

**DATED** 13 December **2012**

**(1) BROADLAND DISTRICT COUNCIL**

- and -

**(2) NORFOLK COUNTY COUNCIL**

- and -

**(3) ALAN GEORGE HERBERT SMITH, JOHN ERNEST SMITH and RAYMOND SMITH**

- and -

**(4) SLA PROPERTY COMPANY LIMITED**

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

**relating to the development of land  
at north side of Yarmouth Road, Blofield, Norfolk**

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**THIS AGREEMENT** is made the 13<sup>th</sup> day of December 2012

**BETWEEN**

1. **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU (the "District Council")
2. **NORFOLK COUNTY COUNCIL** of County Hall, Martineau Lane, Norwich NR1 2DH (the "County Council")
3. **ALAN GEORGE HERBERT SMITH, JOHN ERNEST SMITH and RAYMOND SMITH** of Quarry House, Honingham, Norfolk NR9 5AP ("the First Owners")
4. **SLA PROPERTY COMPANY LIMITED (Co. Reg. No. 1203396)** whose registered office is 153 Princes Street, Ipswich, Suffolk IP1 1QJ ("the Second Owner")

**RECITALS**

- A. The District 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, Education Authority, Library Service Provider and Fire Authority and is also a Local Planning Authority for the purposes of the Act.
- B. The First Owners are the registered proprietors of that part of the Site registered at the Land Registry under title number NK365944.
- C. The Second Owner is the registered proprietor of the remainder of the Site registered at the Land Registry under title number NK372703.

D. The Developer has appealed against the refusal of the Application by the District Council and the parties have agreed to enter into this Agreement in order to secure the Planning Obligations should the Inspector grant the Planning Permission.

## **1 INTERPRETATION AND DEFINITIONS**

**1.1** In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act" the Town and Country Planning Act 1990

"Affordable Housing" housing provided in accordance with the requirements of Schedule 3 to this Agreement 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 Provider" ("AHP") either:

- (i) a registered provider as defined by Section 80 of the Housing and Regeneration Act 2008; or
- (ii) another body whose object is or contains the provision and/or operation of affordable housing and which has been approved by the District Council for the provision and/or operation of affordable housing within the administrative area of Broadland or has otherwise been approved by the District Council for the purposes of this Agreement

"Affordable Housing Units" individual Dwellings constructed or provided as part of the Development for Affordable Housing

"Affordable Rental Units" Affordable Housing Units to be constructed or provided as part of the Development to be let in each case by an AHP on a weekly or

monthly tenancy at an affordable rent (being not more than 80% of Market Rent) in accordance with the requirements of Schedule 3

"Appeal"	the appeal made to the Secretary of State by the Developer against the District Council's refusal of the Application and given reference APP/K2610/A/12/2177219 by the Planning Inspectorate
"Application"	the application for outline planning permission validated by the District Council on 5 September 2012 <sup>1</sup> (and bearing reference <i>WR</i> number 20111303) for the mixed residential and employment <i>CS</i> development of the Site
"Approved Residential Travel Plan"	the residential travel plan to be prepared and submitted by the Developer to the County Council under the terms of the Planning Permission and approved by the County Council in writing (including such amendments as the County Council may approve in writing from time to time)
"Approved Employment Travel Plan"	the employment travel plan to be prepared and submitted by the Developer to the County Council under the terms of the Planning Permission and approved by the County Council in writing (including such amendments as the County Council may approve in writing from time to time)
"CIL Regulations"	means the Community Infrastructure Regulations 2010
"Community Infrastructure Levy"	the charge known as the community infrastructure levy introduced by Part 11 of the Planning Act 2008 or any charge tax or levy introduced as a successor to or as a replacement for that charge
"Decision"	any decision notice issued by the Inspector following the Appeal that grants planning permission for the Development
"Developer"	the First Owners and Second Owner



"Development"	the development carried out pursuant to a planning permission granted by the Inspector following the Appeal
"Director"	the District Council's Chief Executive or other officer of the Council acting under his hand
"Dwelling"	any unit of residential occupation being a self-contained house maisonette bungalow or flat constructed as part of the Development and "Dwelling" shall be construed accordingly
"Education Contribution"	means the Index Linked payment calculated in accordance with Paragraph 3 of Schedule 2
"Employment Bond Sum"	the sum of £42,500.00 (forty two thousand five hundred pounds) being security for the cost of the implementation of and compliance with the Approved Employment Travel Plan
"Employment Travel Plan Monitoring Fee"	Means the sum of £2,500 Index Linked towards the monitoring of the Approved Employment Travel Plan
"Employment Land"	Means that part of the Site to be utilised for employment purposes in accordance with the plans submitted as part of the Application
"Formal Open Space Contribution"	means the payment as increased by the Inflation Provision calculated in accordance with Paragraph 1 of Schedule 2
"Framework"	means the National Planning Policy Framework published for the Department for Communities and Local Government in March 2012
"Implementation"	the carrying out on the Site pursuant to the Planning Permission of a material operation as defined in section 56(4) of the Act other than 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 enclosure, the temporary display of site notices or advertisements and "Implement" and "Implemented" shall be construed accordingly

"Index Linked" means index-linked from the date of this Agreement until such time that payment of any sum specified in this Agreement to be paid by the Developer to either the District Council or the County Council is required to be paid such index linking to reflect the change in such sums by reference to the proportionate increase or decrease by reference to:

(a) the Royal Institution of Chartered Surveyors Building Cost Information Service All In Tender Index in relation to the Education Contribution; or

(b) the Retail Price Index (All Items) published by the office for National Statistics in the case of the Library Contribution and the Travel Plan Bond; or

(c) in the event that any index shall have ceased to be published at the date any payment becomes due then the closest equivalent index shall be used as agreed between the parties acting reasonably.

