

DATED 27th September 2013

NORFOLK COUNTY COUNCIL

-AND-

BROADLAND DISTRICT COUNCIL

-AND -

LOVELL PARTNERSHIPS LIMITED

-AND –

VICTORY HOUSING TRUST

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

Relating to the development of land at
Hubbards Loke, Great Witchingham

Broadland District Council
Thorpe Lodge
Yarmouth Road
Norwich
NR7 0DU

THIS AGREEMENT is made the 27th day of September 2013

BETWEEN:

- (1) NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich NR1 2DH ("the County Council");
- (2) BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council");
- (3) LOVELL PARTNERSHIP LIMITED (Co. Regn. No. 2387333) of Kent House, 14-17 Market Place, London W1W 8AJ (the "Lovell"); and
- (4) VICTORY HOUSING TRUST (Co. Regn. No. 05275586) of Tom Moore House, Cromer Road, North Walsham, Norfolk, NR28 0BN ("Victory").

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 (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"	the 8 units of Affordable Housing to be constructed on the Victory Land as part of the Development (and the term "Affordable Housing Unit" shall be interpreted accordingly)
"Application"	the planning application registered by the Council on 4 th May 2012 and given reference 20120697 for the erection of 19 dwellings on the Lovell Land, 8 dwellings on the Victory Land and the construction of the Village Hall on the Village Hall Land with associated roads, car parking, landscaping and a war memorial.
"Certificate of Practical Completion"	has the same meaning as in the Development Agreement

"Chief Executive"	the Council's Chief Executive or other officer of the Council acting under his hand
"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 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
"Council's Monitoring Fee"	the sum of three hundred and thirty two pounds (£332)
"County Council's Monitoring Fee"	the sum of three hundred pounds (£300)
"Development"	the development permitted by the Planning Permission
"Development Agreement"	the agreement for the transfer and development of the Development entered into on [INSERT DATE OF DEVELOPMENT AGREEMENT] ^{22nd April 2013} between Broadland District Council (1), Lovell (2) and Victory (3)
"HCA Standards"	the "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Community Agency or their successors
"Index Linked"	Index-linked from 7 November 2012 until such time that payment of the Library Contribution 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)
"Lovell Land"	means the land edged red on the Plan
"Library Contribution"	the sum of one thousand six hundred and twenty pounds (£1,620) such sum to be Index Linked
"Market Units"	those 19 units forming part of the Development that are not Affordable Housing Units
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Protected Tenant"	any tenant who: (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; or (b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
"Registered Provider"	a provider of social housing registered in the register kept by the Regulation of Social Housing as provided for in Chapter 3 of the Housing and Regeneration Act 2008 (or any statutory re-enactment or modification thereof)
"Site"	means the Lovell Land and the Victory Land
"Victory Land"	means the land edged blue on the Plan
"Village Hall"	means the Village Hall Development as defined

in the Development Agreement

"Village Hall Land" means the land edged green on the Plan

1.2 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; and
- (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 also a Local Planning Authority for the purposes of the Act.
- B. Lovell is the freehold owner of the Lovell Land and Victory is the freehold owner of the Victory Land.
- C. Lovell has submitted the Application.
- D. The parties have agreed to enter into 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 Lovell and Victory hereunder are planning obligations for the purposes of the Act and the covenants in clauses 10 and 12 are enforceable by the Council and the County Council against Lovell and its

successors in title and assigns and the covenants in clause 11 are enforceable by the Council and the County Council against Victory and its respective 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 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 come into effect upon the Commencement Date.
- 2.5 This Agreement shall cease to have effect if:-
- 2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn; or
 - 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 Notwithstanding anything to the contrary contained or referred to elsewhere in this Agreement the provisions of this Agreement shall not be enforceable against:-
- 2.7.1 any owner occupier tenant mortgagee or charge (or any receiver appointed by such mortgagee or charge) of the Market Units nor against those deriving title from them;
 - 2.7.2 any service companies, statutory undertakers or other person who acquires any part of the Site or any interest in it for the purposes of the supply of electricity, gas, water, drainage or telecommunication services.

