

DATED 28<sup>th</sup> June 2013

BROADLAND DISTRICT COUNCIL

-AND-

JOE CULLUM

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

Relating to the development of land at  
Buckenham Road, Strumpshaw, Norfolk  
NR13 4NT

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

THIS AGREEMENT is made the 28<sup>th</sup> day of June 2013

BETWEEN:

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge 1 Yarmouth Road Norwich Norfolk NR7 0DU ("the Council")
- (2) **JOE CULLUM** of 2 Church Road Buckenham Strumpshaw Norfolk NR13 4HN ("the Owner")

WHEREAS:

- A. The Council is a local planning authority for the purposes of the Act for the area within which the Site is situated
- B. The Owner is the freehold owner of the Site
- C. The Council has resolved to approve the Planning Application subject to the completion of this Agreement

**1. INTERPRETATION AND DEFINITIONS**

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

"Act"	the Town and Country Planning Act 1990 (as amended)
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"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings, archaeological investigations, remedial works, erection of any temporary means of enclosure, temporary display of notices or advertisements or clearance of the Site) and "Commence" shall be
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interpreted in accordance with this definition

"Development"	the development permitted by the Planning Permission
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"Discounted Sale Arrangements"	arrangements that provide that upon sale of the Dwelling it shall be sold at a price which is 20% (twenty per cent) less than the Open Market Value of such Dwelling unless the Council agrees that a lower percentage deduction may be applied
"Discounted Market Sale Restriction"	<p>the restriction to be entered in the Proprietorship Register at the Land Registry in relation to the Dwelling in the following terms (subject to any amendment required by the Land Registry and any reasonable amendment agreed between the parties)</p> <p>"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the solicitor of the disponent or disponentee that the provision of paragraph 4 of the schedule to an agreement dated [ ] and made between (1) Broadland District Council and (2) Joe Cullum containing planning obligation relating to land at Buckenham Road, Strumpshaw, Norfolk have been complied with"</p>
"Dwelling"	the dwelling to be constructed on the Site as part of the Development
"Implementation"	the carrying out on the Site pursuant to the Planning

Permission of a material operation and "Implement" and "Implemented" shall be construed accordingly

"Occupiers"

Joe Cullum and Beryl Cullum

"Occupation"

means Occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting-out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly

"Open Market Value"

the best price at which the sale of an interest in the Dwelling would have been completed unconditionally for cash consideration on the date of valuation assuming (i) a willing buyer and a willing seller, (ii) any restrictions imposed on the Dwelling by this Agreement are disregarded (iii) there has been a reasonable period within which to negotiate the sale (iv) the Dwelling has been freely exposed to the market (v) and both the buyer and the seller acted knowledgeably prudently and without compulsion

"Planning  
Application"

the application for planning permission for the Site to be developed by the erection of a Dwelling and given reference number 20121684.

"Planning  
Permission"

the planning permission to be granted pursuant to the Planning Application

"Plan"

the plan annexed to this Agreement

"Qualifying Occupiers"	in relation to any person housed in the Dwelling pursuant to the Discounted Sale Arrangements, any person who meets the qualifying criteria 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 1996 and 2004 and the Homelessness Act 2002) and having a total household income at a level which prevents them from purchasing on the open market housing accommodation locally
"Site"	the land at Buckenham Road, Strumpshaw, Norfolk which is shown for the purposes of identification only edged red on the Plan

In this Agreement unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Agreement except where otherwise specified
- (iii) 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
- (iv) headings in this Agreement shall not form part of or affect its construction

## **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 Section 1 of the Localism Act 2011 and any other enabling powers
- 2.2 The obligations of the Owner hereunder are planning obligations for the purposes of the Act and enforceable by the Council against the Owner and its successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with the interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement
- 2.5 This Agreement shall cease to have effect if:
- 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.5.2 the Planning Permission shall expire prior to the Commencement Date
- 2.6 This Agreement shall be registered by the Council as a charge in the Council's Register of Local Land Charges

### **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 discretions powers duties and obligations of the Council in the exercise of its functions as local planning 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 was 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 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 from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

## 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 or facsimile
- 4.2 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 Chief Executive  
Thorpe Lodge  
Yarmouth Road  
Thorpe St Andrew  
Norwich  
NR7 0DU

The Owner

Joe Cullum  
2 Church Road  
Buckenham  
Strumpshaw  
Norfolk  
NR13 4HN

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

## **5. THIRD PARTIES**

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 to the Council its legal and administrative costs reasonably incurred in the preparation negotiation and completion of this Agreement (not to exceed £600).

