

DATED

21st May

2019

**SUPPLEMENTAL AGREEMENT UNDER SECTION 106A OF THE TOWN &
COUNTRY PLANNING ACT 1990 RELATING TO LAND AT FORMER
HAMPER PEOPLE, 31 NORWICH ROAD, STRUMPSHAW, NR13 4AG**

between

BROADLAND DISTRICT COUNCIL

and

NORFOLK COUNTY COUNCIL

and

W.M. TUBBY LIMITED



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THIS DEED is dated 21st May

2019

- (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) **W.M. TUBBY LIMITED** incorporated and registered in England and Wales with company number 00564700 whose registered office is at Stanley House Stanley Street, Lowestoft, Suffolk, NR32 2DZ (**Party 3**)

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 free from encumbrances.
- (D) On 18th September 2015 Party 1, Party 2 and Wickerhouse Limited (Wickerhouse Limited in its capacity as the then landowner) entered into the Original Agreement.
- (E) Pursuant to a Transfer Deed dated 22nd February 2016 Wickerhouse Limited in its capacity as the then landowner transferred the Property to Party 3.
- (F) 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.
- (G) 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 18th September 2015 between the Party 1, Party 2 and Wickerhouse Limited.

Property: land at 31 Norwich Road, Strumpshaw, NR134AG registered at the Land Registry with title number NK409939.

- 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:

Second Schedule - definition of "Affordable Housing Mix" shall have the following deleted:	Delete - " <i>and 1 x 2 bedroom bungalow</i> " (PROVIDED THAT and for the avoidance of any doubt the Definition of Affordable Housing Provision in the Original Agreement shall remain unaltered)
Paragraph 1.4 of the Second Schedule shall be amended to:	Delete – " <i>...other than:</i> " from the third line of paragraph 1.4 and replace with: <i>"...PROVIDED THAT the obligations contained in this Schedule shall not be binding upon:"</i>
Paragraph 1.4.2 of the Second Schedule shall be deleted in its entirety and replaced with the following Clause 1.4.2	Delete 1.4.2 and replace with: <i>"1.4.2 a mortgagee or chargee (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:</i> <i>a) such mortgagee or charge of Receiver shall first give notice to the Council of it intention to dispose of the Affordable Dwellings and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwellings or another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; and</i> <i>b) "if such disposal has not completed within the three month period, the mortgagee, charge or Receiver shall be entitled to dispose of the</i>

	<i>Affordable Dwellings free from all obligations contained in this Schedule which provisions shall determine absolutely in relation to the Affordable Dwellings"</i>
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- 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. LOCAL LAND CHARGE

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

6. 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 2019 and made between BROADLAND DISTRICT COUNCIL (1) NORFOLK COUNTY COUNCIL (2) and W.M. TUBBY LIMITED (3)".

7. VALUE ADDED TAX

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

- 7.2 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.

8. 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.

9. **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.

10. **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.

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:

Authorised Signatory: *M. Throver*
Head of Democratic Services and
Monitoring Officer
M. THROVER

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

Authorised Signatory: *Chris Walton*
Authorised to sign on behalf of Chief Legal Officer

Executed as a deed by
W.M. TUBBY LIMITED
acting by *NEVER GEORGE*, a
director, in the presence of:

SIGNATURE:
NAME:
ADDRESS:
OCCUPATION:

George
43600
George
ANDREW BROWN
17, BRALON RD
BELTON.
NR31 9PS
DIRECTOR.

