

Dated

28 March

2008

BROADLAND DISTRICT COUNCIL

- AND -

NORFOLK COUNTY COUNCIL

- AND -

LOVELL PARTNERSHIPS LIMITED

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

relating to the development of land
at Cawston Road Reepham

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

THIS AGREEMENT is made the 28th day of March 2008

BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road
Thorpe St Andrew Norwich Norfolk NR7 0DU (hereinafter called "The Council")
2. NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich
NR1 2DH (hereinafter called "The County Council")
3. LOVELL PARTNERSHIPS LIMITED (Co. Regn. No. 0238733) of Kent
House 14 – 17 Market Place London, Greater London W1W 8AJ
(hereinafter called "The Owner")

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)
"Affordable Housing"	housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market to be owned and/or managed by a Registered Social Landlord consisting of six (6) Affordable Rental Units and four (4) Shared Ownership Units

"Affordable Rental Units "	Six Affordable Housing Units to be constructed or provided on the Site as part of the Development and to be let for a rent upon either a weekly basis or monthly tenancy basis not exceeding housing corporation target rents in accordance with the Registered Social Landlord's normal letting policy
"Application"	the detailed application for planning permission dated 29 January 2007 for 26 dwellings highway and associated site works in accordance with the plans deposited with the Council bearing reference number 20070127 (as amended) (and any application for modification or amendment in connection with the Development)
"Commencement of Development"	the date on which any material operation (as defined in Section 56(4) of the Town and Country Planning Act 1990) forming part of the Development begins to be carried out other than (for the purposes of this Agreement and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosures, the temporary display of site notices or advertisements, and "Commencement of Development" shall be construed accordingly

"Development"	the development permitted by the Planning Permission or any amendment or modification permitted by the Planning Permission
"Director"	the Council's Strategic Director and Chief Planner (Community Services) or other officers of the Council acting under his hand
"Due Date"	the date upon which the payment due under any provisions of this Agreement is to be made
"Dwelling"	any residential Dwelling approved pursuant to the Planning Permission
"Education Contribution"	the sum of £72,604 together with the sum of £2634 per multi-bed house bungalow or maisonette and the sum of £1317 per multi-bed flat or apartment over and above 26 dwellings constructed as part of the Development Index Linked to be used for the provision of additional educational facilities at Reepham Primary School
"Final Staircasing"	the purchase of 100% of the freehold or headleasehold interest or otherwise 100% of the equity in a Shared Ownership Unit from an RSL pursuant to the terms of a Shared Ownership Lease
"Footpath Diversion Costs"	the sum of £5,000
"Footpath Diversion Order"	an order made under s.257 of the Act for the diversion of the public footpath on the south

	side of Cawston Road
"Index Linked	means payments and contributions subject to increase in accordance with Clause 14
"Inflation Provision"	the increase (if any) in the DTI Output Price Index for Public Works between 30 th September 2006 and the date upon which a payment of the Open Space Maintenance Contribution is made pursuant to this Agreement
"Library Contribution"	the sum of £1,300 together with the sum of £50 per Dwelling over and above 26 Dwellings constructed as part of the Development Index Linked to be used for the provision of additional library books or facilities
"Occupation"	occupation of a dwelling (but not including occupation by contractors for construction or fitting out purposes or as a showroom or sales office) and "Occupied" shall be constructed accordingly
"Open Space Maintenance Contribution"	the sum of £30,479 increased in accordance with the Inflation Provision
"Open Market Dwellings"	residential dwellings (comprising a bungalow, flat, maisonette or house) erected or provided on the Site as part of the Development other than for the provision of Affordable Housing
"Plan"	the plan annexed to this Agreement

"Planning Permission"	the detailed planning permission to be granted pursuant to the Application or any amendment or modification granted for the Development
"Public Open Space"	an area or areas within the Site identified in any plan approved by the Council for use as Public Open Space and provided in accordance with the requirements of Schedule 2
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs 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 1985, 1996 and 2004 and the Homelessness Act 2002)
"Registered Social Landlord"	a registered social landlord in the register kept by the Housing Corporation under Part 1 of the Housing Act 1996 (or any statutory re-enactment or modification thereof) as approved by the Council such approval not to be unreasonably withheld or delayed
"Shared Ownership Units"	four units of Affordable Housing Units to be let to Qualifying Occupiers on Shared Ownership Leases to be provided on the Site as part of the Development

