

DATED Fourteenth day of April

2003

BROADLAND DISTRICT COUNCIL

- AND -

BRIAN SABBERTON LIMITED

- AND -

ORBIT HOUSING ASSOCIATION

- AND -

BARCLAYS BANK PLC

- AND -

JAMES DESMOND BUXTON AND ANNABELLA BUXTON

AGREEMENT

Made pursuant to Section 106 of the Town and Country Planning Act (as amended) 1990 and any other enabling power relating to the development of land at St. Faiths Road Old Catton Norfolk

Steele & Co
2 The Norwich Business Park
Whiting Road
Norwich NR4 6DJ
Ref: RPH.4349.822.7

THIS AGREEMENT is made the day of Two thousand and Three **BETWEEN BROADLAND DISTRICT COUNCIL** of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich in the County of Norfolk (“the Council”) (1) **BRIAN SABBERTON LIMITED** whose registered office is 8 Grange Road, Beccles Suffolk, NR34 9NR, and whose Company Number is 0798995 (“the Owner”) (2) **ORBIT HOUSING ASSOCIATION** (“the Association”) whose registered office is at Garden Court Harry Weston Road Binley Coventry CV3 2SU (3) **BARCLAYS BANK PLC** whose registered office is at 54 Lombard Street London ECP 3AH (Registered number 1026167) (“the First Mortgagee”) (4) and **JAMES DESMOND BUXTON** and **ANNABELLA BUXTON** of 23 Murrayfield Road Edingburgh EH12 6EP (“the Second Mortgagee”) (5)

RECITALS

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

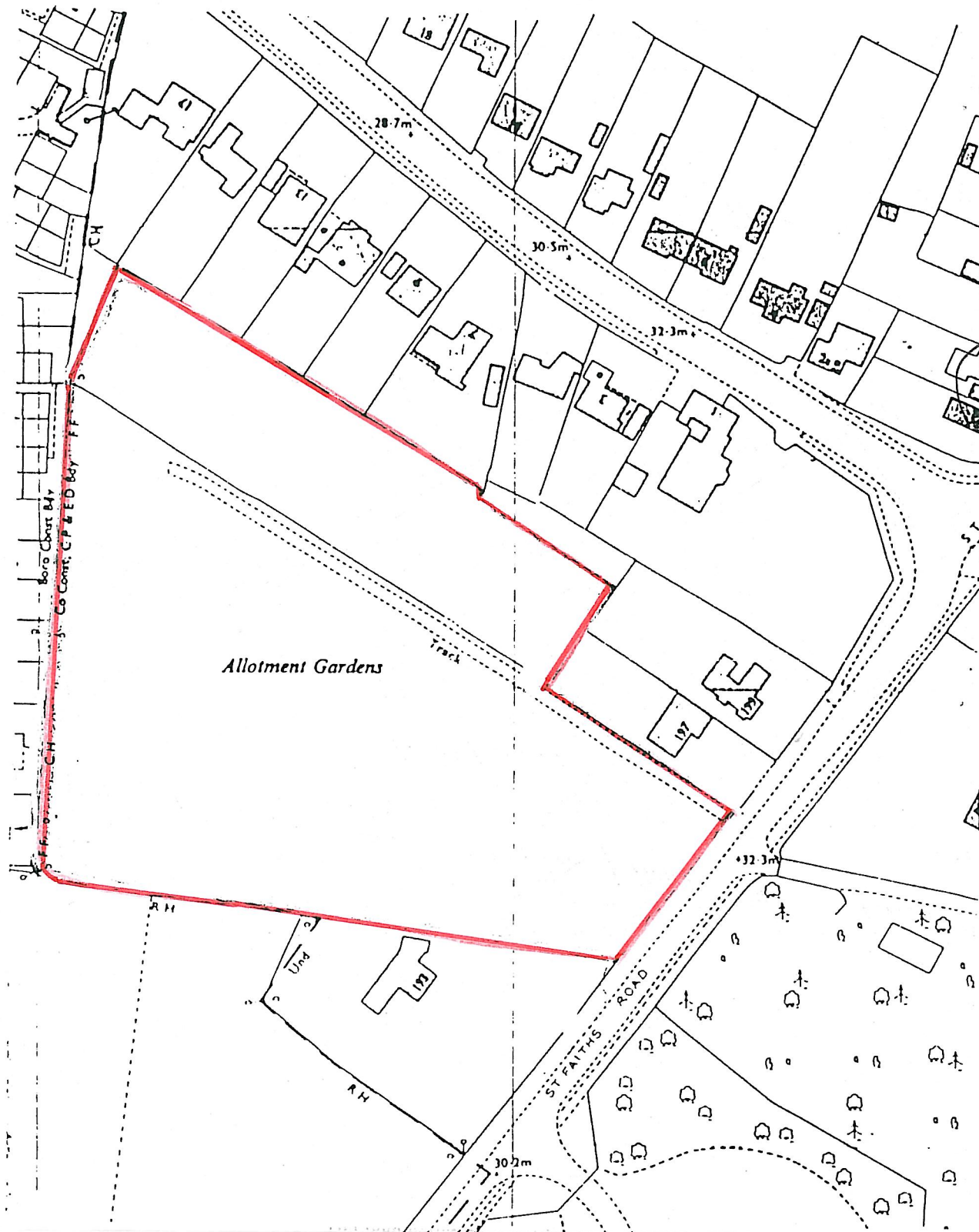
“Affordable Housing” housing for people whose income and means are not sufficient to enable them to purchase or rent housing suitable for their needs in the open market in the relevant area or other social housing as defined by the Housing Corporation publication “Regulating a Diverse Sector” dated May 2000

