

DATED

21st March

2016

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN &
COUNTRY PLANNING ACT 1990 RELATING TO LAND AT FORMER LITTLE
PLUMSTEAD HOSPITAL**

between

BROADLAND DISTRICT COUNCIL

and

NORFOLK COUNTY COUNCIL

and

CRIPPS DEVELOPMENTS LIMITED

and

THE SECRETARY OF STATE FOR HEALTH

and

LLOYDS BANK PLC



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THIS DEED is dated

21st November

2016

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, NR7 0DU (**Party 1**).
- (2) **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich, Norfolk, NR1 2DU (**Party 2**).
- (3) **CRIPPS DEVELOPMENTS LIMITED** incorporated and registered in England and Wales with company number 04081629 whose registered office is at Dencora House, Blyburgate, Beccles, Suffolk NR34 9TY (**Party 3**)
- (4) **THE SECRETARY OF STATE FOR HEALTH** of Richmond House, 79 Whitehall, London, SW1 2NS (**Mortgagee 1**).
- (5) **LLOYDS BANK PLC** incorporated and registered in England and Wales with company number 2065 whose registered office is at 25 Gresham Street, London, EC2V 7HN (**Mortgagee 2**).

BACKGROUND

- (A) Party 1 is the local planning authority for the purposes of the Act for the area in which the Property is situated.
- (B) Party 2 is a local planning authority and the local highway authority for the County of Norfolk
- (C) Party 3 is the freehold owner of the Property subject to mortgages in favour of Mortgagee 1 and Mortgagee 2 but otherwise free from encumbrances.
- (D) Mortgagee 1 is the chargee of the charge of the Property dated 11th April 2016 and has agreed to enter into this deed to give its consent to the terms of this deed.
- (E) Mortgagee 2 is the chargee of the charge of part of the Property dated 11th April 2016 and has agreed to enter into this deed to give its consent to the terms of this deed.
- (F) On 13th January 2016 Party 1, Party 2 and Mortgagee 1 (Mortgagee 1 in its capacity as the then landowner) entered into the Original Agreement.
- (G) Pursuant to a Transfer Deed dated 11th April 2016 Mortgagee 1 in its capacity as the then landowner transferred the Property to Party 3.
- (H) Without prejudice to the terms of the other covenants contained in the Original Agreement the parties have agreed to vary the terms of Original Agreement as set out in this deed.

- (I) This agreement is made under section 106A of the Act and is supplemental to the Original Agreement.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Act: the Town and Country Planning Act 1990

Original Agreement: the agreement made under section 106 of the TCPA 1990 dated 13th January 2016 between the Party 1, Party 2 and Mortgagee 1.

Property: land at Former Little Plumstead Hospital registered at the Land Registry with title number NK349174.

- 1.2 Unless the context otherwise requires, all words and phrases defined in the Original Agreement shall have the same meaning in this deed.
- 1.3 Clause headings shall not affect the interpretation of this deed.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of Party 1 and Party 2 the successors to their respective statutory functions.
- 1.8 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

1.10 Unless the context otherwise requires, references to clauses are to the clauses of this deed.

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

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

2. STATUTORY PROVISION

This deed is made pursuant to the provisions of sections 106 and 106A of the Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and any other enabling powers.

3. VARIATIONS TO THE ORIGINAL AGREEMENT

3.1 The following amendments are made to the Original Agreement with additions to the provisions in the Original Agreement shown for ease of identification in this deed only in bold italics:

Part 1 of the Second Schedule - definition of "Shared Equity Dwellings" shall be amended to:	"Dwellings purchased on a shared equity basis whereby not more than 75 per cent of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition (<i>provided that an institutional lender mortgagee only may exercise the staircasing rights under the shared equity lease at any time</i>) upon a payment equating to the additional equity being purchased payable to the Council (or such other body as the Council may elect), such payment to be based on the actual market value as at the date of acquisition by the purchaser of the remaining share such a scheme to be secured by a mechanism agreed with and approved by the Council (or such other body as the Council may elect) and in a form approved by the Council (or by such other body as the Council may elect) <i>but for the avoidance of doubt the ability to increase ownership within 5 years of acquisition shall be available only to institutional lender mortgagees to whom funding the acquisition of the initial equity proportion is part of their day-to-day activities and not to a purchaser.</i> "
Part 1 of the Second	"A lease <i>substantially</i> in <i>the relevant model</i> form

Schedule – the initial paragraph in the definition of “Shared Ownership Lease” shall be amended to:	published by the Homes and Communities Agency or where there is no such published relevant model form in a form approved by the Council such lease to provide for the following:”
Paragraph 1.5.1 of Part 1 of the Second Schedule shall be amended to:	“a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire (or under any equivalent contractual right or voluntary scheme) and all persons deriving title under such a person and all their respective successors in title; or ”
Paragraph 1.5.2 of Part 1 of the Second Schedule shall be amended to:	“an Eligible Household who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or by a person who has acquired 100% of a Shared Equity Dwelling and all persons deriving title under them respectively and all their respective successors in title; or ”
The initial paragraph of Paragraph 1.5.3 of Part 1 of the Second Schedule shall be amended to:	“a mortgagee or chargee of a Provider (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a “Receiver”) of the whole or any part of the Affordable Dwellings PROVIDED THAT it has first complied with the following:”

- 3.2 In all other respects the Original Agreement (as varied by this deed) shall remain in full force and effect.