"Shared Ownership Lease" a lease of a Shared Ownership Unit granted at a premium whereby up to a maximum of fifty per cent (50%) on first purchase of the equitable interest in the Shared Ownership Unit is paid by the tenant upon completion of such lease or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to purchase the freehold of a Shared Ownership Unit by instalments at some future date or dates and allows a rental premium to be charged on the remainder of the equitable interest

"Site" the land at Cawston Road Reepham Norfolk shown for the purposes of identification only edged red on the Plan and more particularly defined as being the land comprised within title numbers NK21904 and NK312178 and other land

"Walking and Cycling Contribution" the sum of £13,000 together with the sum of £500 per Dwelling over and above 26 Dwellings Index Linked as a contribution to the Walking and Cycling Strategy

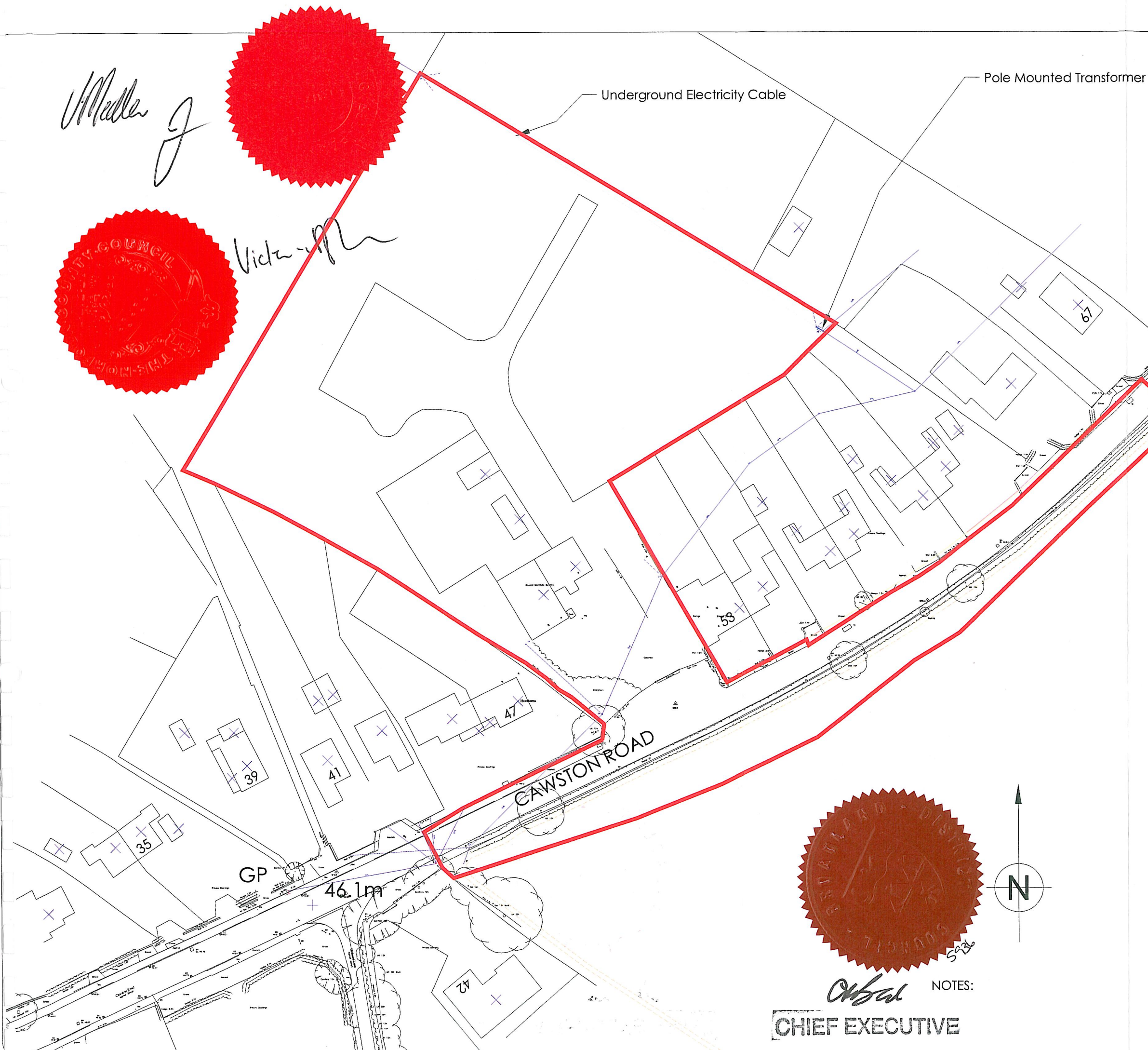
In this Agreement unless the context otherwise requires:

- (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
- (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

W H E R E A S:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated and the County Council is the relevant Highway Authority and is also a Local Planning Authority for the purposes of the Act
- B. The Owner is the freehold owner of the Site shown outlined in red on the Plan
- C. The Owner submitted the Application and the Council has resolved to grant the Planning Permission subject to the entering into this Agreement

Do Not Scale:
All figured dimensions to be checked on site and the Lovell notified of any variation



Rev	Description
A	CHANGE TO A3
---	---
---	---
---	---
---	---
---	---

Project Title: **Proposed Development at Cawston Rd Reepham**

Drawing Title: **Site as Existing @ A3**

Drawing No:	CA119	Rev:	A
Drawn:	CWP	Scale:	1:750 @ A3
Checked:	N/A	Approved:	N/A
		Date:	8/10/07
		Job No:	CP003

This drawing is the copyright of LOVELL Partnerships Ltd and should not be Reproduced without Prior Consent



Lovell Partnerships Ltd
69-75 Thorpe Road, Norwich,
Norfolk, NR1 1UA

TEL: 01603 667663,
FAX: 01603 664114

Orbui
CHIEF EXECUTIVE

NOTES:

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 and any other enabling powers
- 2.2 The obligations of the Owner hereunder are planning obligations enforceable by the Council and the County Council against the Owner and its successors in title and assigns
- 2.3 The provisions of this Agreement are conditional upon
- 2.3.1 the grant of the Planning Permission; and
- 2.3.2 the Commencement of Development
- But provided always that all clauses save for 13.1 and 13.2 shall come into effect immediately upon the date hereof
- 2.4 This Agreement shall cease to have effect if the Planning Permission shall be quashed, revoked or otherwise withdrawn
- 2.5 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges
- 2.6 In the event that this Agreement comes to an end the Council, if so requested by the Owner, will execute a deed of release (or partial release) from the relevant provisions of this Agreement and procure that a note thereof shall be registered on the Council's Register of Local Land Charges
- 2.7 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or County Council under the terms of this Agreement, such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed

- 2.8 This Agreement shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been at any time issued by the Council or by any other appropriate person or authority pursuant to the provisions of the Act

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 powers duties and obligations of the Council or the County Council in the exercise of their functions as Local Planning Authority and Highway 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 or the County Council were 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 or the County 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 or the County Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

- 3.4 No party shall be liable under this Agreement for any breach of the covenants contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any person's interest in the Site or any part thereof in respect of which any such breach has taken place

UTILITES

- 3.5 The obligations and restrictions under this Agreement shall not be enforceable against any statutory undertaker which acquires any part of the Site for the purposes of its statutory undertaking or functions

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 Strategic Director and Chief Planner (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
The Owner	Kent House 14-17 Market Place London Greater London W1W 8AJ
The County Council	Head of Law County Hall Martineau Lane

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

5. THIRD PARTIES

- 5.1 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 prior to completion of this Agreement pay the Council's and the County Council's reasonable legal and administrative costs properly and reasonably incurred in the preparation negotiation and completion of this Agreement in the sums of respectively £2,208 and £550

7. PAYMENT OF INTEREST

- 7.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the Due Date to the date the money is received

8. VAT

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

8.2 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

9. JURISDICTION

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

10. The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived

11. TITLE WARRANTY

11.1 The Owner hereby warrants that it is the freehold owner of the Site and has full power to enter in to this Agreement and that the Site is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Site other than as notified in writing pursuant to Clause 4.2 prior to the date hereof

12. DISPUTES

12.1 The parties 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

12.2 If the matter is not resolved through negotiation 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 for Dispute Resolution

12.3 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.

