

DATED 10<sup>th</sup> August 2005

BROADLAND DISTRICT COUNCIL

- AND -

STUART ALAN SMITHIES

- AND -

VARUNEE SMITHIES

---

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 313 Drayton High Road Hellesdon

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THIS AGREEMENT is made the 10<sup>th</sup> day of August 2005  
BETWEEN BROADLAND DISTRICT COUNCIL of Thorpe Lodge  
Yarmouth Road Thorpe St Andrew Norwich in the County of Norfolk (hereinafter  
called "The Council") of the first part and STUART ALAN SMITHIES and VARUNEE  
SMITHIES of 313 Drayton High Road Hellesdon (hereinafter called "The Owners")  
of the second part

(A) INTERPRETATION AND DEFINITIONS

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

"the Act"	means the Town and Country Planning Act 1990 (as amended)
"Application"	means the application for detailed planning permission for the erection of 13 residential units registered on the 18 <sup>th</sup> April 2005 under reference number 20050612
"Development"	means the redevelopment of the land edged red on the Plan annexed hereto pursuant to the Permission
"Dwelling"	a dwelling forming part of the Development
"Director"	means the Council's Strategic Director (Community Services) or other officers of the Council acting under his hand
"Off-Site Open Space"	means the sum of thirty eight thousand two