## **7. VAT**

- 7.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable
- 7.2 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

## **8. JURISDICTION**



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

## **9. DISPUTE RESOLUTION**

- 9.1 The parties to this Agreement 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
- 9.2 If the matter is not resolved through negotiations 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 of Dispute Resolution
- 9.3 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
- 9.4 Nothing in Clause 9.1, 9.2 and 9.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## **10. TITLE WARRANTY**

The Owner hereby warrants that he is the freehold owner of the Site which is registered at the Land Registry under title number NK116932 and has full power to enter into this Agreement and that the Site is free from all mortgages charges or other encumbrances

## **11. PLANNING OBLIGATIONS**

The Owner covenants with the Council to comply with the provisions of the Schedule

## **SCHEDULE**

1. The Dwelling may only be occupied
  - 1.1 By one or both of the Occupiers (together with members of their family) or
  - 1.2 By a Qualifying Occupier (together with members of his or her family) who has purchased the Dwelling in accordance with the Discounted Sale Arrangements.
2. The Owner must
  - 2.1 Notify the Council promptly if both the Occupiers cease to occupy the Dwelling
  - 2.2 Provide the Council with such evidence as it reasonably requires to determine that the provisions of this Agreement are being complied with.
3. Other than by one or both of the Occupiers the Dwelling shall not be occupied by persons who when they take up first occupation could reasonably afford to buy the Dwelling at Open Market Value.
4. The following further provisions shall apply in respect of the Dwelling:
  - 4.1 Before disposing of the Dwelling the Owner will give at least ten working days notice in writing to the Council stating the price at which it is intended to dispose of the Dwelling
  - 4.2 If within ten working days of receipt of such notice the Council gives notice in writing to the Owner that in the opinion of the Council the price at which the Dwelling is proposed to be offered by the Owner exceeds 80% (eighty per cent) of the Open Market Value then the Owner and the Council shall seek to agree the amount which is equal to 80% (eighty per cent) of the Open Market Value and in default of agreement (and at the election of either party) the matter may be referred to an Independent Chartered Surveyor for determination in accordance with the provisions of paragraph 4.3

4.3 At the election of either party in accordance with paragraph 4.2 the Open Market Value of the Dwelling shall be determined by an Independent Chartered Surveyor of not less than ten years standing having experience of residential property in Strumpshaw (the "Independent Chartered Surveyor") and upon his/her appointment he/she shall notify both parties of his/her agreement to act and allow to them ten working days to make representations on the Open Market Value of the Dwelling;

4.4 Within ten working days of the expiry of the period for the parties to make representations the Independent Chartered Surveyor shall give notice to both parties of his/her decision as to the Open Market Value of the Dwelling which shall be binding upon the parties save in the case of manifest error

4.5 The costs of the Independent Chartered Surveyor shall be borne as follows:

4.5.1 If the Independent Chartered Surveyor finds for the Owner then his costs shall be met by the Council;

4.5.2 If the Independent Chartered Surveyor finds for the Council then his costs shall be met by the Owner

4.5.3 In any other circumstances the Independent Chartered Surveyor shall order that his costs be borne by either party or between the parties whether in equal proportions or otherwise as he shall think reasonable in the circumstances of the particular case and that party or the parties (as the case may be) shall bear such ordered costs

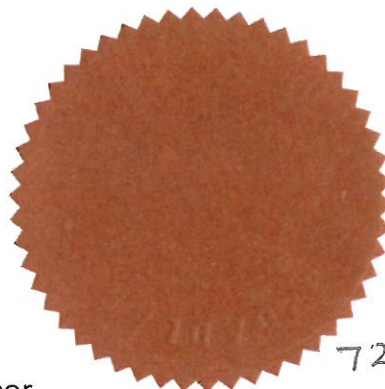
4.6 If either party shall object to the Independent Chartered Surveyor appointed or the Independent Chartered Surveyor shall be unwilling or unable to complete the determination of the Open Market Value of the Dwelling within twenty working days of appointment then either party shall be entitled to apply to the President for the time being of the Royal Institution of Chartered Surveyors for the appointment of a replacement and on his/her appointment the provisions of this paragraph 4 shall apply to the Independent Chartered Surveyor so appointed

5. Within 30 days of this Agreement the owner will apply to the land registry to register the Discounted Sale Restriction against the title to the Site and will provide official copies of the register to the Council to confirm that the registration has been completed.
6. When the Dwelling is sold pursuant to the Discounted Sale Arrangements preference shall be given to the Qualifying Occupiers in the following order:
  - 6.1 Current residents of Strumpshaw;
  - 6.2 People currently working in Strumpshaw;
  - 6.3 Households with a close family connection in Strumpshaw that need to move to give/receive support from/to close family members;
  - 6.4 Residents of Broadland District.