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 their functions as Local Planning Authorities 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 Lovell 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 Chief Executive, Broadland District
Council Thorpe Lodge 1 Yarmouth Road
Thorpe St Andrew Norwich Norfolk NR7
0DU

Lovell

Tony Tann, Regional Director, Lovell
Partnerships Limited, 69-75 Thorpe Road,
Norwich, Norfolk NR1 1UA

The County Council

Practice Director nplaw Norfolk County
Council County Hall Martineau Lane
Norwich NR1 2DH

Victory

Mark Burghall, Development Manager,
Victory Housing Trust, Tom Moore House,
Cromer Road, Norfolk NR28 0NB

- 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. PAYMENT OF INTEREST

- 6.1 Lovell 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.

7. VAT

- 7.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable.
- 7.2 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.

8. JURISDICTION

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

9. DISPUTE RESOLUTION

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 Nothing in Clause 11.1 11.2 and 11.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

10. PLANNING OBLIGATIONS (Council)

Lovell hereby covenants with the Council as follows:-

- 10.1 not to occupy or allow to be occupied more than 10 of the Market Units until the Affordable Housing Units have been constructed and are ready for occupation;
- 10.2 not to occupy or allow to be occupied more than 10 of the Market Units until work on the Village Hall has been started and has reached the stage of:
- 12.2.1 the foundations and floor slabs of the building have been laid
- 12.2.2 the external walls have reached eaves height
- 10.3 not to occupy or allow to be occupied more than 13 of the Market Units until the Village Hall has reached the stage of being wind and water tight

- 10.4 not to occupy or allow to be occupied more than 16 of the Market Units until the Certificate of Practical Completion has been issued in respect of the Village Hall;
- 10.5 to pay the Council's Monitoring Fee within 20 Working Days of the Commencement Date;
- 10.6 to notify the Council in advance of any of the "trigger dates" referred to above.
- 11. Victory hereby covenants with the Council as follows:-
 - 11.1 Subject to the provisions of paragraph 11.3 below, not to allow the Affordable Housing Units to be occupied otherwise than:
 - 11.1.1 on the basis of weekly or monthly tenancies granted by a Registered Provider at affordable rents (being a maximum of 80% of market rents);
 - 11.1.2 by persons nominated by the Council in accordance with the local lettings policy at **Appendix 1** of this Agreement.
 - 11.2 that the Affordable Housing Units will be constructed to minimum HCA Standards; and
 - 11.3 Paragraph 11.1 shall not be binding upon:
 - 11.3.1 any mortgagee in possession of the Affordable Housing Units or any part thereof nor any receiver or manager (including an administrative receiver) for such mortgagee nor any person deriving title under any of the Affordable Housing Units;
 - 11.3.2 a Protected Tenant of any of the Affordable Housing Units or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successor in title thereto and their respective mortgagees and chargees; or
 - 11.3.3 any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
- 12. PLANNING OBLIGATIONS (County Council)
 - Lovell hereby covenants with the Council as follows:-
 - 12.1 to notify the County Council of the Commencement Date

12.2 to pay to the County Council the Library Contribution and the County Council's Monitoring Fee within 20 Working Days of the Commencement Date

13. THE COUNTY COUNCIL'S OBLIGATIONS

The County Council agrees with Lovell that the Library Contribution shall be applied towards the costs of providing library services the need for which has been created by 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)

Head of Corporate Services and Monitoring Officer

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

Head of Law

Signed as a deed by I.S. Brown [NAME] and
A.C. Tappin [NAME] as attorneys for LOVELL
PARTNERSHIPS LIMITED in the presence of :-

Signature of witness:

Name (in BLOCK CAPITALS): SUZANNE MOORE
MARSTON PARK
TAMWORTH
Address: STAFFORDSHIRE
B78 3HN

 [SIGNATURE]
AS ATTORNEY FOR LOVELL
PARTNERSHIPS LTD,

Signature of witness:

Name (in BLOCK CAPITALS): JOHN EAST
59-75 THORPE ROAD
NORWICH
Address: NR1 1UA

 [SIGNATURE]
AS ATTORNEY FOR LOVELL
PARTNERSHIPS LTD.

