

DATED 8TH SEPTEMBER 2009

BROADLAND DISTRICT COUNCIL

- AND -

SAFFRON HOUSING TRUST LIMITED

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

Relating to the development of land at Ethel Tipple Court
Sherwell Road, Hellesdon, Norwich

Broadland District Council
Thorpe Lodge
Yarmouth Road
Norwich
NR7 0DU

THIS AGREEMENT is made the 8TH day of SEPTEMBER 2009

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the first part

SAFFRON HOUSING TRUST LIMITED of Saffron Barn, Swan Lane, Long Stratton, Norwich Norfolk NR15 2XP, Company No: 04740454 ("the Owner") of the second part

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
"Affordable Housing Units"	eight (8) affordable housing Dwellings to be constructed or provided on the Site as part of the Development
"Affordable Rental Units"	the Affordable Housing Units to be let for a rent upon either a weekly basis or monthly tenancy basis not exceeding homes and communities agency target rents (or if such targets cease to

be set such other measure of affordable rents as the Council shall reasonably determine) and to be let by or on behalf of a Registered Social Landlord

"Application"

the detailed planning application received on the 30th November 2007 for the demolition of current building and construction of 8 flats for young disabled people together with the construction of 11 new open market properties adjoining Meredith Road under reference number 20071683

"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" and "commencement" 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 or other officers of the Council acting under his hand

"Dwelling"

Dwelling constructed on the Land pursuant to the Planning Permission

"Inflation Provision"

the increase (if any) in the Department for Business Enterprise and Regulatory Reform

(BERR) Output Price Index for Public Works between 30.9.06 and the date upon which a payment of money for recreational open space is made pursuant to this Agreement

"Occupation" "Occupied"	and Occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"Open Market Unit"	any Dwelling constructed as part of the Development (as opposed to being constructed as part of the revised proposal under reference number 20081728) which is not an Affordable Housing Unit
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who is registered with the Council's Home Option Scheme
"First Recreational Open Space Contribution"	the sum of £19,024.00
"Second Recreational Open Space Contribution"	The sum of £57,649.00
"Registered Social Landlord"	a registered social landlord in the register kept by the Homes and Communities Agency 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)
"Plan"	the plan annexed to this Agreement

"Planning Permission" the detailed planning permission to be granted pursuant to the Application

"Site" the land which is 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 appendices are references to clauses in and appendices to this Agreement except where otherwise specified
- (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 Owner is the freehold owner of the Site
- C. Lovells Partnerships has submitted the Application on behalf of the Owner

- D. The Council has resolved to approve the Application subject to the completion of this Agreement

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 for the purposes of the Act and enforceable by the Council against the Owner and its successors in title
- 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 the 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 discretions 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 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

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 Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU
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The Owner	Director of Housing and Finance Saffron Housing Trust Limited Saffron Barn Swan Lane Long Stratton Norfolk. NR15 2ZY
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- 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 Owner shall on completion of this Agreement pay to the Council its legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

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 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 COMPENSATION

10.1 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 covenants that it is the freehold owner of the Site and has full power to enter into this Agreement and the Owner's Land is free from all charges or other encumbrances

12. DISPUTE RESOLUTION

- 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 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 this clause shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

13. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

- 13.1 prior to the Occupation of any of the Affordable Housing Units on the Site to pay to the Council the First Recreational Open Space Contribution as increased by the Inflation Provision.
- 13.2 prior to the Occupation of any Open Market Unit on the Site to pay the Council the Second Recreational Open Space Contribution as increased by the Inflation Provision.

13.3 to notify the Council in writing within 28 days of the Occupation of the first of the Affordable Housing Units and Open Market Unit on the Site.

13.4 to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement

14. THE COUNCIL'S OBLIGATIONS

14.1 The Council agrees with the Owner that the First Recreational Open Space Contribution and Second Recreational Open Space Contribution shall be applied towards the provision and subsequent maintenance of new outdoor recreational open space facilities in the Parish of Hellesdon

15. MONITORING FEE

15.1 The Owner covenants with the Council to pay the Council the Monitoring Fee, which Fee is required for checking the implementation and compliance with the terms of this Agreement.

15.2 The Monitoring Fee shall be paid to the Council prior to the Commencement Date

15.3 The total sum of £600 to be paid by way of a Monitoring Fee for the main contributions specified in this Agreement.

SCHEDULE 1

1. AFFORDABLE HOUSING

- 1.1 To construct or procure the construction of the Affordable Housing Units in accordance with current NHBC standards and building regulations in force at the time of building and to the Homes and Communities Agency's Scheme Development Standards and to meet the Code for Sustainable Homes Level 3 to the satisfaction of the Council and to complete the construction of the Affordable Housing Units prior to September 2010
- 1.2 Not to use allow or permit the Affordable Housing Units to be Occupied for any purpose other than as Affordable Rental Units.
- 1.3 The Affordable Housing Units shall not be Occupied other than by Qualifying Occupiers unless the Council first agrees otherwise in writing (such agreement not to be unreasonably withheld or delayed)
- 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) other than to a Registered Social Landlord unless the Council first agrees otherwise in writing (such agreement not to be unreasonably withheld or delayed)
- 1.5 Paragraphs 1.2 1.3 and 1.4 above
 - (i) shall not be binding upon any mortgagee in possession of any of the Affordable Housing Units or part thereof or manager (including an administrative receiver) for such mortgagee nor any receiver; or
 - (ii) shall not be binding upon any person (including that person's successor in title) deriving title under such mortgagee receiver or administrative receiver; and
 - (iii) shall cease to apply to any of the Affordable Housing Units where the Owner shall be required to dispose of such Units pursuant to a right to buy under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

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)



M. Moore
COMMITTEE MANAGER & DEPUTY
MONITORING OFFICER

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

THE COMMON SEAL of)
SAFFRON HOUSING TRUST LIMITED)
was hereunto affixed to this Agreement)
in the presence of)

A. D. Turner

Director