12.4 Nothing in Clauses 12.1 and 12.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

13. OBLIGATIONS

13.1 The Owner hereby covenants with the Council to carry out and comply with the obligations and restrictions set out in Schedules 1 2 6 and 7 to this Agreement

13.2 The Owner hereby covenants with the County Council and the Council to carry out and comply with the obligations and restrictions set out in Schedules 3 4 and 5 to this Agreement

14. INDEX LINKED

14.1 Unless otherwise stated all contributions payable under the provisions of this Agreement by the Owner to the County Council as appropriate will be Index Linked in accordance with the following parts of this Clause

14.2 Save for the Open Space Maintenance Contribution for the purposes of applying indexation the index will have the following meanings:-

14.2.1 for the Education Contribution and the Library Contribution the RICS Building Cost Information Service All in Tender Index

14.2.2 for the Walking and Cycling Contribution the Road Construction Tender
Price Index published by the Department of Trade and Industry

or in the event that any such index ceases to be published then in its place
such reasonably equivalent index as the County Council as appropriate shall
specify

- 14.3 Indexation will commence from 26 June 2007 and will end on the date or
dates when the relevant contributions or other sums are paid
- 14.4 The relevant contribution will be increased by an amount equivalent to the
percentage difference between the published (index) from 26 June 2007 and
the published (index) at the date of payment
- 15. The Council hereby covenants with the Owner that following payment to it of
the Footpath Diversion Costs to use all reasonable expedient and timely
measures to make and confirm or (in the event that a valid objection is made)
apply for confirmation of the Footpath Diversion Order and the Council and
the County Council hereby covenant with the Owner to comply with their
respective obligations set out in Schedule 8 to this Agreement

SCHEDULE 1

- 1. AFFORDABLE HOUSING
 - 1.1 Not to construct or procure the construction of the Affordable Housing Units
otherwise than in accordance with the Planning Permission and current
applicable scheme development standards and building regulations in force at
the time of building
 - 1.2 Not to use allow or permit the Affordable Housing Units to be occupied for any
purpose other than as Affordable Rental Units and/or Shared Ownership Units

- 1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.4 The Owner shall not dispose of its interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage or where the disposal is of the final tranche of equity of a Shared Ownership Unit) other than to a Registered Social Landlord
- 1.5 Paragraphs 1.2 and 1.3 and 1.4 above shall not be binding upon:-
 - 1.5.1 any mortgagee in possession of the Affordable Housing Units or part thereof nor
 - 1.5.2 any receiver or manager (including an administrative receiver) for such mortgagee nor
 - 1.5.3 any of the Affordable Housing Units where the Owners shall be required to dispose of such Units pursuant to a right to buy under Part 5 of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right or statutory right which may be applicable nor
 - 1.5.4 any person exercising Final Staircasing Rights nor
 - 1.5.5 any and all successors in title of all persons or parties referred to in the whole of this paragraph 1.5
- 1.6 No Open Market Dwelling shall be Occupied until the Owner has entered into a contract with a Registered Social Landlord approved by the Council (such approval not to be unreasonably withheld or delayed) for the provision of Affordable Housing on the site to a Registered Social Landlord
- 1.7 No more than 7 Open Market Dwellings shall be Occupied prior to the commencement of construction of the Affordable Housing on the Site pursuant to the Planning Permission

- 1.8 No more than 12 Open Market Dwellings shall be Occupied prior to the completion of the construction of the Affordable Housing on the Site pursuant to the Planning Permission so that each Affordable Housing Unit is ready and available for Occupation in accordance with the provisions of this Agreement (which shall be deemed to occurred on the issue of a cover note from NHBC or the equivalent from any other building warranty provider)

SCHEDULE 2

2. PUBLIC OPEN SPACE

- 2.1 The Open Space Maintenance Contribution shall be paid by the Owner to the Council prior to the Occupation of the tenth Dwelling on the Site
- 2.2 not to occupy or allow to be Occupied more than ten Dwellings on the Site until the Public Open Space has been laid out to the reasonable satisfaction of the Council in accordance with detailed plans and a scheme to be submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed)
- 2.3 to maintain the Public Open Space and keep the same at all times clean cultivated fed and watered and shall replace as necessary any dead or diseased planting or any defective equipment or surfacing to the reasonable satisfaction of the Council until the said Public Open Space is transferred to the Council or such other body as the Council may nominate
- 2.4 Subject to compliance with Clause 2.2 above either party may serve notice on the other (the Public Open Space Notice) offering (or requiring) the transfer of the Public Open Space to the Council on the terms and conditions set out in Schedule 7 hereof

- 2.5 neither the Owner nor the Council shall unreasonably delay prevent the completion of or unreasonably refuse to complete a deed of Transfer of the Public Open Space to the Council following the service of the Public Open Space Notice

SCHEDULE 3

3. EDUCATION CONTRIBUTION

- 3.1 Prior to the Occupation of the tenth Dwelling on the Site to pay the Education Contribution to the County Council

SCHEDULE 4

4. LIBRARY CONTRIBUTION

- 5.1 Prior to the Occupation of the tenth Dwelling on the Site to pay the Library Contribution to the County Council