Executed as a Deed by affixing the)
COMMON SEAL of VICTORY)
HOUSING TRUST in the presence of:-)

Board Member

[Signature] X

Secretary

[Signature]



Legend:	
	Market Housing Land
	Allocatable Housing Land
	Village Hall Land
	Company's Road
	Access Area
	Shared Footpath Route
	Color Gas Point
	LPG Easement
	Buffer Zone Area
	Ground Maintenance Areas
	Site Compound Area
	Pedestrian Right of Way
	2m Easement

No.	Date	Description
1	14.09.2013	Private drive area added, color gas lorry removed, lorry access area half removed
2	14.09.2013	Color Gas compound & easement moved
3	14.09.2013	Color Gas compound & easement updated
4	14.09.2013	Access Area & 2m Easement added
5	14.09.2013	Access Area & 2m Easement updated
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99	14.09.2013	Access Area & 2m Easement updated
100	14.09.2013	Access Area & 2m Easement added

LOVELL
Lovell Partnerships Ltd
10-12 The Quadrant, Newbury, Berkshire, RG16 1JH
Tel: 01344 862000
Fax: 01344 862001

Richard Pike Associates
10-12 The Quadrant, Newbury, Berkshire, RG16 1JH
Tel: 01344 862000
Fax: 01344 862001

exor
10-12 The Quadrant, Newbury, Berkshire, RG16 1JH
Tel: 01344 862000
Fax: 01344 862001

Hubbards Loke
Great Witchingham

Lovell Partnerships Ltd

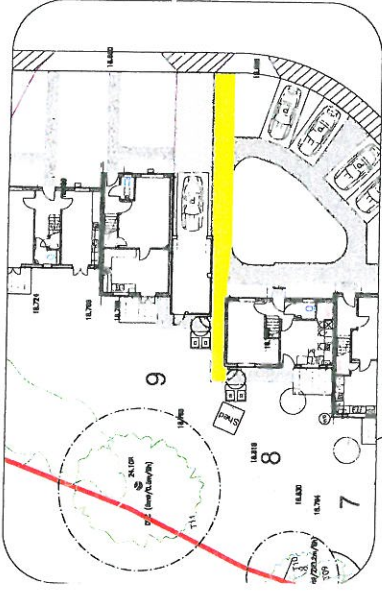
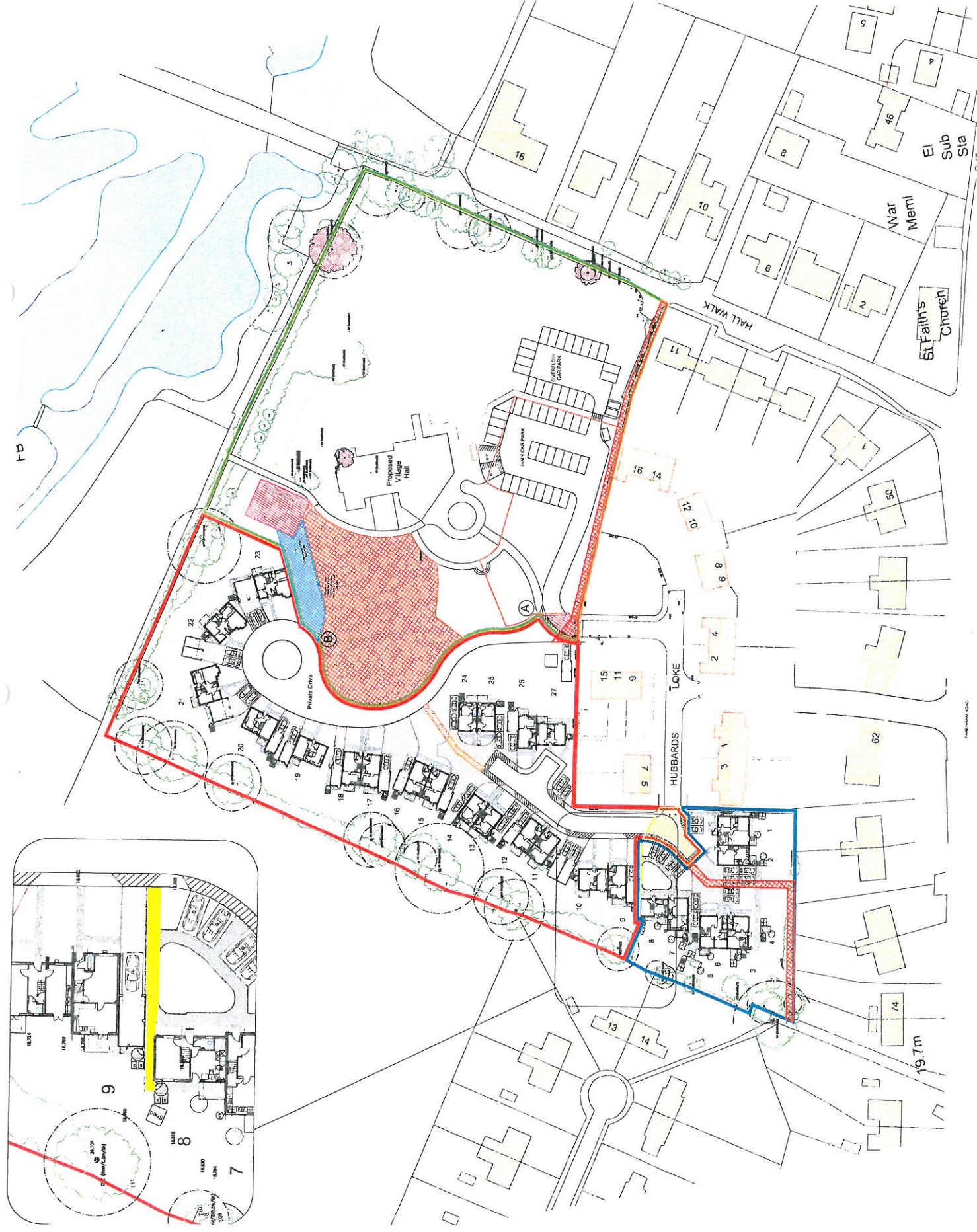
Contract Plan