"Inflation Provision" the increase (if any) in the Department for Business Innovation and Skills (BIS) Output Price Index for New Construction (2010) All New Construction between 24 July 2007 and the date upon which a payment of the relevant sum is made pursuant to this Agreement (or if such index ceases to be published such other index as the District Council shall reasonably determine)

"Informal Open Space" means public open space to be provided within the Site in accordance with the Planning Permission

"Informal Open Space Maintenance Contribution" means a payment calculated in accordance with Paragraph 2 of Schedule 2 as increased by the Inflation Provision

"Inspector"	the Inspector appointed by the Secretary of State for Communities and Local Government to determine the Appeal
"Library Contribution"	the sum of £60 per Dwelling Index Linked
"Market Rent"	the estimated rent at which a Dwelling should be let on the date of valuation between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction after proper marketing where the parties act knowledgeably prudently and without compulsion
"Occupation"	occupation of a building as a Dwelling (but not including occupation by contractors or for construction or fitting out purposes or as a showroom or sales office) and "Occupy" and "Occupied" shall be construed accordingly
"Open Market Dwellings"	Dwellings other than Affordable Housing Units
"Phase"	a phase of the Development identified on a phasing plan in accordance with the Application as approved by the District Council
"Planning Obligations"	covenants contained in the Schedules to this Agreement made with and enforceable by the District Council and the County Council pursuant to Section 106 of the Act (and to the extent to which the said covenants are capable of being enforced hereunder they shall constitute planning obligations for the purposes thereof)
"Qualifying Occupiers"	in relation to any person to be housed in an Affordable Housing Unit such 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 District 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) or where such persons have been exhausted any person nominated by the District Council on the Broadland Housing Register which the AHP owning or managing the Affordable Housing Units on the Site is entitled to house within its rules

"Residential Bond Sum"	the sum of £81,625 (eighty one thousand six hundred and twenty five pounds) being security for the cost of the implementation of and compliance with the Approved Residential Travel Plan
"Residential Travel Plan Monitoring Fee"	means the sum of £500 Index Linked per annum towards the monitoring of the Approved Residential Travel Plan
"Shared Ownership Dwellings"	Affordable Housing Units to be constructed or provided as part of the Development and to be let on a Shared Ownership Lease in accordance with Schedule 3
"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 to be charged on the remainder of the equitable interest not exceeding 2.75% of the equity retained by the AHP rising with inflation on an annual basis (or such other measure of affordable rent as the District Council shall approve in writing)
"Site"	the land to the north of Yarmouth Road, Blofield, Norfolk which is

shown for the purposes of identification only edged red on the plan marked "Site Plan" annexed to this Agreement at Schedule 1

"Travel Plan Bond" a bond or bonds in the form set out in Appendix 9 to this Agreement to secure the Employment Bond Sum and the Residential Bond Sum

1.2 In this Agreement unless the context otherwise requires:

- 1.2.1 one gender includes all the others and the singular includes the plural and vice versa;
- 1.2.2 references to any party shall include their respective successors in title and function (as appropriate);
- 1.2.3 covenants given or made by any party which includes more than one person (whether natural or artificial) shall be deemed to be given or made jointly and severally save that any covenant by the First and/or Second Owners to transfer or grant an interest in land shall be given by the owner holding the interest in the relevant parcel of land to be transferred or leased;
- 1.2.4 references to clauses and schedules are references to clauses in and schedules to this Agreement;
- 1.2.5 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; and
- 1.2.6 the headings in this Agreement shall not form part of or affect its construction

## **2 GENERAL PROVISIONS**

- 2.1 This Agreement is made under Section 106 of the Act, Sections 111 and 120 of the Local Government Act 1972 Section 1 of the Localism Act 2011 and any other enabling powers
- 2.2 The obligations arising hereunder are planning obligations enforceable by the District Council and the County Council (as appropriate) against the Developer and their respective successors in title and assigns
- 2.3 The provisions of this Agreement shall have immediate effect save for the obligations contained in clause 11 which shall have effect upon Implementation.
- 2.4 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn before Implementation
- 2.5 This Agreement shall be registered as a charge in the District Council's Register of Local Land Charges
- 2.6 In the event that this Agreement comes to an end or any provision of this Agreement shall have been satisfied or discharged the District Council and the County Council shall if so requested by the Developer procure that a note confirming such satisfaction or discharge shall be registered on the District Council's Register of Local Land Charges

## **3 AGREEMENTS AND DECLARATIONS**

It is hereby agreed and declared as follows:

- 3.1 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 District 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 District Council or the County Council were not a party to this Agreement
- 3.2 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 (whether express or implied) by the District Council or the County Council of any breach or default by the Developer in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the District 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 restrictions or obligations 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 subsisting breach occurring prior to the parting by such party with such party'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 District Council	The Chief Executive Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
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The County Council	The Head of Library and Information Service or the Director of Environment, Transport and Development or the Director of Children's Services (as appropriate) County Hall Martineau Lane Norwich NR1 2DH
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The Developer                      Howes Percival LLP  
    The Guildyard  
    51 Colegate  
    Norwich  
    NR3 1DD  
    Ref: TCI/JZM/211208.1

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

## **5      THIRD PARTIES**

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 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**

The Developer shall on completion of this Agreement pay the District Council's and the County Council's reasonable legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

## **7      PAYMENT OF INTEREST**

The Developer 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**

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

## **10 DISPUTES**

10.1 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

10.2 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

10.3 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 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.

