

DATED 23 August 2005

BROADLAND DISTRICT COUNCIL

- AND -

ESSO PETROLEUM COMPANY LIMITED

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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 the former Drayton Way Service Station  
303 Drayton High Road Hellesdon

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THIS AGREEMENT is made the 23 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 ESSO PETROLEUM COMPANY LIMITED  
(Company Registration Number 26538) whose registered office is at Exxon Mobil  
House Ermyn Way Leatherhead Surrey KT22 8UX (hereinafter called "The  
Owner") 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 planning permission for the Development dated 8 <sup>th</sup> February 2005 under reference number 20050154
"Development"	means the redevelopment of the land edged red on the Plan annexed hereto comprising the demolition of the existing service station and the erection of 18 flats with ancillary parking, refuse and cycle storage
"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 Contribution"	means the sum of fifty three thousand and twenty pounds (£53,020)
"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
- (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





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**Application No: 20050154**

**Drayton Way Service Station, 303 Drayton High Road, Hellesdon**

**Scale:  
1:1250**

**Date:  
6-Apr-05**



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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 Owner is seized of land situated and known as land at the former Drayton Way Service Station 303 Drayton High Road Hellesdon in the County of Norfolk (hereinafter 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) The Application was submitted by GML Architects of 40 Featherstone Street London
- (E) Having regard to the Development Plan 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 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
- 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 any 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 Owner
- 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
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The Owner	Esso Petroleum Company Limited Exxon Mobil House Ermyn Way Leatherhead Surrey KT22 8UX
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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 Owner HEREBY FURTHER AGREES that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of the 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 Owner

- 4.1 The Owner hereby covenants and undertakes with the Council so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in this Agreement

The Obligations

### 5. OFF-SITE OPEN SPACE CONTRIBUTION

- 5.1 Prior to commencement of the Development on the Land the Owner shall pay to the Council the Off-Site Open Space Contribution as increased by the Inflation Provision

- 5.2 The Owner shall pay interest at 4% above the base rate of the Co-operative Bank PLC 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

### 6. THE COUNCIL'S OBLIGATIONS

- 6.1 The Council undertakes with the Owner 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 District or towards the improvement and maintenance of existing open space in the District

- 6.2 In the event that the Council does not utilise all or part of the Off-Site Open Space Contribution within five years from the date of its receipt of the same then the Council shall reimburse to the payer any sums comprising the Contribution which have not been expended by the Council for the purposes specified in Clause 6.1 above.

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 )



*C. B. A.*

CHIEF EXECUTIVE

~~Head of Corporate Services and Monitoring Officer~~

THE COMMON SEAL of )  
ESSO PETROLEUM COMPANY LIMITED )  
was hereunto affixed in the presence of )



*M. L. H.*

DIRECTOR.

*P. Lind*

ASSISTANT COMPANY SECRETARY.