sum calculated in accordance with the formula set out in Schedule 3 to the Agreement as increased by the Inflation Provision



"Open Market Dwellings"	the dwellings to be constructed on the Site pursuant to the Development which are to be provided and occupied as general market housing
"the Permission"	an outline planning permission for the Development
"the Plan"	the plan annexed to this Agreement
"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)
"Registered Social Landlord"	a Registered Social Landlord or Housing Association registered under Section 1 of the Housing Act 1996 (or any statutory re-enactment or modification thereof) as approved by the Council



"Residential Units"	a self-contained house, bungalow or flat to be constructed on the Site as part of the Development
"Shared Ownership Dwellings"	Affordable Housing Units which are let or sub let on a Shared Ownership Lease
"Shared Ownership Lease"	a lease or sub-lease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 50% (fifty per cent) on first purchase of the value of the equitable interest in the Shared Ownership Dwelling is paid by the tenant or sub-tenant upon completion of such lease or sub-lease
"the Site"	the land at Home Farm Blue Boar Lane Sprowston Norwich which is shown for the purposes of identification only edged red on the Plan

(2) In this Agreement unless the context otherwise requires:

- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural number and vice versa
- (ii) "party" or "parties" means a party or parties to this Agreement
- (iii) references to any party shall include the successors in title and assigns of that party
- (iv) where a party includes more than one person any obligations of that party shall be joint and several



- (v) headings in this Agreement shall not form part of or affect its construction
  - (vi) references to clauses and schedule are references to clauses in and schedules to this Agreement
  - (vii) 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
- (B) The Council is a Local Planning Authority for the purposes of the Act for the area within which the Site is situated
- (C) The County Council is a Local Planning Authority for the purposes of the Act and is the Education Authority for the area within which the Site is situated
- (D) The Owner is the freehold owner of that part of the Site edged red for the purposes of identification only on the Plan
- (E) Having regard to the Development Plan and other material considerations the Council considers it expedient in the interests of the proper planning of its area that provision should be made for regulating or facilitating the Development of the Site in the manner hereinafter appearing and is satisfied the Permission can only be granted subject to and upon completion of this Agreement

N O W THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling power



- 1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as a Local Planning Authority and by the County Council as a Local Planning Authority against the Owner and the Owner's successors in title and assigns
- 1.3 This Agreement is conditional upon:
- 1.3.1 the Permission being duly granted and
  - 1.3.2 Implementation
- 1.4 This Agreement is a deed and may be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a deed
- 1.5 This Agreement is a local land charge and upon completion shall be registered by the Council as such
- 1.6 No waiver (whether express or implied) by the Council and/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 and/or County Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof
- 1.7 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement
- 1.8 This Agreement shall be governed by the laws of England
- 1.9 Save for the covenants in Schedule 1 of this Agreement which shall continue to bind the Affordable Housing Units no party shall be liable for any breach of the covenants restrictions or obligations 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 party's interest in the Site or any part thereof in respect of which any such breach has taken place

1.10 This Agreement shall cease to have effect if the Permission has lapsed without having been implemented or has been revoked or quashed or has been modified other than at the request of the Owner

#### 1.11 NOTICES

1.11.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if received by facsimile delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered or sent by facsimile or by recorded delivery post to the address of the party concerned as nominated in sub-clause

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

The Council	The Strategic Director (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
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The County Council	The Director of Planning and Transportation Norfolk County Council County Hall Martineau Lane Norwich NR1 2SG
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The Owner                      The Old Rectory    Church Road    Stratton  
Strawless Norwich Norfolk NR10 5LN

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

1.12 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 respective functions as local planning authority or local highway authority and the rights powers duties and obligations under all private and public statutes 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

## 2. GENERAL

All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not presently been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

## 3. RIGHTS OF THIRD PARTIES

The Contract (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

4. The Owner shall on completion of this Agreement pay the Council and the County Council's reasonable legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

## 5. DISPUTE RESOLUTION

- 5.1 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

- 5.2 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

- 5.3 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 Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties

- 5.4 Nothing in this clause 5 shall apply to the recovery of a liquidated sum or prevent the parties from commencing or continuing court proceedings

## 6. COVENANTS

- 6.1 The Owner hereby covenants and undertakes so as to bind the Site and each and every part thereof to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement



- 6.2 The Owner hereby covenants and undertakes that in the event of any delay in making any payment required under Schedule 1 interest shall be payable on the amount payable at the rate of four (4) per cent above the Co-Operative Bank PLC base lending rate from time to time in force from the date that the relevant payment falls due to the date of actual payment
7. THE COUNCIL'S AND COUNTY COUNCIL'S OBLIGATIONS
- 7.1 The County Council agrees with the Owner to comply with the obligations set out in Paragraphs 1.2 and 1.3 in Schedule 2 to this Agreement
- 7.2 The Council agrees with the Owner to comply with the obligations set out in Paragraph 1.1 in Schedule 2 to this Agreement

## SCHEDULE 1

1. AFFORDABLE HOUSING
- 1.1 Not to commence development on the Site pursuant to the Permission until a scheme for the provision and long-term management of the Affordable Housing Units has been submitted to and approved by the Strategic Director (Community Services) of the Council ("the Affordable House Scheme") which Scheme for the avoidance of doubt shall deal with and include the location of the Affordable Housing within the Site, the percentage breakdown of Affordable Rental Dwellings and Shared Ownership Dwellings to be provided as part of the Affordable Housing Units and shall deal with the transfer of the Affordable Housing Units to the Registered Social Landlord and upon approval such Scheme shall be deemed to be incorporated into the provisions of this Agreement



- 1.2 Upon approval of the Affordable Housing Scheme by the Council to implement the Affordable Housing Scheme as approved and in accordance with the provisions contained in the Affordable Housing Scheme
- 1.3 Not to occupy or permit the occupation of more than 15 Open Market Dwellings on the Site until such time as 10 Affordable Housing Units have been completed and are ready for occupation with the remainder of the Affordable Housing Units comprised within the Development to be completed and available for occupation and transferred to a Registered Social Landlord prior to the occupation of 35 Open Market Dwellings on the Site
- 1.4 Not to use the Affordable Housing Units for any purpose other than Affordable Housing
- 1.5 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.6 The Registered Social Landlord shall not dispose of its interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Social Landlord
- 1.7 Paragraphs 1.4, 1.5 and 1.6 above shall not be binding upon any mortgagee in possession of the Affordable Housing Units or part thereof nor any receiver or manager (including an administrative receiver) for such mortgagee and shall cease to apply to any of the Affordable Housing Units where the Registered Social Landlord 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 applicable or shall be required to sell a further and/or final tranche of equity to a tenant pursuant to the terms of any shared equity lease granted in respect of such Unit



- 1.8 Under the transfer of an Affordable Housing Unit to the Registered Social Landlord such transfer shall be free from incumbrances other than any existing as at the date of this Agreement and shall contain (inter alia) the following provisions:-

A grant in favour of the Registered Social Landlord of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and reservations of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development

## 2. PAYMENTS

- 2.1 Within 28 days of the date of Implementation of the Permission to pay to the County Council the Library Contribution as increased in accordance with the Index-linked Provision
- 2.2 Prior to the occupation of any Residential Unit on the Site to pay to the County Council the Education Contribution as increased in accordance with the Index-linked Provision
- 2.3 Within 28 days of the date of Implementation of the Permission to pay to the Council the Off-Site Open Space Contribution as increased by the Inflation Provision

## SCHEDULE 2

- 1.1 The Council agrees with the Owner that the Off-Site Open Space Contribution shall be applied towards the provision of a new open space or recreational facilities (which for the avoidance of doubt could include a community centre) to serve the residents of Sprowston or towards the improvement and maintenance of existing open spaces in the Parish of Sprowston



- 1.2 The County Council agrees with the Owner that the Library Contribution shall be applied towards the cost of providing library services and/or towards facilities in light of the need created by the Development and for no other purpose
- 1.3 The County Council agrees with the Owner that the Education Contribution shall be applied towards the cost of school provision in light of the need created by the Development and for no other purpose

SCHEDULE 3

For each 1 bedroom dwelling comprised in the Development	£2,946
For each 2 bedroom dwelling comprised in the Development	£2,946
For each 3 bedroom dwelling comprised in the Development	£4,418
For each 4 bedroom dwelling comprised in the Development	£4,418
For each 5 or more bedroom dwelling comprised in the Development	£5,891

IN WITNESS WHEREOF this Agreement has been executed and delivered as a deed on the date first written above

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



HEAD OF CORPORATE SERVICES AND MONITORING OFFICER



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



Keir Mune

HEAD OF LAW

SIGNED AS A DEED by )  
JOANNE MARGARET TILLET )  
in the presence of:- )

*[Handwritten signature]*

x

Witness Signature:  
" Name

*[Handwritten signature]*  
NORMAN JARVIS

Address

11 HINSHALWOOD WAY  
OLD COSTESSY  
NORWICH NORFOLK

Occupation

BANK MANAGER