10.4 Nothing in clauses 10.1 and 10.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## **11 COVENANTS**

11.1 The Developer hereby covenants with the District Council to carry out and comply with the obligations and restrictions on their part set out in this Agreement and in Schedule 3 which are expressed to be given to or to be for the benefit of the District Council and as a separate covenant with the County Council to carry out and comply with the obligations and restrictions on their part set out in this Agreement and in Schedules 4, 5, 6 and 7 which are expressed to be given to or to be for the benefit of the County Council

11.2 The District Council covenant with the Developer to comply with the obligations on their part set out in this Agreement and in Schedule 3 where covenants are expressed to be given by the District Council to or for the benefit of the Developer.

11.3 The County Council covenant with the Developer to comply with the obligations on their part set out in this Agreement and in Schedules 4, 5, 6 and 7 where covenants are expressed to be given by the County Council to or for the benefit of the Developer.

## **12 COMMUNITY INFRASTRUCTURE LEVY**

In the event that the District Council adopts a Charging Schedule for the purposes of the Community Infrastructure Levy Regulations 2010 and such Charging Schedule takes effect prior to the date of the Planning Permission the obligations contained in this Agreement which are also covered in such a Charging Schedule shall cease and no longer be of any effect.

## **13 TRANSFER OF LAND**

13.1 Where any provision of the Agreement requires the transfer of land to either the District Council or the County Council the provisions of Schedule 8 shall apply to such transfer

13.2 Any provision of this Agreement which requires the transfer of land to either the District Council or the County Council shall be deemed to include a provision whereby the land concerned may at the election of the relevant council be transferred to an alternative body or organisation properly able to hold and administer such land for the purposes for which it is transferred

## **14 INDEMNITY AND LIABILITY**

14.1 The Developer agrees that any right to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Agreement are hereby waived

14.2 The parties agree that notwithstanding any provision to the contrary herein the liability of the Second Owner (for the purposes of this clause meaning Suffolk Life Annuities Limited, SLA Property Company Limited and any associated companies and referred to as 'Suffolk Life') shall be limited to the net value of the assets held by Suffolk Life on behalf of plan number(s) 716312, 716315,

716316 (or any other plan or plans which may become entitled to the property subject to this clause) at the point in time any claim is made.

## **15 APPROVALS AND CONSENTS**

Where any approval, consent, agreement or the like is required to be given by the District Council or the County Council pursuant to the terms of this Agreement it shall be in writing and shall not be unreasonably withheld or delayed

## **16 STATUTORY UNDERTAKERS LAND**

The obligations and restrictions in this Agreement shall not be enforceable against:

- 16.1 an owner lessee occupier mortgagee or chargee of any Dwelling except an owner lessee or occupier (but not mortgagee) of an Affordable Housing Unit which shall be bound by the provisions of Schedule 2 of this Agreement in relation to the Unit which it owns leases or occupies (but not in respect of any other Affordable Housing Unit or in respect of any other clause or Schedule of this Agreement); or
- 16.2 a statutory undertaker which acquires an interest in any part of the Site for the purposes of its statutory undertaking or function

## **17 NOTIFICATION**

If requested by the District Council or the County Council the Developer agrees to notify the District Council and the County Council within a reasonable period of time of:

- 17.1 the date of Implementation;
- 17.2 the completion of any Dwelling which acts as a trigger for the performance by the Developer of any obligation owed to the District Council and/or the County Council; and
- 17.3 the occupation of any Dwelling which acts as a trigger for the performance by the Developer of any obligation owed to the District Council and/or the County Council.





