

DATED 7th September 2012

BROADLAND DISTRICT COUNCIL

- AND -

THE TRUSTEES OF THE CHARITY
KNOWN AS THE THORPE ST ANDREW
BURIAL GROUND

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

Relating to the development of land adjacent to
130 Yarmouth Road, Thorpe St Andrew, Norfolk

Broadland District Council
Thorpe Lodge
Yarmouth Road
Norwich
NR7 0DU

THIS AGREEMENT is made the 7th day of September 2012

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") and JOHN ANTHONY MORRICE PREUS of 17 Hillside Road Thorpe St Andrew Norwich Norfolk NR7 0QG and NICHOLAS JOHN PRICE of the Beeches 40 Norwich Road Strumpshaw Norwich NR13 4AG and ALAN RODNEY GEORGE of 13 Anne Close Norwich NR7 0PH and JOHN FREDERICK FISHER of 88 Yarmouth Road Norwich NR7 0QZ and STEVEN JOHN FORD of 101 Thunder Lane Norwich NR7 0JG and REVEREND CANON BARRY RICHARD OAKE of Thorpe Rectory 21a South Avenue Norwich NR7 0EY being the Trustees of the Charity known as Thorpe St Andrew Burial Ground ("The Trustees")

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 an AHP
"Affordable Housing Unit"	Dwellings to be provided as Affordable Housing in accordance with Schedule 1 and consisting of the Affordable Rental Units

"Affordable Rental Units"	fifteen Dwellings to be constructed or provided as part of the Development and to be let for a rent by or on behalf of an AHP in accordance with the AHP's normal letting policy
"Affordable Housing Provider" "(AHP) "	either: (i) a registered provider as defined by S80 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 Council for the provision and/or operation of affordable housing within the administrative area of Broadland or has otherwise been approved by the Council for the purposes of this Agreement
"Application"	the detailed planning application validated on the 20 September 2011 for the proposed development of 15 new properties consisting of 9 houses and 6 bungalows under reference number 20111370
"Code"	the Code for Sustainable Homes published by the Department for Communities and Local Government dated December 2006
"Commencement Date"	the initiation of the Development by the carrying



Application No: 20111370

Land at Yarmouth Road, Thorpe St Andrew, NR7 0SB

Scale:
1:1250

Date:
15-Sep-11



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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 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, erection of any temporary means of enclosure, the temporary display of site notices or advertisements) and "Commence" shall be interpreted in accordance with this definition

"Council's Monitoring Fee"	the sum of six hundred and thirty eight pounds (£638) payable by the Trustees to the Council
"Development"	the development permitted by the Planning Permission
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"Dwelling"	any unit of residential occupation being a self-contained house or bungalow constructed as part of the Development
"HCA Standards"	the Housing Quality Indicators and Design and Quality Standards specified by the Homes and Communities Agency
"Inflation Provision"	the increase (if any) in the BIS (Department for Business Innovation and Skills) Output Price index for New Construction (2010) : All New Construction between 30 September 2006 and

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

"Local Lettings Policy"

the order in which the Affordable Rental Units are to be allocated and which is set out under the title "Local Lettings Policy" at Appendix 1 to this Agreement as amended from time to time

"Occupation and Occupied"

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 purposes or occupation in relation to security operations

"Open Space Contribution"

the sum of seventy three thousand six hundred and sixty two pounds (£73,662)

"Plan"

the plan annexed to this Agreement

"Planning Obligations"

the planning obligations set out in clause 14 hereof

"Planning Permission"

the planning permission to be granted for the Development 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)

"Site"

the land adjacent to 130 Yarmouth Road, Thorpe St Andrew, 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

- B. The Trustees are the registered freehold owners of the Site pursuant to title Number NK419393
- C. Lovell Partnerships Limited have submitted the Application
- D. The Council has resolved to approve the Application subject to the completion of this Agreement
- E. The Parties agree that the planning obligations contained in this Agreement comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010

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 Trustees hereunder are planning obligations for the purposes of the Act and enforceable by the Council against the Trustees and their successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with his interest in the Site or the part of the Site in respect of which such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place
- 2.4 The provisions of this Agreement shall have immediate effect upon completion of this Agreement with the exception of the Planning Obligations which shall not come into effect until both the grant of the Planning Permission and the Commencement Date

2.5 This Agreement shall cease to have effect if:

2.5.1 the Planning Permission shall be quashed revoked modified without the consent of the Trustees 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

2.7 The obligations in this Agreement shall not be enforceable against a statutory undertaker after the transfer of any apparatus and any land upon or in which the statutory apparatus is situated by the Trustees to that statutory undertaker

2.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Agreement.

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 Trustees 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 Chief Executive Broadland District
Council Thorpe Lodge 1 Yarmouth Road
Thorpe St Andrew Norwich Norfolk
NR7 0DU

The Trustees

Thorpe St Andrew Burial Trust
C/o John Preus
17 Hillside Road
Thorpe St Andrew
Norwich

or to such other address as one party may notify in writing to the other at any time as its address for service.

