

DATED

7th March

2013

BROADLAND DISTRICT COUNCIL

- AND -

PAUL VICTOR HOLMES & TREVOR JOHN HOLMES

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

Relating to the development of land at Norwich Camping and Leisure, South Hill Road,
Thorpe St Andrew, Norfolk

Broadland District Council
Thorpe Lodge
Yarmouth Road
Norwich
NR7 0DU

THIS AGREEMENT is made the 7th day of March 2013

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") and PAUL VICTOR HOLMES and TREVOR JOHN HOLMES both of Norwich Camping and Leisure 58 Yarmouth Road Blofield Norwich Norfolk NR13 4LQ ("the Owner")

1. INTERPRETATION AND DEFINITIONS

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

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	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 a minimum of two Affordable Rental Units
"Affordable Rental Units"	A minimum of two Affordable Rental Units 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 either:
Provider" "(AHP) "

- (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 10 May 2012 for the erection of 16 two storey houses and 1 disabled lifetime bungalow estate road and parking under reference number 20120730

"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 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 three hundred and thirty two pounds (£332) Index Linked payable by the Owner to the District Council
"Development"	the development permitted by the Planning Permission
"Director"	the District 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
"Occupation and Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by



Project South Hill Road Client Trevor Holmes. Drawing no. HOL001/0205 - 2 Drawn by Mark Stewart Scale 1:1250 @ A3

Job Ref HOL001/0205

Date February 2012

Revision B

4 St Mary Works
Duke Street
Norwich
NR3 1QA
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personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

"Plan"	the plan annexed to this Agreement
"Planning Obligations"	the planning obligations set out in clauses 14 hereof
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs contained in the Council's policies relating to housing allocation (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002)
"Site"	the land known as Norwich Camping and Leisure, South Hill 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) words in the singular shall include the plural and the plural shall include the singular
- (ii) a reference to one gender shall include a reference to the other gender

- (iii) references to any party shall include the successors in title and assigns of that party
- (iv) references to clauses and schedules are references to clauses in and schedules to this Agreement except where otherwise specified
- (v) 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
- (vi) headings in this Agreement shall not form part of or affect its construction

W H E R E A S:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated
- B. The Owner is the freehold owner of the Site
- C. The Owner has submitted the Application
- D. The Council has resolved to approve the Application subject to the completion of this Agreement

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers
- 2.2 The obligations of the Owner hereunder are planning obligations for the purposes of the Act and enforceable by the Council against the Owner and its 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 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 or otherwise withdrawn
- 2.5.2 the Planning Permission shall expire prior to the Commencement Date
- 2.6 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

3. AGREEMENTS AND DECLARATIONS

IT IS HEREBY AGREED AND DECLARED as follows:

3.1 No Fetter of Discretion

Save insofar as legally or equitably permitted nothing contained or implied in this Agreement shall prejudice or affect the rights discretions powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 NO WAIVER

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

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 Owner

Norwich Camping & Leisure, 58 Yarmouth
Road, Blofield, Norwich, Norfolk NR13 4LQ
and c/o Rogers & Norton Solicitors, The Old
Chapel, 5-7 Willow Lane, Norwich NR2 1EU

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

5. THIRD PARTIES

- 5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

6. COSTS

- 6.1 The Owner shall on completion of this Agreement pay to the Council a contribution towards its legal and administrative costs incurred in the preparation negotiation and completion of this Agreement up to a maximum of £750

7. PAYMENT OF INTEREST

- 7.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

8. VAT

- 8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall

have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. JURISDICTION

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

10. The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of the Agreement are hereby waived

11. DISPUTE RESOLUTION

11.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same

11.2 If the matter is not resolved through negotiations the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre of Dispute Resolution

11.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties

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

12. TITLE WARRANTY

- 12.1 The Owner hereby warrants that it is the freehold owner of the Site and has full power to enter into this Agreement

13. NOTIFICATION

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

14. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

- 14.1 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

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

SCHEDULE 1


1. AFFORDABLE HOUSING

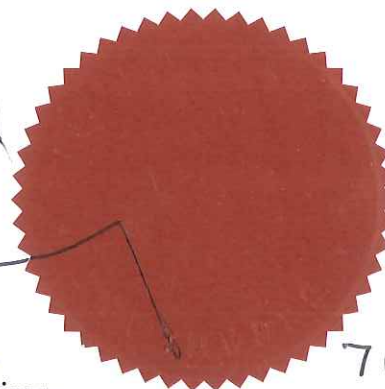
- 1.1 Not to commence Development on the Site pursuant to the Planning Permission until a scheme for the provision and long-term management of the Affordable Housing Units has been submitted and approved (such approval not to be unreasonably withheld or delayed) by the Chief Executive of the Council ("the Affordable Housing Scheme") which Scheme for the avoidance of doubt shall deal with and include the timing of the Development and the location of the Affordable Housing within the Site and in accordance with the Affordable Housing Overall Provision and upon approval such scheme shall be deemed to be incorporated into the provisions of this Agreement

- 1.2 Upon approval of the Affordable Housing Scheme by the Council to implement the Affordable Housing Scheme as approved and in accordance with the provisions contained in the Affordable Housing Scheme
- 1.3 Not to use the Affordable Housing Units for any purpose other than for Affordable Housing
- 1.4 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.5 The Owner shall not dispose of its freehold interest in the Affordable Housing Units other than to an AHP
- 1.6 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
- 1.7 Paragraphs 1.3 and 1.4 and 1.5 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

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


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



7128

Signed as a deed by **PAUL VICTOR HOLMES** in the
presence of:

Witness:

Signature: 

Full Name: KEVIN ANTHONY COLLINS

Address: 40..... Norwich Camping & Leisure
..... The Leisure Village
58 Yarmouth Road, Blofield
Norwich
NR13 4LQ
Tel: 01603 717600/717800

Signed as a deed by **TREVOR JOHN HOLMES** in the
presence of:

Witness:

Signature: 

Full Name: KEVIN ANTHONY COLLINS

Address: 40..... Norwich Camping & Leisure
..... The Leisure Village
58 Yarmouth Road, Blofield
Norwich
NR13 4LQ
Tel: 01603 717600/717800