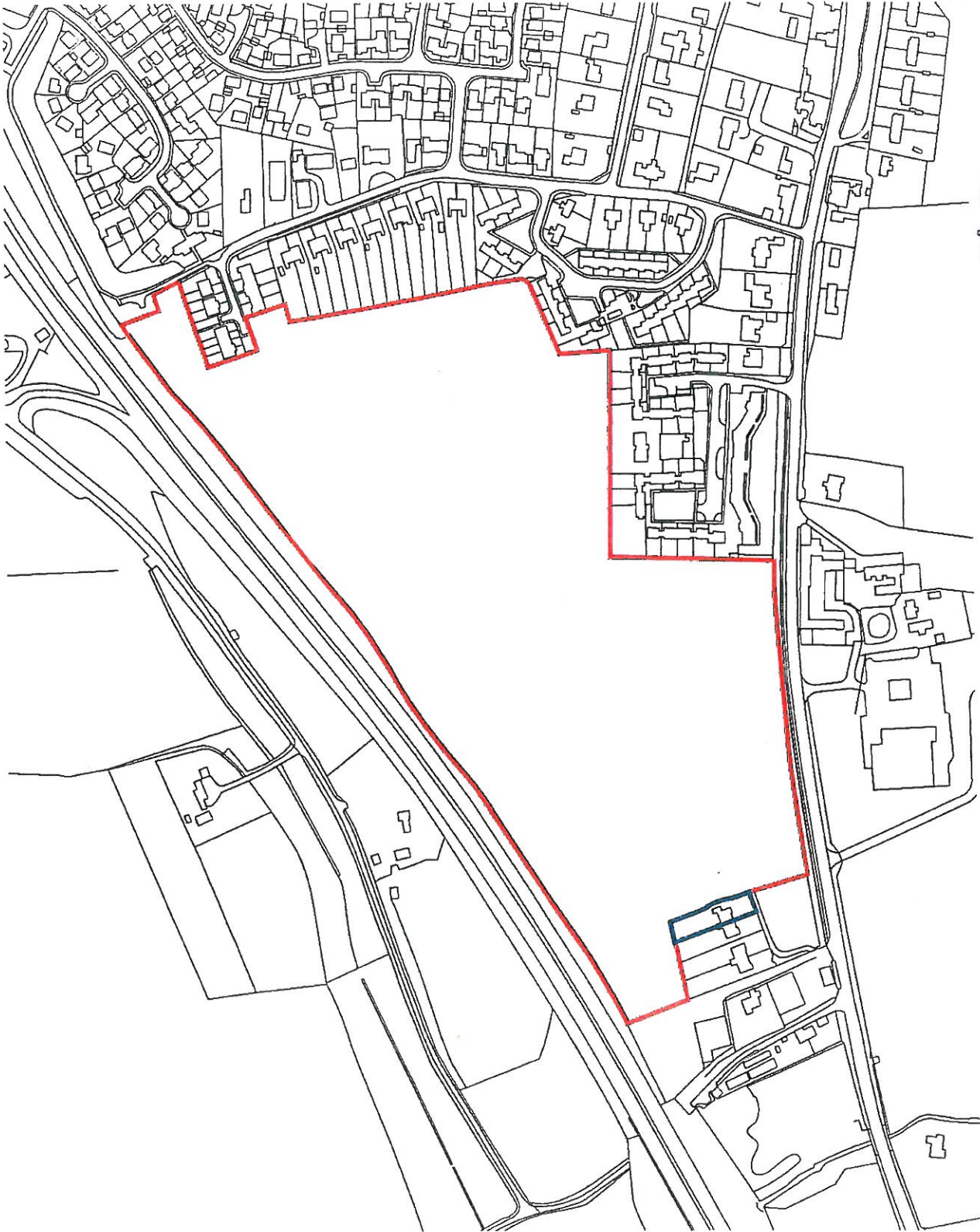
Locallon Plan  
2010-110-030

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*M. J. M. M.*

Head of Democratic Services and  
Monitoring Officer

35195



*[Signature]*  
Scale 1:2500 @ A3  
OS Licence number 100049978

Drawn by LBL  
Checked by

Drawing no. 2010-110-030  
Revision B

Client Beacon Planning  
Date August 2011

Yarmouth Road, Blofield  
Locallon Plan



**SCHEDULE 1**  
**The Site Plan**

## SCHEDULE 2

### The Contributions

#### Formal Open Space Contribution

- 1 Subject to paragraph 4 of this Schedule the Formal Open Space Contribution for each Phase shall be calculated in accordance with the following formula:

$$((A + B + C + D + E) \times 0.66) + F + G + H$$

Where:

A = Number of 1 bedroom dwellings in that Phase x £2,574.00;

B = Number of 2 bedroom dwellings in that Phase x £3,432.00;

C = Number of 3 bedroom dwellings in that Phase x £4,290.00;

D = Number of 4 bedroom dwellings in that Phase x £5,148.00;

E = Number of 5 bedroom dwellings in that Phase x £6,006.00;

F = Number of local areas for play in that Phase x £5,305.00;

G = Number of local equipped areas for play in that Phase x £19,156.00; and

H = Number of neighbourhood equipped areas for play in that Phase x £48,513.00.

#### Informal Open Space Maintenance Contribution

*PROVIDED THAT elements F, G and H shall only be payable if the Developer elects to transfer the play areas to the District Council pursuant to paragraph 1.1 of Schedule 4.*

- 2 Subject to paragraph 4 of this Schedule the Informal Open Space Maintenance Contribution for each Phase shall be calculated in accordance with the following formula:

$$A + B + C + D$$

Where:

A = £112, 129.15 per hectare of Informal Open Space provided in that Phase (prorated for any part hectare of provision);

B = £1,592.00 x number of litter waste bins to be provided within the Informal Open Space for that Phase;

$C = £1,664.80 \times \text{number of dog waste bins to provided within the Informal Open Space for that Phase; and}$

$D = £20.00 \times \text{number of new trees to be planted within the Informal Open Space for that Phase.}$

### Education Contribution

- 3 Subject to paragraph 4 of this Schedule the Education Contribution for each Phase shall be calculated in accordance with the following formula:

$A + B$

Where:

A = Number of Dwellings being a house or bungalow containing two or more bedrooms for that Phase x £5,947.00; and

B = Number of Dwellings being a flat maisonette or apartment containing two or more bedrooms for that Phase x £2,974.00.

### Amendment to take account of Inspector's Decision

- 4 In the event that the Inspector finds in his decision that any part of the calculations set out in paragraphs 1, 2 and/or 3 above should be amended or removed then the calculations above shall take effect as if they had been amended in accordance with the Inspector's findings.