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.*

Authorised Officer

Head of Democratic Services and  
Monitoring Officer

72 48

EXECUTED as a DEED by  
JOE CULLUM  
in the presence of

) *J. Cullum*  
)

Signature of the Witness:

*W.D.O.*

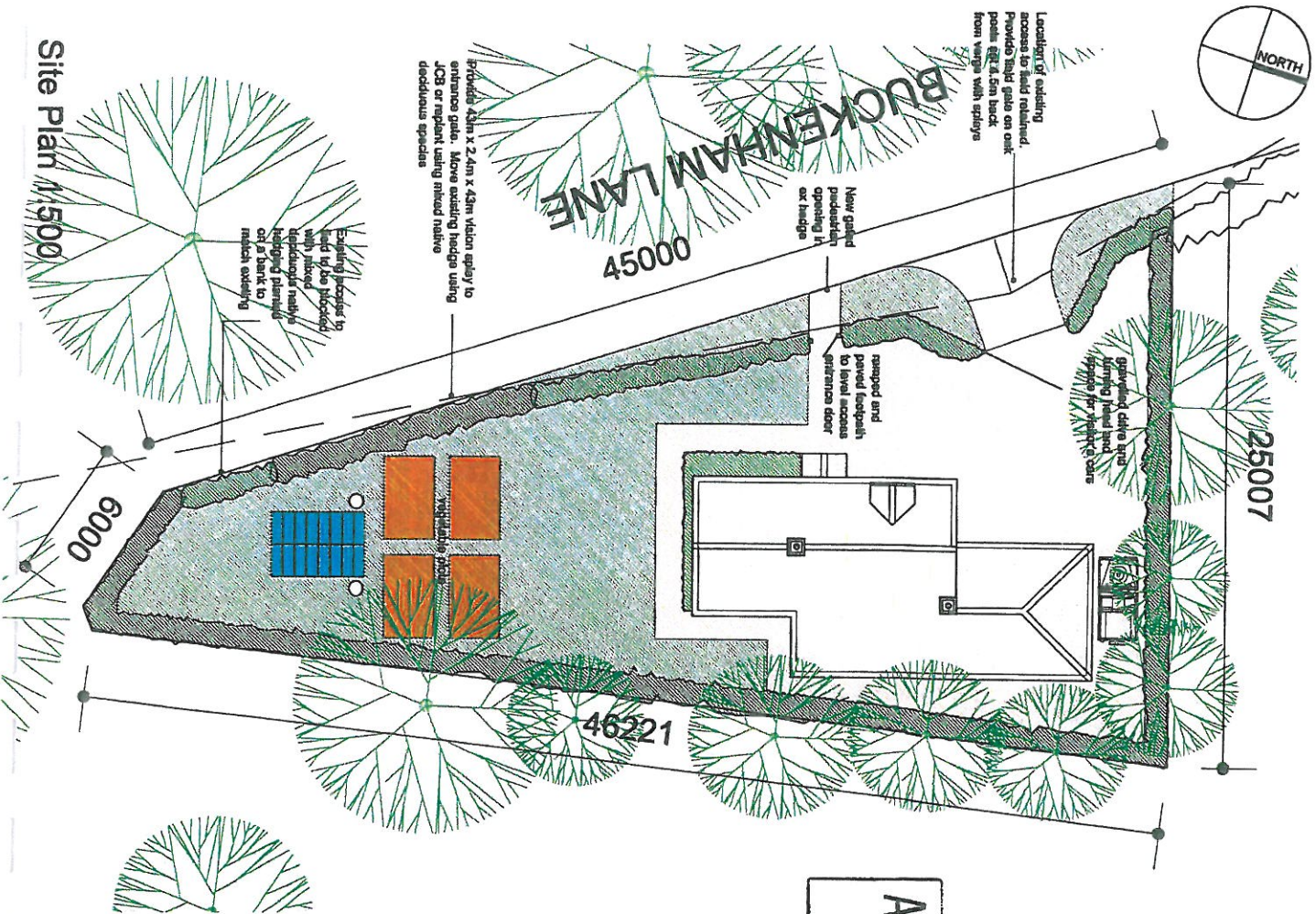
Name of the Witness:

NICHOLAS JOHN PRICE

Address of the Witness:

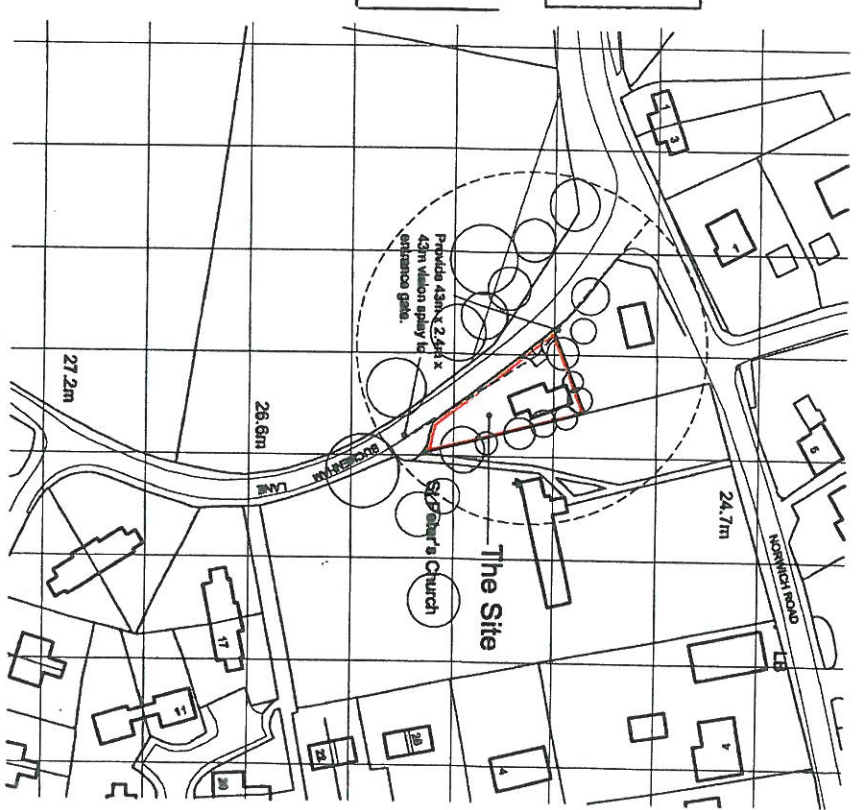
40 NORWICH ROAD  
STROMBHAM  
NORWICH NR13 4AG





# AMENDED PLAN

**BROADLAND DISTRICT COUNCIL**  
10 Jan 2013  
20121684 AP  
PLANNING CONTROL



planning

C	9 Jan 13	MR	Site plan redrawn based on site survey dimensions with reduced carport. Plan revised as client's instructions. Elevation omitted & section added.
B	14 Nov 12	MR	
A	Nov 12	CC	
REVISION	DATE	BY	REVISION
CLIENT	Mr & Mrs J. Cullen		
PROJECT NAME	Proposed new house at Buckenham Road Stumpshaw		
DRAWING TITLE	Site & Location Plans		
DRAWING SCALE	1:200 & 1:1250 @ A3	DRAWN BY MR	DATE
DRAWING NO.	1228	DATE	31 Jul 12
JOB NO.	1228	DATE	31 Jul 12
DRAWING NO.	1228	DATE	31 Jul 12
JOB NO.	1228	DATE	31 Jul 12

juny

**1228 01C**

© All rights reserved. DO NOT SCALE. CHECK ALL DIMENSIONS ON SITE. REPORT DISCREPANCIES.  
INCORPORATING WEATHER, PLANTINGS & NOTION CHANGING ARCHITECTS  
RENDERING: JURY ARCHITECTURE LTD, 28 MARKET PLACE, AYLESHAM, NORTHANTS, NN16 9EL. TEL: 01203 723494 FAX: 01203 723477 E-MAIL: enquiries@rendering.co.uk WEB: www.rendering.co.uk  
RENDERING: JURY ARCHITECTURE LTD, 28 MARKET PLACE, AYLESHAM, NORTHANTS, NN16 9EL. TEL: 01203 723494 FAX: 01203 723477 E-MAIL: enquiries@rendering.co.uk WEB: www.rendering.co.uk  
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