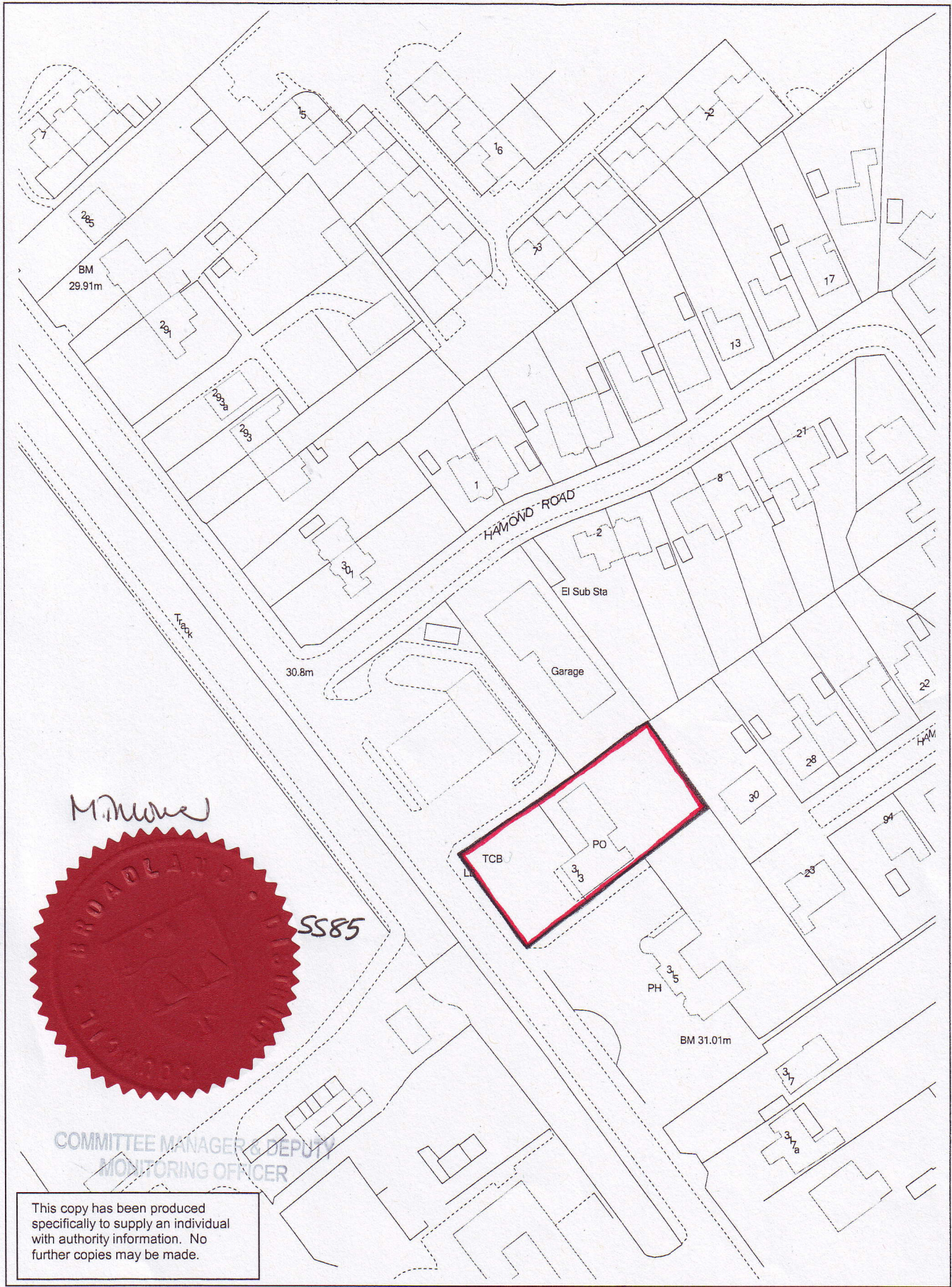


Contribution"	hundred and ninety two pounds (£38,292) increased in accordance with the Inflation Provision
"Inflation Provision"	the increase (if any) in the RICS All In Tender Price Index between 1 <sup>st</sup> August 2003 and the date upon which a payment of money is made pursuant to this Agreement
"Permission"	means the planning permission granted pursuant to the Application together with any renewal or modification thereof

(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






M. Moore



SS85

COMMITTEE MANAGER & DEPUTY  
MONITORING OFFICER

This copy has been produced specifically to supply an individual with authority information. No further copies may be made.

<b>Application No: 20050612</b> <b>313 Drayton High Road, Helleston</b>	<b>Scale:</b> 1:1250 <b>Date:</b> 22-Jun-05	<b>N</b> 
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(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 the Local Planning Authority for the purposes of the Act for the area within which the Land is situated

(C) The Owners are seized of land situated and known as land at 313 Drayton High Road Hellesdon in the County of Norfolk (hereinafter together called "The Land") shown for the purpose of identification only edged red on the plan annexed hereto (hereinafter called "The Plan") for an estate in fee simple absolute

(D) Having regard to the Development Plan for the area (being the Local Plan adopted 2000 and the Structure Plan adopted 1999) and other material considerations the Council considers it expedient in the interests of the proper planning of their area that provision should be made for regulating or facilitating the development of the Land in the manner hereinafter appearing and the Council 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 any 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 Local Planning Authority
- 1.3 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
- 1.4 This Agreement is a local land charge and upon completion shall be registered by the Council as such
- 1.5 No waiver (whether express or implied) by the Council of any breach or default by the Owners 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
- 1.6 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
- 1.7 This Agreement shall be governed by the laws of England
- 1.8 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 Land or the part of the Land in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of that party's interest in the Land or any part thereof in respect of which any such breach has taken place



1.9 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 Owners

1.10 NOTICES

1.10.1 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

1.10.2 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
The Owners	313 Drayton High Road Hellesdon Norwich

1.10.3 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



## 2. GENERAL

2.1 The Owners HEREBY FURTHER AGREE that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of this Agreement are hereby waived

2.2 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. COVENANTS

The Owners

4.1 The Owners hereby jointly and severally covenant and undertake with the Council so as to bind the Land and each and every part thereof to carry out and comply with the obligations entered into by the Owners set out in this Agreement



## The Obligations

### 5. OFF-SITE OPEN SPACE CONTRIBUTION

5.1 Prior to occupation of any Dwelling comprised in the Development on the Land the Off-Site Open Space Contribution as increased by the Inflation Provision shall be paid by the Owners (or their respective successors in title) to the Council

5.2 Interest at 4% above the base rate of the Co-operative Bank PLC shall be paid on any part of the above Contribution not paid within fourteen days of the date upon which it becomes due in accordance with Clause 5.1 above

### 6. THE COUNCIL'S OBLIGATIONS

6.1 The Council undertakes with the Owners that the Off-Site Open Space Contribution (as increased by the Inflation Provision) shall be applied towards the provision of new open space in the area administered by the Council ("the District") or towards the improvement and maintenance of existing open space in the District

### 7. LEGAL COSTS

7.1 The Owners shall on completion of this Agreement pay the Council's reasonable legal costs incurred in the preparation negotiation and completion of this Agreement

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 )



5585

*M. Murrell*

COMMITTEE MANAGER & DEPUTY  
MONITORING OFFICER

~~Head of Corporate Services and Monitoring Officer~~

SIGNED as a DEED by )  
STUART ALAN SMITHIES )  
in the presence of:- )

*Stuart Alan Smithies*

WITNESS SIGNATURE *S. Cossey*  
WITNESS NAME *MRS. SUSAN COSSEY*  
WITNESS ADDRESS *208A MIDDLETONS LANE*  
*HELLES DON NORWICH NR6 5SA.*  
WITNESS OCCUPATION *POST OFFICE CLERK.*

SIGNED as a DEED by )  
VARUNEE SMITHIES )  
in the presence of:- )

*V. Smithies*

WITNESS SIGNATURE *S. Cossey*  
WITNESS NAME *MRS. SUSAN COSSEY*  
WITNESS ADDRESS *208A MIDDLETONS LANE*  
*HELLES DON NORWICH NR6 5SA.*  
WITNESS OCCUPATION *POST OFFICE CLERK.*