### **SCHEDULE 3**

#### **Affordable Housing**

- 1 No Phase of the Development shall be Implemented until the Developer shall have agreed with the District Council:
  - 1.1 which of the Dwellings in that Phase (being not less than 33% of the total number of Dwellings in the Phase) shall be Affordable Housing Units; and
  - 1.2 which of the Affordable Housing Units in that Phase, being not more than 85% of the total number of Affordable Housing Units in that Phase shall be Affordable Rental Units and which of the Affordable Housing Units in that Phase, being not less than 15% of the total number of Affordable Housing Units in that Phase shall be Shared Ownership Dwellings.
- 2 Subject to the other provisions of this Schedule 3, no Affordable Housing Unit shall be occupied for any purpose other than as Affordable Housing.
- 3 The Affordable Housing Units shall subject to the other provisions of this Schedule 3 not be occupied otherwise than by Qualifying Occupiers.
- 4 The Affordable Rental Units will be occupied by persons nominated by the Council from its general needs housing list.
- 5 Up to one third (or such other amount as the District Council shall reasonably require) of the Affordable Rental Units (as chosen by the District Council) will be let on first occupation in accordance with the local lettings policy set out below:
  - 5.1 first allocations will be made to people living in the Parish of Blofield
  - 5.2 if there is no suitable person in paragraph 5.1 allocations will be made to people who work in the Parish of Blofield
  - 5.3 if there are no suitable persons in paragraphs 5.1 and 5.2 allocations will be made to people who need to move to the Parish of Blofield to give/receive support to/from close family
  - 5.4 if there are no suitable persons in paragraphs 5.1 to 5.3 allocations will be made to people who live in the Broadland District

- 6 Subject to the other provisions of this Schedule 3, no more than 50% (fifty per cent) of the Open Market Dwellings in any Phase may be occupied until the Affordable Housing Units within that Phase have been constructed and transferred to an AHP, unless the District Council agrees otherwise in writing and (for the avoidance of doubt) where the provisions of paragraph 11 of this Schedule apply the provisions of this paragraph 6 shall cease to have effect and the Developer and the Council shall use all reasonable endeavours to agree (and in the event that agreement cannot be reached the provisions of clause 10 shall apply) such other threshold of restriction on the occupation of a percentage of the Open Market Dwellings as shall in all the circumstances be fair and reasonable and having regard to the election made by the District Council under paragraph 11.
- 7 Any transfer of the Affordable Housing or any part thereof to an AHP shall be free from incumbrances (including financial charges) save for:
- 7.1 incumbrances and other matters contained or referred to in the Developer's title; and
- 7.2 any requirements for reasonable contributions to shared services and facilities.
- 8 A transfer by the Developer of Affordable Housing Units to an AHP shall include (for the benefit of the Affordable Housing Units at least to the boundary of the land on which the Affordable Housing Units are provided) all necessary connection points for infrastructure including but not limited to roads and footpaths pipes cables wires foul and surface drainage and any other appropriate services all constructed (where applicable) to adoptable standards.
- 9 Paragraphs 3, 4, 5 and 6 above shall not be binding upon any mortgagee in possession or exercising its powers of sale 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 Developer 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 where an occupier of a Shared Ownership Dwelling has acquired the final amount of equity to bring the occupier's equity holding to 100% in relation to that Shared Ownership Dwelling.

- 10 If the Developer considers that the provisions of paragraph 11 are likely to apply to any Phase they shall give the District Council notice to that effect as soon as reasonably practicable after forming such opinion.
- 11 If the Developer demonstrates to the reasonable satisfaction of the District Council (supplying all evidence and financial statements reasonably required by the District Council) that they are or will be unable (after using all reasonable endeavours) to secure or procure the provision of all or part of the Affordable Housing Units or transfer of such units to an AHP for any Phase on a basis which will:
- 11.1 provide the Developer with a reasonable consideration which is at least equal to the cost of the design and construction of the Affordable Rental Units and Shared Ownership Dwellings; and
- 11.2 in relation to the Affordable Rental Units will allow the Affordable Rental Units to be transferred to an AHP at a level which enables such Affordable Rental Units to be let at an affordable rent (as set out in the definition of the Affordable Rental Units) without the need for public subsidy,
- then the following provisions shall apply:
- 11.3 the District Council may require that all or any of the Affordable Rental Units intended to be transferred to the AHP be sold by way of a Shared Ownership Lease; or
- 11.4 the District Council may require that a reduced number of Affordable Rental Units are gifted to a nominated AHP or the District Council; or
- 11.5 the District Council may require free serviced land (with all roadways and services to be taken to the edge of the land) to be provided to a nominated AHP or the District Council; or
- 11.6 the District Council may require the opportunity to purchase the Affordable Rental Units on reasonable terms; or
- 11.7 the District Council may require the making of a commuted payment in lieu of the provision; or
- 11.8 the District Council may require the substitution of some or all of the Affordable Rental Units the Shared Ownership Dwellings by different affordable housing products provided always that the District Council shall not



make any election under paragraphs 11.3 to 11.7 above where this would impose a cost on the Developer greater than the cost of the provision of the approved Affordable Housing Units or otherwise in a manner as to materially and adversely affect the viability of the Development.

