

Dated 23rd April **2008**

BROADLAND DISTRICT COUNCIL

- AND -

NORFOLK COUNTY COUNCIL

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

relating to the development of land at
the former NCS Depot, 389 Drayton High Road
Hellesdon Norwich Norfolk

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

THIS AGREEMENT is made the 23rd day of April 2008
BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road
Thorpe St Andrew Norwich Norfolk NR7 0DU (hereinafter called "The
Council") and
2. NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich
NR1 2DH (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" | not less than 40% in total of all dwellings to be
erected on the Site 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 and comprising a mix of Affordable
Rental Units and Shared Ownership Units |
| "Affordable Rental Units " | a single unit of Affordable Housing 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
(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 application for outline planning permission received on 19 December 2007 for residential development on the Site in accordance with the plans deposited with the Council bearing reference number 20071795
"Commencement"	the initiation of the Development by the carrying out of a material operation within the meaning of Section 56 (4) of the Act (but not including operations relating to demolition of 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 th 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 calculated in accordance with the formula set out in Schedule 2 to this Agreement

"Open Market Dwellings"	dwellings erected or provided on the Site as part of the Development other than for the provision of Affordable Housing
"the Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application
"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
"Shared Ownership Dwellings"	Affordable Housing Units to be let on a Shared Ownership Lease to be provided on the Site as part of the Development
"Shared Ownership Lease"	a lease of a Shared Ownership Dwelling

granted at a premium whereby up to a maximum of 50% (fifty per cent) on first purchase of the equitable interest in the Shared Ownership Dwelling 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 Dwelling 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 389 Drayton High Road, Hellesdon Norwich Norfolk shown for the purposes of identification only edged red on the Plan

"Dwelling"

means any residential dwelling (comprising a bungalow, flat, maisonette or house) approved pursuant to the Planning Permission

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

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Outline Planning Application
NCS Depot, Drayton High Road, Helleston

DATE: 14/12/2007 SCALE: 1:1250



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. Norfolk County Services Limited submitted the Application and the Council
has resolved to grant the Planning Permission subject to the entering into 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 enforceable
by the Council against the Owner and its successors in title and assigns
- 2.3 This Agreement shall cease to have effect if the Planning Permission shall be
quashed revoked or otherwise withdrawn
- 2.4 This Agreement shall be registered as a charge in the Council's Register of
Local Land Charges
- 2.5 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

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 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

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

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
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The Owner	Head of Law County Hall Martineau Lane Norwich NR1 2DH
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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 the Council's 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. 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

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 to the Council 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. PLANNING OBLIGATIONS

- 13.1 The Owner hereby covenants with the Council to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement
- 13.2 The Owner hereby covenants with the Council to pay to the Council the Off-Site Open Space Contribution as increased by the Inflation Provision prior to the occupation of any Dwellings on the Site

14. COUNCIL OBLIGATIONS

- 14.1 The Council hereby covenants with the Owner that it will deposit the Off-Site Open Space Contribution into an interest bearing account and will apply the capital and any interest accrued towards the improvement maintenance and/or provision of open spaces within the area of the Development which shall at least include the Parish of Hellesdon
- 14.2 The Council hereby further covenants with the Owner that in the event that the Off-Site Open Space Contribution has not been committed towards the provision improvement and/or maintenance of open spaces within the area of the Development which shall at least include the Parish of Hellesdon within 10 years of the date of receipt of the balance then the Council will repay to the payer so much of the Off-Site Open Space Contribution as shall remain uncommitted together with any interest accrued

SCHEDULE 1

1. AFFORDABLE HOUSING

- 1.1 Not to commence development of the Site pursuant to the Planning Permission until a scheme for the provision and long-term management of the Affordable Housing Units has been submitted to

and approved by the Director ("the Affordable Housing Scheme") which Scheme for the avoidance of doubt shall deal with and include the location of the Affordable Housing within the Site and upon approval such Scheme shall be deemed to be incorporated into the provisions of this Agreement

1.2 Not more than 25% Open Market Dwellings shall be occupied unless and until either

1.2.1 the land on which the Affordable Housing is to be provided has been transferred to a Registered Social Landlord together with all rights service installations and access up to at least the boundary of the Affordable Housing Land so as to be available in all respects for the provision of Affordable Housing or

1.2.2 the Owner has entered into a contract with a Registered Social Landlord for the provision of Affordable Housing as part of the Development (such contract to include the timetable and programme as referred to in paragraph 1 of this Schedule)

1.3 Not to use or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units and/or Shared Ownership Units

1.4 Units of Affordable Housing shall not be occupied other than by Qualifying Occupiers

1.5 Except where this would be inconsistent with the intention of this Agreement 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

1.6 Paragraphs 1.2 1.3 1.4 and 1.5 above shall not be binding upon any mortgagee in possession of the Affordable Housing Units or part thereof nor any receiver or manager (including an administrative receiver) for such

mortgagee and 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 5 of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

SCHEDULE 2

For each 1 bedroom dwelling comprised in the Development	£3,203
For each 2 bedroom dwelling comprised in the Development	£4,270
For each 3 bedroom dwelling comprised in the Development	£5,338
For each 4 bedroom dwelling comprised in the Development	£6,405
For each 5 or more bedroom dwelling comprised in the Development	£7,473

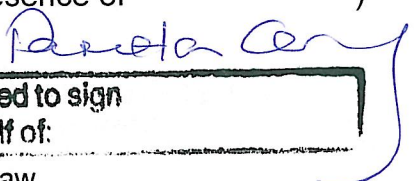
EXECUTED by the parties hereto as a deed on the date written above

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


Head of Corporate Services
and Monitoring Officer



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



Head of Law