“Affordable Housing Payment”	means the sum of £77,500.00 to be paid by the Owner for the provision of Affordable Housing within the Broadland District Council area
“Application”	means the application for planning permission to develop the Land and dated 21 st December 1999 submitted to the Council in accordance with the application plans and other materials deposited with the Council and bearing reference number 99.1488
“Development”	means the development permitted by the Permission
“Director”	means the Council’s Strategic (Community Services) or other officers of the Council acting under his authority
“The Inflation Provision”	means the increase (if any) in the Retail Prices’ Index between the date of this Agreement and the date upon which a payment of money is made or play equipment is provided in accordance with any of the requirements of this agreement
“Permission”	means the outline planning permission granted pursuant to the Application together with any renewal or modification thereof
“1990 Act”	means the Town and Country Planning Act 1990 (as amended)

- (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 schedules are references to clauses in and schedules to this Agreement
 - (vii) where a party or any officer or employee is required to give its consent approval or agreement in any specific provision in this agreement such approval or agreement shall not be unreasonably withheld or delayed
 - (viii) 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

H.M. LAND REGISTRY		TITLE NUMBER NK124180	
ORDNANCE SURVEY PLAN REFERENCE	TG 2212 SE		Scale 1/1250
COUNTY NORFOLK	DISTRICT BROADLAND		© Crown copyright

The boundaries shown by dotted lines have been plotted from the transfer plan. The title plan may be updated from later survey information.



Handwritten notes:
 Peter I. Sabbata
 Amoson Books
 A Bux

BARCLAYS BANK PLC
 LOAN SERVICING CENTRE
 P.O. BOX 200
 BIRMINGHAM B1 3PF

Handwritten note:
 MAF

This OFFICE COPY shows the state of the title plan on 23 May 2001 and is admissible in evidence to the same extent as the original. This office copy of the title plan may be subject to minor distortions in scale. It was produced on 24 May 2001 by HM Land Registry. This title is administered by Kingston-Upon-Hull District Land Registry. Crown Copyright. Produced by HMLR. Further reproduction in whole or part is prohibited without the prior written permission of Ordnance Survey. Licence Number GD272728.