4. COVENANT WITH PARTY 1 AND PARTY 2

Party 3 covenants to observe and perform the covenants, restrictions and obligations contained in the Original Agreement as varied by this deed.

5. MORTGAGEE 1 CONSENT

Mortgagee 1 consents to the completion of this deed and acknowledges that from the date of this deed the Property shall be bound by the terms of this deed, as if it had been executed and registered as a land charge prior to the creation of Mortgagee 1's interest in the Property.

6. MORTGAGEE 2 CONSENT

Mortgagee 2 consents to the completion of this deed and acknowledges that from the date of this deed the Property shall be bound by the terms of this deed, as if it had been executed and registered as a land charge prior to the creation of Mortgagee 2's interest in the Property.

7. LOCAL LAND CHARGE

This deed shall be registered as a local land charge by Party 1.

8. ENDORSEMENT

Promptly following completion of this deed Party 1 shall endorse a memorandum of variation on the Original Agreement in the following terms:

"This Agreement has been varied by a supplemental agreement dated 2016 and made between BROADLAND DISTRICT COUNCIL (1) NORFOLK COUNTY COUNCIL (2) CRIPPS DEVELOPMENTS LIMITED (3) THE SECRETARY OF STATE FOR HEALTH (4) LLOYDS BANK PLC (5)."

9. VALUE ADDED TAX

9.1 All consideration given in accordance with the terms of this deed shall be exclusive of any VAT properly paid.

9.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this deed then to the extent that VAT has not been previously charged in respect of that supply the party making the supply shall have the right to issue a VAT invoice to the party to whom the supply was made and the VAT shall be paid accordingly.

10. THIRD PARTY RIGHTS

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

11. GOVERNING LAW

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

12. COUNTERPARTS

This deed may be executed in any number of counterparts and by the Parties hereto in separate counterparts each of which when executed and delivered shall be an original but all the counterparts shall together constitute one and the same instrument.

13. Parag 1 and Party 2 confirm to the fullest extent that they can do so that as regards the planning obligations contained in the Site Agreements dated 1st July 2003 and 31st July 2008 and Deed of Release and Variation dated 5th August 2010 ("the Deeds") that the Deeds will not bind anyone who acquires an interest in any part of the property for the purpose of the supply of utility services or as a freehold or leasehold owner of individual dwellings constructed pursuant to the permission (or their respective mortgagee)s.

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

THE COMMON SEAL OF
BROADLAND DISTRICT COUNCIL
was affixed in the presence of:

* made between (1) Broadland District Council (2) Norfolk County Council (3) The Secretary of State for Health (4) Coftron Land & Property (Norwich) Limited and (5) Coftron Limited.

Authorised Signatory:

** made between (1) Broadland District Council (2) Norfolk County Council (3) The Secretary of State for Health (4) Coftron Land & Property (Norwich) Limited.

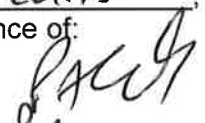
THE COMMON SEAL OF
NORFOLK COUNTY COUNCIL
was affixed in the presence of:

*** made between (1) The Secretary of State for Health (2) Coftron Land & Property (Norwich) Limited (3) Hopkins Homes Ltd (4) Broadland District Council and (5) John Charles Reid and Dominic Lee, Zhuang Wong.

Authorised Signatory:

Executed as a deed by
CRIPPS DEVELOPMENTS LIMITED
acting by Daniel Cripps, a
director, in the presence of:

SIGNATURE:
NAME:
ADDRESS:
OCCUPATION:


P. ALBRIGHT
DANIEL HARRIS, BUTTERFATS, BUCKLE, NR34 977
FINANCE DIRECTOR

THE COMMON SEAL OF
THE SECRETARY OF STATE FOR HEALTH
was affixed in the presence of:

Authorised Signatory:

Executed as a Deed by _____
as Attorney for and on behalf of
LLOYDS BANK PLC
in the presence of:



witness name — JULIE WHITTAKER

witness signature — 

witness address — 11, Biscuit Gardens
Lisore at Yarmouth
NR30 5RU

witness occupation — Assistant Bank Manager