- 12 In determining the appropriate election in accordance with paragraph 11, the District Council shall consider the representations of the Developer and act reasonably taking into account the evidence supplied by the Developer in accordance with paragraph 11.
- 13 In the event that paragraph 11 applies:
  - 13.1 not more than 50% Open Market Dwellings in the Phase may be occupied until the District Council has made its election in accordance with paragraph 11.
  - 13.2 not more than 50% of Open Market Dwellings in the Phase may be occupied until the affordable housing to be provided in accordance with the election in that Phase is available for occupation and (where appropriate) has been transferred to an AHP.
  - 13.3 The Developer and the District Council shall enter into any supplementary agreements reasonably required by the District Council to give effect to any revised arrangements agreed under paragraph 11.

## **SCHEDULE 4**

### **Formal and Informal Open Space**

- 1 The Developer covenants with the District Council on completion of the Informal Open Space (including any play area areas) required pursuant to the conditions imposed on the Planning Permission in respect of each Phase either to;
  - 1.1 offer to transfer the same to the District Council in accordance with the Open Spaces Act 1906; or
  - 1.2 transfer the same into a management company whose members shall be the owners from time to time of all of the Dwellings, such transfer to include a covenant that the land shall thereafter be retained and maintained in accordance with the Planning Permission.
- 2 Subject to paragraph 6 on the completion of any transfer referred to in paragraph 1.1 the Developer shall pay to the District Council the Informal Open Space Maintenance Contribution.
- 3 Subject to paragraph 6 the Developer covenants not to Occupy more than 50% of the Dwellings in any Phase until the Formal Open Space Contribution in respect of that Phase has been paid to the District Council.
- 4 The District Council covenants with the Developer:
  - 4.1 to hold the Formal Open Space Contribution in an interest bearing account and to apply it (and any interest accrued upon it) only to the provision and extension of formal play and sports facilities and the maintenance of such formal play and sports facilities; and
  - 4.2 in the event that the Formal Open Space Contribution or any part of it has not been committed (by way of a contract to provide additional formal play and sports facilities by the expenditure of the monies) to the provision and extension of the additional formal play and sports facilities within 5 years from final Occupation of the Development then the District Council will repay to payer any unspent balance to the person who made the payment
- 5 The covenants given in paragraphs 2 and 3 of this Schedule shall only take effect if the Inspector specifically finds in his decision letter that the relevant contribution

accords with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations; and

- 6 In the event that the Inspector does not find the covenants contained in paragraph 2 or 3 above to comply with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations then such covenant shall be of no effect but the rest of this Agreement shall remain in full force and effect.

## **SCHEDULE 5**

### **Library Contribution**

- 1 Subject to paragraph 3 not to allow Occupation of more than 50% of the Dwellings in a Phase unless and until the Library Contribution for that Phase has been paid to the County Council
- 2 The County Council covenants with the Developer:
  - 2.1 to hold the Library Contribution in an interest bearing account and to apply it (and any interest accrued upon it) only to the provision and extension of additional library facilities; and
  - 2.2 in the event that the Library Contribution or any part of it has not been committed (by way of a contract to provide additional library facilities or by the expenditure of the monies) to the provision and extension of the additional library facilities within 5 years from final Occupation of the Development then the County Council will repay to payer any unspent balance to the person who made the payment
- 3 The covenant given in paragraph 1 of this Schedule 5 shall only take effect if the Inspector specifically finds in his decision letter that the Library Contribution accords with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations.
- 4 In the event that the Inspector does not find the covenant contained in paragraph 1 above to comply with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations then such covenant shall be of no effect but the rest of this Agreement shall remain in full force and effect.

## **SCHEDULE 6**

### **Part 1**

#### **Residential Travel Plan**

- 1 The Developer covenants with the County Council as follows:
  - 1.1 to monitor and review the Approved Residential Travel Plan and submit a Travel Plan Update to the County Council on the 12 (twelve) month anniversary after the date of first Occupation of the Development and on subsequent anniversaries or such other date as may be agreed with the County Council such monitoring to continue each year until the second anniversary of final Occupation of the Development; and
  - 1.2 Not to allow first Occupation of any Dwelling until it has complied with paragraphs 1.2 (a) or 1.2 (b) below as follows:
    - (a) obtained and provided to the County Council a Travel Plan Bond with a Surety approved by the County Council for the Residential Bond Sum ("the Residential Travel Plan Bond") and paid to the County Council the Residential Travel Plan Monitoring Fee; or
    - (b) deposited the Residential Bond Sum with the County Council ("the Residential Travel Plan Deposit") and paid to the County Council the Residential Travel Plan Monitoring Fee.
- 2 In the event that the Developer fails to perform the obligations and deliver the requirements of the Approved Residential Travel Plan the County Council shall serve notice on the Developer confirming the actions required by them to comply with the obligations contained in this Agreement ("the Performance Notice").
- 3 If after a period of 28 days the requirements of the Performance Notice have not been complied with to the satisfaction of the County Council the County Council may call in the Residential Travel Plan Bond or the Residential Travel Plan Deposit as the case may be and carry out the requirements of the Approved Residential Travel Plan without further recourse to the Developer.
- 4 Subject to compliance with the Approved Residential Travel Plan the County Council on the first anniversary of first Occupation will reduce the Travel Plan Deposit by an

amount proportionate to the number of Dwellings Occupied at that time and thereafter by a further proportionate amount on a yearly basis.