AUTHORISED SIGNATORY
[Signature]
AUTHORISED SIGNATORY

- (B) The Council is a Local Planning Authority for the purposes of the 1990 Act for the area within which the Land as defined below is situated
- (C) The Owner is the registered proprietor with absolute title of the land (hereinafter called “the Land”) shown for the purpose of identification only edged red on the plan annexed hereto as the same is registered under Title Number NK 124180 subject to the matters contained in the Charges Register for that Title Number but otherwise free from encumbrances
- (D) The Association is a Registered Social Landlord within the meaning of Part I Housing Act 1996 and provides Affordable Housing within the Broadland District Council area.
- (E) The First Mortgagee is the registered proprietor of a registered charge dated the 24th day of September 2001 and registered on the 30th day of October 2001
- (F) The Second Mortgagee is the registered proprietor of a registered charge dated the 24th day of September 2001 and registered on the 30th day of October 2001
- (G) 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 that provision be made for the Owner to contribute to Affordable Housing to be provided in

the area and the Council is satisfied the Permission can only be granted subject to and upon completion of this Agreement

(H) The First Mortgagee hereby consents to the giving of the obligations on the part of the Owner herein contained but without liability the First Mortgagee hereby agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession and that such liability will cease once the First Mortgagee has parted with its interest in the land

(I) The Second Mortgagee hereby consents to the giving of the obligations on the part of the Owner herein contained but without liability the Second Mortgagee hereby agrees to be bound by the said obligations only in the event that it becomes a mortgagee in possession and that such liability will cease once the Second Mortgagee has parted with its interest in the land

NOW THIS DEED WITNESSETH as follows:-

1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and any other enabling power

1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council

- 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 occurring 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 either:-

1.9.1 the Permission is quashed revoked or otherwise withdrawn; or

1.9.2 planning permission on the Land is granted subsequently and implemented for proposals incompatible with the Development
PROVIDED THAT no sums paid to the Council under clauses 6 or 7 shall be repayable to the Owner in the circumstances described in this sub-clause if any such sums shall have been committed by the Council when any such subsequent consent is granted.

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 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 recorded delivery post to the address of the party concerned as nominated in sub-clause 1.10.2

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	Strategic Director (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
The Owner	8 Grange Road, Beccles, NR34 9NR

The Association	14 St. Matthews Road Norwich NR1 1SP
The First Mortgagee	PO Box 299 Birmingham BI 3PF
The Second Mortgagee	23 Murrayfield Road Edinburgh EH12 6EP

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 works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Owner and at no cost to the Council
- 2.3** Any consideration or supplies made under this Agreement are inclusive of VAT

3. ARBITRATION

- 3.1** Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration of a single arbitrator to be agreed upon between the parties, or failing agreement within fourteen days after either

of the parties has given to the other parties a written request requiring the appointment of an arbitrator, to a person to be appointed at the request of any of the parties by the President of The Institution of Civil Engineers for the time being.

3.2 Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-

- (a) the seat of the arbitration shall be at the Council's offices in Norwich
- (b) where appropriate the arbitrator may consolidate arbitral proceedings;
- (c) with the parties agreement the arbitrator may appoint experts or legal advisers

3.3 Either of the parties concerned in any such dispute or difference arising from this Agreement wishing to refer any such dispute or difference to arbitration shall notify the other party in writing of such intention without delay

3.4 The arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the arbitrator when such parties may also agree that such arbitrator shall act as an expert

3.5 Subject to Sections 67, 68 and 69 of the Arbitration Act 1996, the parties agree to be bound by the decision of the arbitrator

4. RIGHTS OF 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.

5. COVENANTS

5.1 The Owner

The Owner hereby covenants and undertakes with the Council and (where applicable) with the Association so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in clauses 6 and 7 of this Agreement on the part of the Owner

The Obligations

6. OPEN SPACE AND PLAY EQUIPMENT

6.1 Within 28 days of the date of this Agreement the Owner shall pay to the Council the sum of £7,272.00 (calculated as at 1 April 2002) in respect of the responsibility of the Owner to meet the agreed open space and play equipment requirements of the Council.

6.2 Within 30 days of practical completion of the last of the dwellings to be constructed as part of the Development the Owner shall pay to the Council a further sum or the Council shall refund to the Owner part of the sum paid under Clause 6.1 to be calculated as follows:

6.3 The sum referred to in Clause 6.2 shall reflect the proper sum due and payable in accordance with the process set out in Appendix 4 of the Broadland District Local Plan adopted July 2000.

