

DATED 11th. September 2008

BROADLAND DISTRICT COUNCIL (1)

and

MCCARTHY & STONE (DEVELOPMENTS) LIMITED (2)

and

ELAINE IRIS FITZMAURICE (3)

SECTION 106 AGREEMENT

Land at 149 Yarmouth Road, Thorpe St Andrew

THIS AGREEMENT is made the
2008

11th

day of September

By

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Norwich NR7 0DU ("the Council")
- (2) ELAINE IRIS FITZMAURICE of 149 Yarmouth Road, Norwich, Norfolk, NR7 0SA ("the Owner")
- (3) MCCARTHY & STONE (DEVELOPMENTS) LIMITED (company registered number 770529) whose registered office is at Homelife House, 26/32 Oxford Road, Bournemouth BH8 8EZ ("the Developer")

WHEREAS

- (1) The Owner is the registered proprietor registered with title absolute at HM Land Registry under title number NK362406 of the Land free from encumbrances
- (2) The Developer has by the application of allocated ref no. 2008/0800 ("the Planning Application") applied to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the First Schedule and the Council has granted the Permission
- (3) The Council is the local planning authority for the purposes of Section 106 of the 1990 Act for the area within which the Land is located and the local planning authority by whom the planning obligations in this deed are enforceable
- (4) The Owner and Developer are willing to enter into the Planning Obligations as at the date of this deed in respect of the Land.
- (5) The Council consider that planning permission for the Development could be granted subject to certain conditions and for this purpose the parties have agreed to enter into this Agreement in the manner following:

NOW THIS DEED WITNESSES as follows:

1. Definitions and Interpretation

In this deed:

- 1.1 "the Act" means the Town and Country Planning Act 1990 (as amended)

- 1.2 **"Affordable Housing"** means subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market.
- 1.3 **"Affordable Housing Contribution"** means the sum of Four Hundred and Seventy Seven Thousand Pounds £477,504.00. Index Linked subject all times to the provisions set out at the Second Schedule.
- 1.4 **"Commencement of Development"** means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out pursuant to the Permission other than (for the purposes of this Deed and for no other purpose) 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 **"Commence Development"** and **"Commenced"** shall be construed accordingly
- 1.5 **"Committed"** means the date when the use of any sum payable under this Agreement is committed to either:
- 1.5.1 in the form of a policy which supports the purpose for which the sum has been paid towards under the terms of this Agreement; or
- 1.5.2 in contract or a tender for works or services (which for the avoidance of doubt shall include any expression of interest) which works or services shall be consistent with the purpose for which the sum has been paid towards under the terms of this Agreement
- 1.6 **"Contributions"** mean the Affordable Housing Contribution the Libraries Contribution and the Open Space Contribution and **Contribution** means any one of them
- 1.7 **"the Development"** means the development described in the First Schedule as more particularly set out in the Planning Application
- 1.8 **"Dwellinghouse"** means any unit of the residential accommodation forming a part of the Development for the sole use of private residence of the occupier other than house manager's accommodation.
- 1.9 **"Index"** means the 'all items' figure of the Index of Retail Prices published by the Office of National Statistics or any successor (or equivalent index should the Index cease to be compiled) and if the reference base used to compile that Index changes after the date of this Agreement the figure taken to be shown in that Index after the change is to be the figure that would have been shown in that Index if the reference base current at the date of this Agreement had been retained
- 1.10 **"Index Linked"** any sum expressed in this Agreement to be Index Linked shall be increased by the amount (if any) by which the Index for the month preceding

the date on which any sum is required by this Agreement to be paid exceeds the Index for the month preceding the issue of the Permission

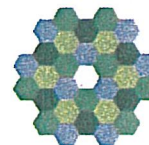
- 1.11 **"the Land"** means land at 149 Yarmouth Road, Thorpe St Andrew shown outlined in red on the Plan and registered at the Land Registry under title number NK362406
- 1.12 **"Libraries Contribution"** means the sum of Two Thousand Four Hundred and Sixty Pounds £2460.00. Index Linked subject all times to the provisions set out at the Second Schedule.
- 1.13 **"Monitoring Fee"** means the sum of Nine Hundred Pounds (£900)
- 1.14 **"Occupation and Occupied"** means the occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decorating or occupation for marketing or display in relation to security operations.
- 1.15 **"Open Space Contribution"** means the sum of Twenty One Thousand and One Hundred and Twelve Pounds (£21,112.00) Index Linked subject all times to the provisions set out at the Second Schedule.
- 1.16 **"the Payment Date"** means on or prior to the first Occupation of a Dwellinghouse
- 1.17 **"the Permission"** means planning permission for the Development pursuant to the Planning Application issued by the Council or the Secretary of State pursuant to any appeal submitted in respect of the Application
- 1.18 **"the Plan"** means the plan annexed hereto
- 1.19 **"the Planning Obligations"** means the obligations referred to in clause 2 below and specified in the Second Schedule annexed hereto
- 1.20 **"Specified Period"** means 5 years from and including the Payment Date
- 1.21 **"Unallocated Amount"** means the amount, if any, of any Contribution that has to be expended or otherwise Committed by the Council at the end of the Specified Period