Date
February 2013

Scales
1/500 @ A1

Drawing No.
8570-190-1001

FOR COMMENT ONLY



Appendix 1

Local Lettings Policy

ANNEX

LOCAL LETTINGS POLICY

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 Victory 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 Housing List managed and maintained by Broadland District Council on the following priority basis:

- 2.1.1 Residents of Great Witchingham who have lived in the Parish for a total of at least 3 of the last 10 years.
- 2.1.2 Former residents of Great Witchingham who have had their main home in the Parish for 3 of the last 10 years.
- 2.1.3 Households who need to move to the parish of Great Witchingham to give/receive support from family/relatives.
- 2.1.4 Residents of the adjacent parishes of Alderford, Booton, Brandiston, Reepham, Morton on the Hill, Swannington, and Weston Longville who have lived in these parishes for the last three years.
- 2.1.5 People working in the parish of Great Witchingham who have done so for a year or more.
- 2.1.6 Residents of Great Witchingham who have lived in the parish for less than three years.
- 2.1.7 Residents of the adjacent parishes of Alderford, Booton, Brandiston, Reepham, Morton on the Hill, Swannington, and Weston Longville who have lived in these parishes for less than 3 years.
- 2.1.8 Residents of the adjacent parishes of Attlebridge, Cawston, Felthorpe, Haveringland, Honingham, Ringland, Salle, Themelthorpe and Wood Dalling, who have lived in these parishes for the last three years.
- 2.1.9 Residents of the adjacent parishes of Attlebridge, Cawston, Felthorpe, Haveringland, Honingham, Ringland, Salle, Themelthorpe and Wood Dalling who have lived in these parishes for less than 3 years.

2.10 Residents of Broadland District

2.11 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 Allocations Scheme as amended from time to time or in accordance with alternative procedures as the Council and Victory shall agree between them.