

DATED 20th October 2009

NORFOLK COUNTY COUNCIL

-AND-

BROADLAND DISTRICT COUNCIL

- AND -

JOHN WILLIAM POSTLE

- AND -

ROGER ALAN POSTLE

- AND -

DOUGLAS CHARLES POSTLE

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

Relating to the development of land at
Hungate Lodge Hungate Street
Aylsham Norfolk

Broadland District Council
Thorpe Lodge
Yarmouth Road
Norwich
NR7 0DU

THIS AGREEMENT is made the 20th day of October 2009

BETWEEN:

NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich NR1 2DH of the first part and BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the second part and JOHN WILLIAM POSTLE of Highbury Farm Cottage Church Road Colby Norfolk NR11 7AB, DOUGLAS CHARLES POSTLE of Didworthy House 10 Holman Road Aylsham Norwich NR11 6BY and ROGER ALAN POSTLE of Bullimore Cottage Frankfort Sloley Norwich Norfolk NR12 8HG ("the Owners") of the third 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
"Affordable Housing Units"	forty per cent (40%) of the Residential Units excluding the 2 staff flats to be constructed or provided on the Site as part of the Development
"Application"	the detailed planning application received on the 24 th February 2009 for the demolition of an

existing buildings and development of 35 Assisted Living flats, 2 Staff flats and ancillary accommodation under reference number 20090102

"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

"Index Linked" Index-linked from 13 May 2009 until such time that payment of any sum specified in this Deed is made such index linking to be equivalent to any increase or decrease in such sums in proportion to the increase or decrease in the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Index (or if such index ceases to be published such other index as the County Council shall reasonably determine)

"Inflation Provision" the increase (if any) in the DTI Output Price Index for Public Works between 30 July 2008

and the date upon which a payment of the Off-Site Open Space Contribution is made pursuant to this Agreement

"Monitoring Fee"	the sum of six hundred pounds (£600)
"Open Market Dwellings"	those Residential Units to be constructed on the Site pursuant to the Development which are to be provided and occupied as general market housing
"Off-Site Open Space Contribution"	the sum of £57,205
"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)

"Library Contribution"	the sum of £2,220 such sum to be Index Linked
"Residential Unit"	a self-contained house maisonette bungalow or flat approved pursuant to the Planning Permission
"Shared Ownership Dwellings"	those Affordable Housing Units to be let on a Shared Ownership Lease
"Shared Ownership Lease"	a lease or sub-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 tenant to acquire up to 100% (one hundred per cent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates
"Site"	the land at Hungate Lodge, Hungate Street, Aylsham, Norfolk 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 schedules are references to clauses in and schedules 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 and the County Council is the relevant Highway Authority and is also a Local Planning Authority for the purposes of the Act
- B. The Owners are the freehold owners of the Site pursuant to Title numbers NK262940 and NK262634
- C. Guild Retirement Housing Limited have submitted the Application
- 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 Owners hereunder are planning obligations for the purposes of the Act and enforceable by the Council and the County Council against the Owners and their respective successors in title and assigns
- 2.3 Save for the covenants in Schedule 1 of this Agreement which shall continue to bind the Affordable Housing Units 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 or the County 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 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

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 Norfolk

The Owners c/o 10 Holman Road Aylsham Norfolk
NR11 6BY

The County Council Head of Law Norwich County Council
County Hall Martineau Lane Norwich
NR1 2DH

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

11.1 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

11.2 If the matter is not resolved through negotiations 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 of Dispute Resolution

11.3 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

11.4 Nothing in Clause 11.1 and 11.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

12. TITLE WARRANTY

12.1 The Owners hereby warrant that they are the freehold owners of the Site which is registered at the Land Registry under title numbers NK 262940 and NK 262634 and have full power to enter into 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 and the County Council's Head of Law prior to the date hereof

13. NOTIFICATION

13.1 The Owner shall notify the Council and the County Council of the Commencement Date and upon occupation of the first Residential Unit

14. PLANNING OBLIGATIONS

The Owners hereby jointly and severally covenant with the Council as follows:

- 14.1 prior to the occupation of the third Residential Unit on the Site to pay to the Council the Off-Site Open Space Contribution as increased by the Inflation Provision.
- 14.2 to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement
- 14.3 the Monitoring Fee which is required for checking the implementation and compliance with the terms of this Agreement shall be paid to the Council prior to commencement of the Development on the Site
- 15. The Owners hereby jointly and severally covenant with the County Council as follows:
 - 15.1 The Library Contribution as Index Linked shall be paid prior to the occupation of the tenth Residential Unit erected on the Site
- 16. THE COUNCIL'S OBLIGATIONS
 - 16.1 The Council agrees with the Owners that the Off-Site Open Space Contribution shall be applied towards the provision of new open space in the Parish of Aylsham or towards the improvement and maintenance of existing open space in the Parish of Aylsham

SCHEDULE 1

1. AFFORDABLE HOUSING

- 1.1 Not to Commence Development on the Site pursuant to the Permission until a scheme for the provision and long-term management of the Affordable Housing Units has been submitted to and approved (such approval not to be unreasonably withheld or delayed) by the Strategic Director and Chief Planner (Community Services) of the Council ("the Affordable Housing Scheme") which Scheme for the avoidance of doubt shall deal with and include the timing of the Development and 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 Upon approval of the Affordable Housing Scheme by the Council to implement the Affordable Housing Scheme as approved and in accordance with the provisions contained in the Affordable Housing Scheme
- 1.3 Not to occupy or allow to be occupied more than three Open Market Dwellings on the Site until such time as the Affordable Housing Scheme has been fully implemented and all of the Affordable Housing Units comprised within the Development have been constructed and are ready for occupation and have been transferred to a Registered Social Landlord
- 1.4 Not to use the Affordable Housing Units for any purpose other than for Affordable Housing
- 1.5 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.6 The Registered Social Landlord shall not thereafter dispose of its interest in the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Social Landlord

- 1.7 Paragraphs 1.4 1.5 and 1.6 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 Registered Social Landlord 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 or shall be required to sell a further and/or final tranche of equity to a tenant pursuant to the terms of any Shared Ownership Lease granted in respect of such Unit
- 1.8 Under the transfer of an Affordable Housing Unit to the Registered Social Landlord such transfer shall be free from encumbrances and shall contain (inter alia) the following provisions:-

A grant in favour of the Registered Social Landlord of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and reservations of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development

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

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6230

C.H.L.
CHIEF EXECUTIVE

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

SIGNED AS A DEED by
JOHN WILLIAM POSTLE
in the presence of:-

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)
)

John William Postle

Greenwood

SIGNED AS A DEED by
DOUGLAS CHARLES POSTLE
in the presence of:-

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)

D.C. Postle

Greenwood

SIGNED AS A DEED by
ROGER ALAN POSTLE
in the presence of:-

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)
)

RA Postle

Greenwood

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



[Handwritten signature]

authorised to sign
on behalf of: Head of Law