7. THE AFFORDABLE HOUSING PAYMENT

- 7.1 The Owner covenants and undertakes with the Council and (as a distinct and separate obligation) with the Association to pay the Affordable Housing Payment to the Council within 28 days of the date of this Agreement.
- 7.2 If the Owner fails to pay the Affordable Housing Payment in accordance with the timescale prescribed by Clause 7.1 the Affordable Housing Payment shall be increased by the Inflation Provision and occupation of the dwellings permitted by the Development shall not commence until such time as the Affordable Housing Payment shall have been paid in full.
- 7.3 The Council covenant and undertake with the Association to pay the Affordable Housing Payment to the Association within 21 days of receiving the Affordable Housing Payment from the Owner. For the avoidance of doubt if the Affordable Housing Payment is increased in accordance with Clause 7.2 the Council will pay the increased sum to the Association.
- 7.4 The Association covenant with the Council and (as a separate and distinct covenant) with the Owner to utilise the Affordable Housing Payment, together with any interest earned thereon, within 3 years of its receipt by the Association in connection with the provision of Affordable Housing in the Old Catton area by way of the provision of new buildings or the acquisition of land or existing properties to provide a minimum of 3 Affordable Housing Units.
- 7.5 If the Association fail to utilise the Affordable Housing Payment or any part of it within the period prescribed by Clause 7.4 above the Association will repay the Affordable Housing Payment (or the part of the Affordable Housing

Payment it has failed to utilise) to the Council within 14 days of demand together with interest at 2% above the minimum lending rate of HSBC Bank Plc from time to time in force calculated on a daily basis.


- 7.6 If the Association repay the Affordable Housing Payment or any part of it to the Council in accordance with Clause 7.5 above the Council will repay the sum to the Owner within 21 days of receipt.

8. PREVIOUS AGREEMENT

- 8.1 This agreement is in succession to an agreement dated 7th March 2001 and made between the Council (1) and the First and Second Mortgagees (2) predecessors
- 8.2 in title to the Owner.
- 8.3 The parties hereby agree that the said agreement of 7th March 2001 shall be of no further effect.
- 8.4 The Council hereby agrees to make appropriate entry in the Council's Land Charges Register to that effect.

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)


HEAD OF CORPORATE SERVICES
& MONITORING OFFICER



EXECUTED AS A DEED BY BRIAN)
SABBERTON LIMITED acting)
by a director and the company)
secretary)

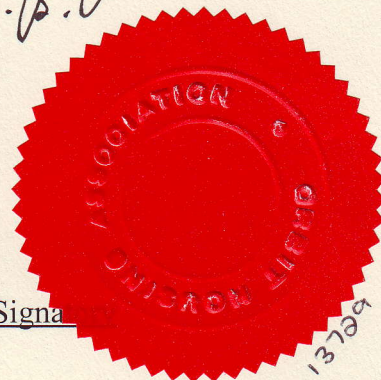
Director Peter J. Sabberton

Secretary P. B. Sabberton

THE COMMON SEAL OF)
ORBIT HOUSING ASSOCIATION)
was hereunto affixed in the presence of)

Alan Davis
Alan Davis

Authorised Signatory



Authorised Signatory

EXECUTED AS A DEED BY)
BARCLAYS BANK PLC acting by)
its attorney in the presence)
of:-)

Signed as a deed
By Margaret Ann Kelly M. Kelly
as Attorney for and
on behalf of
Barclays Bank PLC
in the presence of
JANE ESSED
Name Signature

Witness's Signature

Name
Address

Occupation

QC	INITIALS	DATE
	<u>Alan Davis</u>	<u>7.4.03</u>

EXECUTED AS A DEED BY JAMES
DESMOND BUXTON in the
presence of :-

)
)
)

Witness's Signature

Name

Address

Occupation

Beryl Knox

BERYL KNOX

11, STENHOUSE PLACE WEST
EDINBURGH EH11 3JW

HOUSEKEEPER -

EXECUTED AS A DEED BY
ANNABELLA BUXTON in the
presence of :-

)
)
)

Witness's Signature

Name

Address

Occupation

Beryl Knox

BERYL KNOX

11, STENHOUSE PLACE WEST
EDINBURGH EH11 3JW.

HOUSEKEEPER .