

DATED 26 February 2008

BROADLAND DISTRICT COUNCIL

- AND -

GEORGE EDWARD PAUL CARRS and
PETER ROBIN GILES

- AND -

NATIONAL WESTMINSTER BANK PLC

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

Relating to the development of land adjacent
to The Royal Oak Public House
North Walsham Road
Sprowston Norfolk

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

THIS AGREEMENT is made the 26 day of February 2008

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the first part GEORGE EDWARD PAUL CARRS and PETER ROBIN GILES whose address for service is Unit 5 Shepherds Business Park Norwich Road Lenwade Norwich Norfolk NR9 5SH ("the Owners") of the second part and NATIONAL WESTMINSTER BANK PLC (Company Number 00929027) of Norfolk and Waveney Business Centre Norwich Office Norfolk House Exchange Street Norwich NR2 1DD ("the Mortgagee")

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)
"Application"	the detailed application made on 28.09.07 for planning permission for eight flats and associated works in accordance with the plans deposited with the Council bearing reference No 20071405
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings or clearance of the Site) and "commence" shall be interpreted in accordance with this definition

"Development"	the development 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
"Inflation Provision"	the increase (if any) in the DTI Output Price Index for Public Works between 30 September 2006 and the date upon which a payment of the Off-Site Open Space Contribution is made pursuant to this Agreement
"Off-Site Open Space Contribution"	the sum of twenty nine thousand eight hundred and ninety two pounds (£29,892)
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Residential Unit"	a self-contained house bungalow or flat
"Site"	the land adjacent to The Royal Oak Public House North Walsham Road Sprowston Norfolk shown for the purposes of identification only edged red on the Plan

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
- B. The Owners are the freehold owners of the Site and the Mortgagee has a charge over the site
- C. The Owner's agents have submitted the Application
- D. The Council have resolved to approve the Application subject to the completion of this Agreement
- E. The Mortgagee has agreed to be a party to this Agreement for the purpose of giving consent as hereinafter appears

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 Owners hereunder are planning obligations enforceable by the Council against the Owners and their respective successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with his interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement
- 2.5 This Agreement shall cease to have effect if:
 - 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
 - 2.5.2 the Planning Permission shall expire prior to the Commencement Date
- 2.6 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

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 in the exercise of its functions as Local Planning 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 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 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

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:-



[Handwritten signature]

[Handwritten signature]

REV:	date:	
 DAVID FUTTER ASSOCIATES LTD ARCHITECTS CONSULTING ENGINEERS PLANNING CONSULTANTS INTERIOR DESIGNERS "ARKITECH HOUSE" 25 WHIFFLER ROAD, NORWICH, NR3 2AW TEL: (01603) 787778 / 788878 FAX: (01603) 787498 www.davidfutterassociates.com		
Project: 8 No Apartments Adjacent Royal Oak Public House North Walsham Road Sprowston.		
Client: Carrs & Giles		
Drawing: Location Plan		
Drawn By: Scales: Date: Nov 2006	Ref. No. 5247	Org. No. S01

The Council	The Strategic Director and Chief Planner (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
The Owners	George Edward Paul Carrs and Peter Robin Giles of Unit 5 Shepherds Business Park Norwich Road Lenwade Norwich Norfolk NR9 5SH
The Mortgagee	Norfolk and Waveney Business Centre Norwich Office Norfolk House Exchange Street Norwich NR2 1DD

- 4.3 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

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

7. PAYMENT OF INTEREST

- 7.1 The Owners 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 date the monies should have been paid 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 Owners agree 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. PLANNING OBLIGATIONS

The Owners hereby jointly and severally covenant with the Council that prior to the occupation of any Residential Unit of the Development on the Site to pay to the Council the Off-Site Open Space Contribution as increased by the Inflation Provision

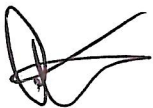
12. The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owners with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement

EXECUTED by the parties hereto as a deed on the date written above

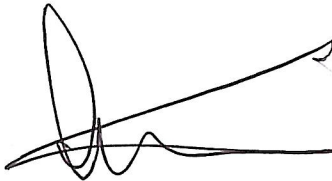
THE COMMON SEAL of)
BROADLAND DISTRICT COUNCIL)
was hereunto affixed in the presence of)

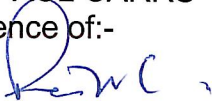



Head of Corporate Services
and Monitoring Officer


SIGNED by the said *Edward Paul Carrs*
EDWARD PAUL CARRS
in the presence of:-

)
)
)




PETER M. COOK
SOLICITOR
5/7 CHURCH STREET
WYMONDHAM NR18 0PP

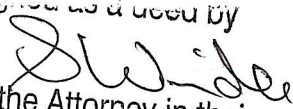
SIGNED by the said
PETER ROBIN GILES
in the presence of:-

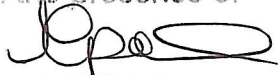
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PETER M. COOK
SOLICITOR
5/7 CHURCH STREET
WYMONDHAM NR18 0PP

THE COMMON SEAL of)
NATIONAL WESTMINSTER)
BANK PLC was)
hereunto affixed in the)
presence of:-)

Signed as a deed by

as the Attorney in their capacity
23
Sheffield Credit Documentation
on behalf of National
Westminster Bank PLC

In the presence of

Bank Official
JANE Copestake
Sheffield Credit Documentation
PO Box No. 502
2nd Floor, 42 High Street
Sheffield S1 2YW