SCHEDULE 5

5. WALKING & CYCLING CONTRIBUTION

- 5.1 Prior to the Occupation of any Dwellings to be erected or provided as part of the Development to pay the Walking and Cycling Contribution to the County Council

SCHEDULE 6

6. FOOTPATH DIVERSION ORDER

- 6.1 No Dwelling on the Site to be constructed pursuant to the Planning Permission shall be Occupied unless and until the Footpath Diversion Order has been made and confirmed and implemented

- 6.2 Subject to clause 6.3 the Footpath Diversion Order will be made by the Council as soon as reasonable possible upon the Footpath Diversion Costs being paid in full to the Council
- 6.3 In the event that the actual costs (reasonably and properly incurred by the Council) of making and pursuing the confirmation of the Footpath Diversion Order exceed the Footpath Diversion Costs the Owner will within ten working days of demand pay to the Council any further sum reasonably and properly required by the Council and in the event that the actual costs of making the Footpath Diversion Order are less than the Footpath Diversion Costs the Council will refund to the payee the unexpended balance within ten working days of the Footpath Diversion Order having been made or confirmed.
- 6.4 For the avoidance of doubt no undertakings are to be implied into this agreement that the Council will obtain the Footpath Diversion Order and any costs properly incurred by the Council in complying with the requirements of this schedule will be payable by the Owner (subject to clause 6.3 above) whether or not the Footpath Diversion Order is confirmed

SCHEDULE 7

7. LAND TRANSFER PROVISIONS

- 7.1 Completion of the transfer of any land required by this Agreement to be transferred to the Council shall take place on such date as shall be agreed in writing between the Council and the relevant Owner or Owners or in default of such agreement upon such date as shall be specified in a notice in writing given by the Council to the Owner(s) or by the Owner(s) to the Council such notice to be given not later than 28 days before the date specified for completion
- 7.2. The land shall be transferred with full title guarantee and with vacant possession

- 7.3 The transfer shall contain all such rights and easements whatsoever (including without prejudice to the generality of the foregoing the provision of all rights of access of services and service installations thereto) as are required to facilitate the use of the land transferred for the purpose it is being transferred
- 7.4 The transfer will if so required by the Owner(s) contain a covenant by the Council restricting the use of the land transferred to the purpose for which it is transferred and for no other use whatsoever except in the case of open space land as defined in the Open Spaces Act 1906
- 7.5 The standard conditions of sale (4th edition) shall apply to any transfer under the provisions of this Schedule so far as they are applicable to a sale by private treaty and are not varied by or inconsistent with the express terms of this Agreement

SCHEDULE 8

8. COUNCIL COVENANTS

The Council and County Council (as appropriate) hereby covenant with the Owner as follows:-

- 8.1 To use all sums received under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council or County Council shall agree
- 8.2 To provide to the payer such evidence as the payer shall reasonably require in order to confirm the expenditure of the said sums paid by the payer pursuant to this Agreement

- 8.3 To provide to the payer such evidence as the Payer shall reasonable require in order to confirm the expenditure of the said sums paid by the payer pursuant to this Agreement
- 8.4 The County Council (as appropriate) hereby covenants with the Owner as follows:-
- 8.4.1 In the event that the Education Contribution or any part of it has not been committed in accordance with this Agreement (by way of a contract or expenditure of the monies) within five years from the date of receipt by the County Council of the Education Contribution the County Council will repay to the payer such unexpended sum together with any interest accrued thereon
- 8.4.2 In the event that the Library Contribution or any part of it has not been committed in accordance with this Agreement (by way of a contract or expenditure of the monies) within five years from the date of receipt by the County Council of the Library Contribution the County Council will repay to the payer such unexpended sum together with any interest accrued thereon
- 8.4.3 In the event that the Walking & Cycling Contribution or any part of it has not been committed in accordance with this Agreement (by way of a contract or expenditure of the monies) within ten years from the date of receipt by the County Council of the Walking & Cycling Contribution the County Council will repay to the payer such unexpended sum together with any interest accrued thereon

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)

CWB

CHIEF EXECUTIVE

~~Head of Corporate Services~~
~~and Monitoring Officer~~



THE COMMON SEAL of)
NORFOLK COUNTY COUNCIL)
was hereunto affixed)
in the presence of)

Victor

Head of Law



THE COMMON SEAL of)
LOVELL PARTNERSHIPS LIMITED)
was hereunto affixed)
in the presence of)

Madley