- 5 On reduction of the Travel Plan Deposit in accordance with paragraph 4 above, the County Council shall within 28 days return such reduced amount of the Residential Travel Plan Deposit to the Developer, or confirm in writing to the Surety that such proportion of the Residential Travel Plan Bond is released.
- 6 The covenant given in paragraph 1.2 of this Part of Schedule 6 shall only take effect if the Inspector specifically finds in his decision letter that the Residential Travel Plan Deposit, Residential Travel Plan Bond and/or the Residential Travel Plan Monitoring Fee accords with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations.
- 7 In the event that the Inspector does not find the covenant contained in paragraph 1.2 above to comply with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations then such covenant shall be of no effect but the rest of this Agreement shall remain in full force and effect.

## **Part 2 Employment Travel Plan**

- 1 The Developer covenants with the County Council as follows:
  - 1.1 to monitor and review the Approved Employment Travel Plan and submit a Travel Plan Update to the County Council on the 12 (twelve) month anniversary after the date of first Occupation of the Employment Land and on subsequent anniversaries or such other date as may be agreed with the County Council such monitoring to continue each year until the fifth anniversary of final Occupation of the Employment Land; and
  - 1.2 Not to allow first Occupation of the Employment Land until it has complied with paragraphs 1.2 (a) or 1.2 (b) below as follows:
    - (a) obtained and provided to the County Council a Travel Plan Bond with a Surety approved by the County Council for the Employment Bond Sum ("the Employment Travel Plan Bond") and paid to the County Council the Employment Travel Plan Monitoring Fee; or



- (b) deposited the Employment Bond Sum with the County Council ("the Employment Travel Plan Deposit") and paid to the County Council the Employment Travel Plan Monitoring Fee.
- 2 In the event that the Developer fails to perform the obligations and deliver the requirements of the Approved Employment Travel Plan the County Council shall serve notice on the Developer confirming the actions required by them to comply with the obligations contained in this Agreement ("the Performance Notice").
- 3 If after a period of 28 days the requirements of the Performance Notice have not been complied with to the satisfaction of the County Council the County Council may call in the Employment Travel Plan Bond or the Employment Travel Plan Deposit as the case may be and carry out the requirements of the Approved Employment Travel Plan without further recourse to the Developer.
- 4 Subject to compliance with the Approved Employment Travel Plan the County Council shall reduce the Employment Travel Plan Deposit / Employment Travel Plan Bond as the case may be by one fifth upon the first anniversary of first Occupation of the Employment Land and thereafter by one fifth of the original Employment Bond Sum on a yearly basis
- 5 On reduction of the Travel Plan Deposit in accordance with paragraph 4 above, the County Council shall within 28 days return such reduced amount of the Employment Travel Plan Deposit to the Developer, or confirm in writing to the Surety that such proportion of the Employment Travel Plan Bond is released.
- 6 The covenant given in paragraph 1.2 of this Part of Schedule 6 shall only take effect if the Inspector specifically finds in his decision letter that the Employment Travel Plan Deposit, Employment Travel Plan Bond and/or Employment Travel Plan Monitoring Fee accords with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations.
- 7 In the event that the Inspector does not find the covenant contained in paragraph 1.2 above to comply with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations then such covenant shall be of no effect but the rest of this Agreement shall remain in full force and effect.

## **SCHEDULE 7**

### **Education Contribution**

- 1 Subject to paragraph 3 not to allow Occupation of more than 50% of the Dwellings in a Phase unless and until the Education Contribution for that Phase has been paid to the County Council
- 2 The County Council covenants with the Developer:
  - 2.1 to hold the Education Contribution in an interest bearing account and to apply it (and any interest accrued upon it) only to the provision and extension of the additional education facilities; and
  - 2.2 in the event that the Education Contribution or any part of it has not been committed (by way of a contract to provide additional education facilities or by the expenditure of the monies) to the provision and extension of the additional education facilities within 5 years from the final Occupation of the Development then the County Council will repay to payer any unspent balance to the person who made the payment.
- 3 The covenant given in paragraph 1 of this Schedule 7 shall only take effect if the Inspector specifically finds in his decision letter that the Education Contribution accords with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations.
- 4 In the event that the Inspector does not find the covenant contained in paragraph 1 above to comply with the tests set out in paragraph 204 of the Framework and Regulation 122(2) of the CIL Regulations then such covenant shall be of no effect but the rest of this Agreement shall remain in full force and effect.

## **SCHEDULE 8**

### **Terms and Conditions of Land Transfers**

- 1 The land shall be transferred with such title as the Developer has and such incumbrances as affect the land at the date hereof.
- 2 The land shall be transferred with vacant possession.
- 3 The transfer shall contain all such rights and easements as are necessary for the proper enjoyment of the land for its authorised use and subject to the ability of the Developer to grant the same without prejudicing their ability to develop their retained land.
- 4 The standard conditions of sale (4th edition) shall apply to any transfer made pursuant to this Agreement 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
- 5 Each party shall bear its own costs (and disbursements) in dealing with the completion of the transfers referred to in this Schedule.