- 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 Trustees shall on completion of this Agreement pay to the Council its reasonable and proper legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

7. PAYMENT OF INTEREST

- 7.1 The Parties 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

- 10. The Trustees 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 except insofar as such decision is affected by manifest error or fraud

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 Trustees hereby warrant that they are the freehold owners of the Site and has full power to enter into this Agreement

13. NOTIFICATION

13.1 The Trustees shall notify the Council of the Commencement Date and upon Occupation of the first Dwelling

14. PLANNING OBLIGATIONS

The Trustees hereby covenant with the Council as follows:

14.1 on the Occupation of the first Dwelling on the Site pursuant to the Planning Permission to pay to the Council the Open Space Contribution as increased by the Inflation Provision

14.2 the Council's Monitoring Fee which is required for checking the implementation and compliance with the terms of this Agreement shall be paid to the Council on or prior to the Commencement Date

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

15. THE COUNCIL'S OBLIGATIONS

15.1 The Council agrees with the Trustees that the Open Space Contribution shall be applied towards the provision and/or maintenance of new open space and/or outdoor recreational facilities in the Parish of Thorpe St Andrew or towards the improvement and/or maintenance of existing open space and/or outdoor recreational facilities in the Parish of Thorpe St Andrew

15.2 The Council agrees with the Trustees that the Council's Monitoring Fee shall be applied towards checking the implementation and compliance with the terms of this Agreement

SCHEDULE 1

1. AFFORDABLE HOUSING

- 1.1 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission and the Code to HCA standards
- 1.2 Not to use allow or permit any Dwelling constructed as part of the Development 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
- 1.4 The Trustees shall not dispose of its freehold interest in the Affordable Housing Units other than to an AHP
- 1.5 Paragraphs 1.2 and 1.3 and 1.4 above shall not be binding upon:
 - (a) any mortgagee in possession of the Affordable Housing Units or part thereof nor
 - (b) any receiver or manager (including an administrative receiver) for such mortgagee
 - (c) any purchaser pursuant to a right to buy under Part 5 of the Housing Act 1985 or a right to acquire under Section 16 of the Housing Act 1996 or any similar or substitute right applicable, and shall not be binding upon any successor in title following such a disposal

APPENDIX 1

Local Lettings Policy for exception site on Yarmouth Road, Thorpe St Andrew

1. Nomination Rights Policy

1.1 The Policy will apply to all categories of properties on the basis of 100% of all lettings for the first 80 years.

1.2 The Council and the Association are both committed to eradicating double scrutiny of nominated households for general needs accommodation. They are also agreed on the move away from a pool nomination system to a direct nomination system where a maximum of 2 households will be nominated in priority order for any letting other than those designated as hard to let where a maximum of 3 households will be nominated

2. Allocations will be made to applicants on the Common Housing Register managed and maintained by Broadland District Council on the following priority basis:

2.1 Residents of parish Thorpe St Andrew who have lived in the Parish for a total of at least 3 of the last 10 years.

2.2 Former residents of Thorpe St Andrew who have had their main home in the Parish for 3 of the last 10 years.

2.3 Households who need to move to Thorpe St Andrew to give/receive support from family/relatives.

2.4 Residents of the adjacent parishes of Postwick, Great and Little Plumstead and Sprowston who have lived in these parishes for the last three years.

2.5 People working in the parish of Postwick, Great and Little Plumstead and Sprowston who have done so for a year or more.

2.6 Residents of Thorpe St Andrew who have lived in the parish for less than three years.

2.7 Residents of the parish Postwick, Great and Little Plumstead and Sprowston who have lived in these parishes for less than three years.

2.8 Residents of Broadland District

2.9 Any other person

3. Administrative Procedure for Nominations

3.1 The administrative procedure for nominations shall be in accordance with the operational procedures of the Home Options Choice Based Lettings as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.

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. Mue

Head of Democratic Services
and Monitoring Officer



EXECUTED AS A DEED by
JOHN ANTHONY MORRICE PREUS
in the presence of:

)
)
)

John Anthony Morrice Preus
David Payne

Witness

Name:

Address:

DAVID PAYNE
11 ANNE CLOSE
NORWICH
NR7 0PH

EXECUTED AS A DEED by
NICHOLAS JOHN PRICE
in the presence of:

)
)
)

Nicholas John Price

Witness

Name:

Address:

P. Preus
PAMELA PREUS
17 HILLSIDE ROAD
THORPE ST. ANDREW
NR7 0QG

EXECUTED AS A DEED by
ALAN RODNEY GEORGE
in the presence of:

)
)
)
)

Witness

Name:

Address:

Shaw
DAVID PHAYNE
11 ANNE CLOSE
NORWICH
NR7 0PH1

EXECUTED AS A DEED by
JOHN FREDERICK FISHER
in the presence of:

)
)
)
)

Witness

Name:

Address:

P. PREUS
Iain PREUS
17 HILLSIDE ROAD
THORPE ST ANDREW
NR7 0QG

EXECUTED AS A DEED by
STEVEN JOHN FORD
in the presence of:

)
)
)
)

Witness

Name:

Address:

P. PREUS
Iain Preus (PREUS)
17 Hillside Road Thorpe St Andrew
NR7 0QG

EXECUTED AS A DEED by
REVEREND CANON BARRY
RICHARD OAKE
in the presence of:

)
)
)
)

Witness

Name:

Address:

C.M. Guthrie.
C.M. GUTHRIE.
19 HILLSIDE ROAD
THORPE ST. ANDREW.
NR 7 0QQ.