2. The Planning Obligations

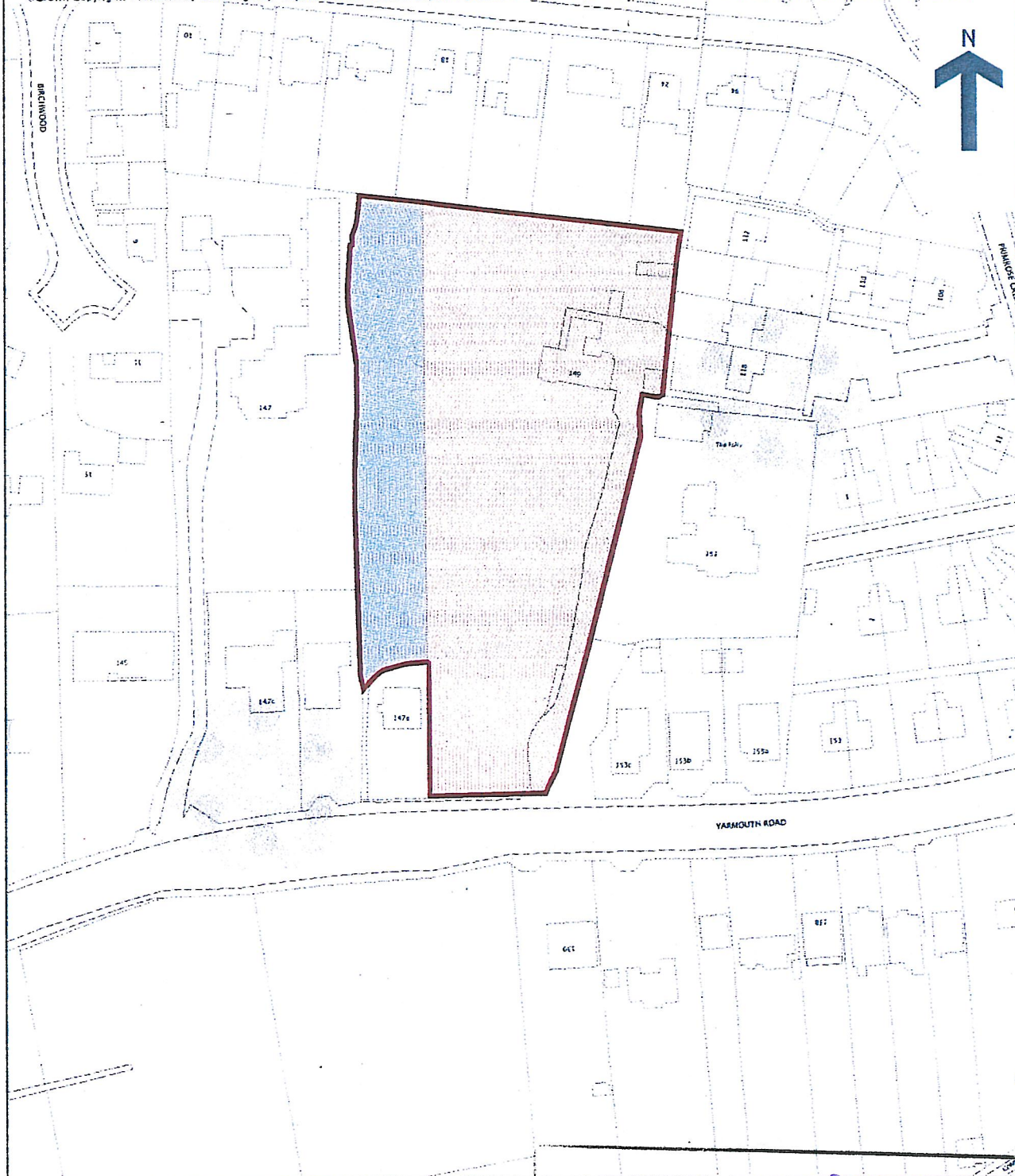
- 2.1 The Planning Obligations contained in this Deed are planning obligations for the purpose of Section 106 of the Act and the Developer undertakes to comply with them
- 2.2 The Planning Obligations may be enforced by the Council
- 2.3 The Owner shall upon disposing of:

Land Registry
Official copy of
title plan

Title number NK362406
Ordnance Survey map reference TG2708NW
Scale 1:1250
Administrative area NORFOLK: BROADLAND



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E.I. Fitzmaurice (Habe Witten)

DIRECTOR C. Nelson

~~DIRECTOR / SECRETARY~~

2.3.1 any part of the Land be released from all liability under the terms of this Deed insofar as such liability relates to such part of the Land

2.3.2 the Land as a whole be released from all liability whatsoever under the terms of this Deed insofar as such liability relates to the Land

2.4 The Planning Obligations shall not come into effect until the Commencement of Development

2.5 This Deed is a local land charge and shall be registered as such

2.6 The Developer covenants to inform the Council by notice in writing addressed to the Conditions Monitoring Officer, Development Services (quoting the allocated application reference number) within 14 days of the date of Commencement of Development

2.7 The Applicant covenants with the Owner and its respective successors in title to indemnify the Owner against all costs and payments required to be paid to the Council in accordance with this Deed.

3. **Declarations**

IT IS HEREBY DECLARED:

3.1 Lapse of Deed

that (unless otherwise proposed by the Developer) this Deed shall lapse and be of no further effect:-

3.1.1 if the Permission shall lapse without having been Commenced shall be revoked or shall be modified other than at the request of the Owner or the Developer; or

3.1.2 if a subsequent planning permission is granted in respect of the Land (either by the Council or on appeal) AND that planning permission is Commenced

3.2 This Deed shall not be enforceable against the purchaser of a Dwellinghouse or a statutory undertaker after the transfer of statutory apparatus by the Owner to that statutory undertaker

IN WITNESS of which this Deed has been executed by the Parties the day and the year first before written

FIRST SCHEDULE

(The Development)

The demolition of any existing buildings and the erection on the Land of a block of 41 sheltered apartments for the elderly including communal facilities and parking

SECOND SCHEDULE

(The Planning Obligations)

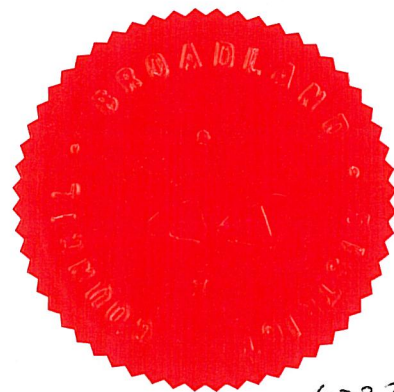
1. Payment of the Contributions
 - 1.1 The Owner and Developer covenant that on or before the Payment Date the Contributions shall be paid to the Council.
 - 1.2 The Owner and Developer covenant to pay Interest in Default on any Contribution to the Council from day to day from the Payment Date until actual payment if this occurs later than the Payment Date
 - 1.4 The Council covenants with the Owner and Developer:
 - 1.4.1 to use the Affordable Housing Contribution towards Affordable Housing and for no other purpose;
 - 1.4.2 to use the Open Space Contribution towards the provision and/or enhancement of bowling greens within the administrative boundaries of the Council and for no other purpose
 - 1.4.3 to forward the Libraries Contribution to Norfolk County Council to be used towards the provision and/or enhancement of library facilities within the administrative boundaries of the Council and for no other purpose
 - 1.4.4 to repay the Unallocated Amount to the party that paid that Contribution

THE COMMON SEAL of BROADLAND DISTRICT COUNCIL
was affixed in the presence of:

Authorised Signatory:

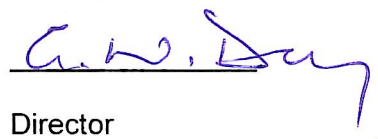


HEAD OF CORPORATE SERVICES
& MONITORING OFFICER




6022

SIGNED as a deed by MCCARTHY &
STONE (DEVELOPMENTS) LIMITED
acting by two directors or a director and
its secretary)
)
)
)
)
)
)



Director

Name: _____



Director/Secretary

Name: _____

EXECUTED as a deed by
BANK OF SCOTLAND PLC
in the presence of:


Authorised Signatory:

SIGNED as a deed by
ELAINE IRIS FITZMAURICE in the presence of

.....

E.I. Fitzmaurice
Signature

Signature of witness:

NFB
.....

Name (in BLOCK CAPITALS)

NICOLAS FRANCIS BROADHEAD
16 FOXGLOVE CLOSE
ARLEY ST MART
NORFOLK.