**SCHEDULE 9**  
**Draft Travel Plan Bond**

DATED \_\_\_\_\_ 200

- and -

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BOND  
in respect of

---

Norfolk County Council  
**County Hall**  
Martineau Lane  
NORWICH  
NR1 2DH

In this BOND OF SURETY the following persons are named:-

The Developer is  
whose registered office is situate at

The Surety is  
whose registered office is

The County Council is THE NORFOLK COUNTY COUNCIL of County Hall  
Martineau Lane Norwich Norfolk

BY THIS BOND the Developer and the Surety are held and firmly bound to the County Council in the sum of (£ ) to be paid to the County Council for which payment we jointly and severally bind ourselves and our successors and assigns by these presents

SEALED WITH OUR SEALS this                      day of                      200

WHEREAS by an Agreement dated                      and made between the County Council and the Developer ("the Agreement") the Developer undertook in accordance with Clause                      of the Agreement to enter into a bond with an Assurance Company guarantee society bank or like body in favour of the County Council of the sum of £

AND WHEREAS the Surety at the request of the Developer and with the approval of the County Council has agreed to become the surety for the Developer and will pay to the County Council the Bond Sum upon demand

N O W THE CONDITIONS of the above written Bond are such that if the Developer shall duly perform and observe all the terms provisions conditions and stipulations of the Agreement on the Developers part to be performed and observed or if on default by the Developer the Surety shall satisfy and discharge the damages sustained by the County Council (including without prejudice to the generality thereof any costs actually incurred by the County Council pursuant to the Agreement) thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect but no alteration in the terms of the Agreement made by agreement between the County Council and the Developer or in the extent or nature of the works to be performed thereunder and no allowance of time by or on behalf of the County Council under the Agreement nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Agreement on the part of the County Council shall in any way release the Surety from any liability under this Bond



AND IT IS AGREED THAT subject to the Developer performing the obligations and delivering the requirements of the Approved Travel Plan (as defined in the Agreement)

- (i) upon receipt of written confirmation from the County Council (such confirmation not to be unreasonably withheld or delayed) this Bond may be reduced by one fifth of the original Bond Sum upon the first anniversary of first Occupation (as defined in the Agreement) and thereafter upon receipt of the County Council's written confirmation by a further one fifth on each subsequent anniversary of the first occupation; so that
- (ii) Upon receipt of the County Council's written confirmation that the terms of the Agreement have been complied with this Bond together with any interest accrued will be released on the fifth anniversary of first Occupation

NO PARTY who is not a party to this Bond shall be entitled to enforce any of its terms for his own benefit and the application of the Contracts (Rights of Third Parties) Act 1999 to the terms of this Bond are hereby expressly excluded

THE COMMON SEAL of  
the Developer was hereunto  
affixed in the presence of:-

DIRECTOR

SECRETARY

SIGNED as a Deed by  
the Surety acting by:-

AUTHORISED SEALING OFFICER

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

HEAD OF LAW

THE COMMON SEAL of  
was hereunto affixed  
in the presence of:-

Director

Director/Secretary

THE COMMON SEAL of  
Was hereunto affixed  
In the presence of:-

Director

Director/Secretary

THE COMMON SEAL of  
Was hereunto affixed  
In the presence of:-

Director

Director/Secretary

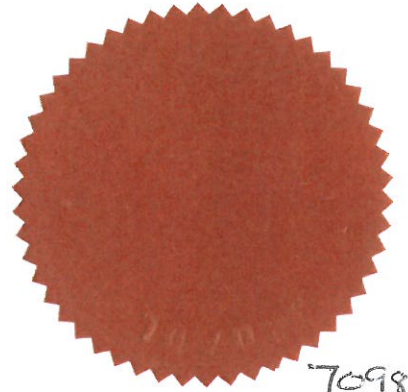
EXECUTED by the parties hereto as a deed on the date written above

THE COMMON SEAL of  
**BROADLAND DISTRICT COUNCIL** )  
was hereunto affixed )

in the presence of )

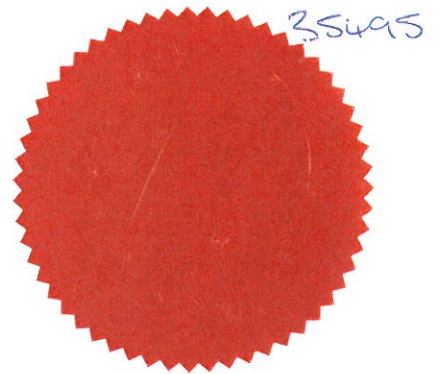
~~Head of Corporate Services  
and Monitoring Officer~~

*M. M. M.*  
Head of Democratic Services and  
Monitoring Officer



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

*Alban*  
Head of Law



SIGNED as a deed by **ALAN GEORGE  
HERBERT SMITH** in the presence of:

) *Alan G H Smith*

Signature of Witness: *J. M. Fountain*  
Name of Witness: *Janet Fountain*  
Address of Witness: *31, Raynes Way, Mattishall,*  
Occupation of Witness: *Dereham, NE20 3WQ*  
*Secretary*

SIGNED as a deed by **JOHN ERNEST  
SMITH** in the presence of:

) *[Signature]*

Signature of Witness: *J. M. Fountain*  
Name of Witness: *Janet May Fountain*  
Address of Witness: *31 Raynes Way, Mattishall*  
Occupation of Witness: *Dereham NE20 3WQ*  
*Secretary*

SIGNED as a deed by **RAYMOND  
SMITH** in the presence of:

) *Raymond Smith*

Signature of Witness: *J. M. Fountain*  
Name of Witness: *Janet Fountain*  
Address of Witness: *31, Raynes Way, Mattishall,*  
Occupation of Witness: *Dereham, NE20 3WQ*  
*Secretary*

SIGNED as a deed by **SLA PROPERTY** )  
**COMPANY LIMITED** acting by: )

Director:

*R. Chuter*

)  
)

Director/~~Secretary~~:

*al. c.*