

DATED 13TH FEBRUARY 2013

BROADLAND DISTRICT COUNCIL

-AND-

BADGER BUILDING (E. ANGLIA) LIMITED

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

Relating to the development of land at 148  
Plumstead Road East, Thorpe St Andrew, Norwich

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Broadland District Council  
Thorpe Lodge  
1 Yarmouth Road  
Thorpe  
Norwich  
NR7 0DU

THIS AGREEMENT is made the 13<sup>TH</sup> day of FEBRUARY 2013

BETWEEN:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Norwich NR7 0DU ("the Council")
- (2) BADGER BUILDING (E. ANGLIA) LIMITED (Co. Regn. No. 02407008) of Stanley House Stanley Street Lowestoft Suffolk NR32 2DZ ("the Owner")

WHEREAS:

- 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 and registered at the H.M.Land Registry under title number NK121987
- C. The Council has resolved to approve the Application subject to the completion of this Agreement

#### 1. INTERPRETATION AND DEFINITIONS

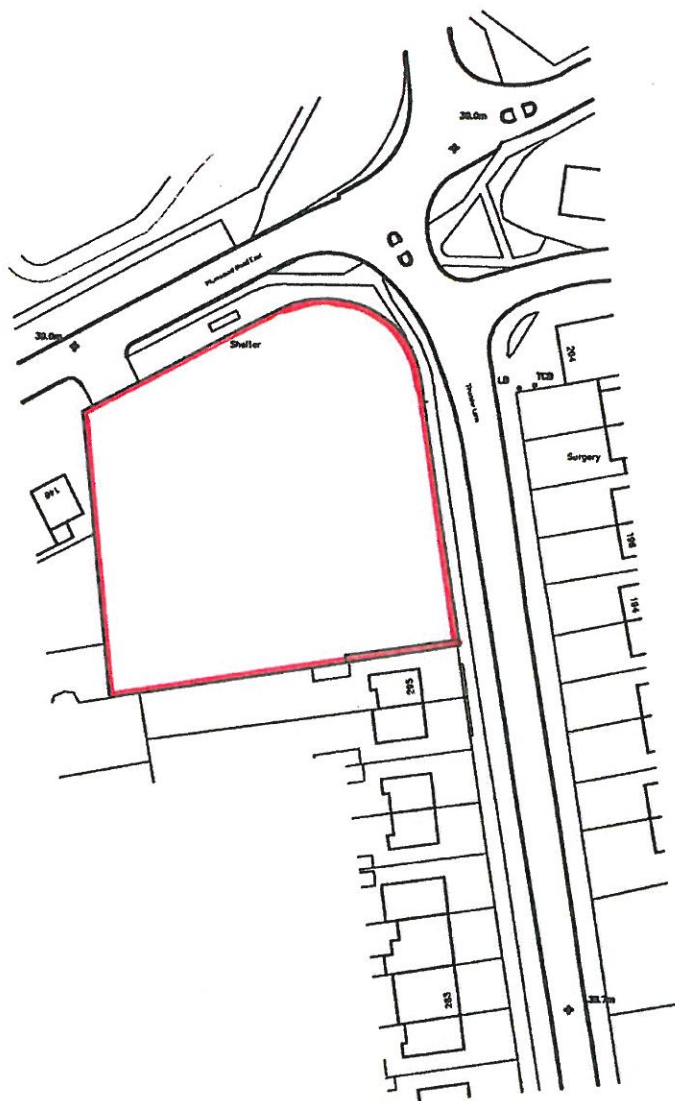
In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Affordable Housing Payment"	25% of the amount (if any) by which the Sale Price exceeds the Base Price up to the Maximum Sum
"Application"	the application for planning permission for the erection of 9 Residential Units on the Site and given reference number 20120887
"Appointed Expert"	Means the person appointed pursuant to clause 11.3
"Act"	the Town and Country Planning Act 1990 (as amended)

"Base Price"	£1,945,000.00 adjusted by the Inflation Provision over the period from the date of this Agreement to the date on which the Affordable Housing Payment becomes due
"Commencement"	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, archaeological investigations, remedial works, erection of any temporary means of enclosure, temporary display of notices or advertisements or clearance of the Site) and "Commence" shall be interpreted in accordance with this definition
"Council's Monitoring Fee"	the sum of £332.00
"Development"	the development permitted by the Planning Permission
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"Disposal"	The unconditional and completed sale of a freehold interest or a leasehold interest for a premium in a Residential Unit
"Inflation Provision"	the increase or decrease (if any) between the date of this Agreement and the date upon which a payment of the relevant sum is made pursuant to this Agreement in the Department for Business Innovation and Skills (BIS) Output Price Index for New Construction (2010) All New Construction (or if such index ceases to be published such other index as the Council shall reasonably determine)

"Maximum Sum"	£130,000
"Occupation"	means 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 or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Plan"	the plan annexed to this Agreement
"Off-Site Open Space Contribution"	the sum of £57,702.07 as adjusted by the Inflation Provision over the period from the date of this Agreement to the date on which payment thereof becomes due for the provision of public open space in the Council's area
"Residential Unit"	A unit of residential nature approved pursuant to the Planning Permission which shall include as well as a dwelling house any garage, outbuildings, car parking area, garden land and any other land and structure appurtenant to that dwelling house
"Sale Price"	<p>The net amount of all sales revenue received by the Owner generated from the first Disposals of Residential Units after taking into account and deducting therefrom:</p> <p>(a) the amount of any deposit paid by the Owner, arrangement allowance, cash back or other sales incentive agreement on such first Disposals and evident from the contracts of sale relating to them;</p> <p>(b) all money received by way of extra items such as carpets, curtains, soft furnishings and white goods</p>

PLAN



BROADLAND COUNCIL  
19 JUN 2012  
PLANNING CONTROL

*Handwritten signature*

*Handwritten signature*

20120887



7131

*Handwritten signature*

Head of Democratic Services and  
Monitoring Officer



LOCATION PLAN Scale 1:1250

REV	DATE	DESCRIPTION	DRAWN	CHECKED BY
Revisions				



PLANNING

Chaplin Farrant Limited  
51 Yarmouth Road  
Norwich  
NR7 6ET

Badger Builders

Tel: 01603 700000  
Fax: 01603 700001

Woodside Pub Site

office@chaplinfarrant.com  
www.chaplinfarrant.com

Location Plan

Also at:  
London  
Winchester  
Southampton  
Great Yarmouth

4241

This drawing is copyright of the  
Architects and shall not be  
reproduced without their  
permission.

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Check all dimensions and report  
any errors or omissions.

June 2012

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provided that in the case of Disposals which shall take place on a part exchange basis there shall be deducted from the sale price of the relevant Residential Unit as shown on the contract for sale relating to it an additional amount equivalent to 5% of such sale price in order to cover the costs incurred in selling such a part exchange property

"Site" the land at 148 Plumstead Road East Thorpe St Andrew Norwich 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

## 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 Section 2 of the Local Government Act 2000 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 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 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 not be enforceable against owner-occupiers or tenants of completed Residential Units nor against those deriving title from them
- 2.5 The provisions of this Agreement shall have immediate effect upon completion of this Agreement
- 2.6 This Agreement shall cease to have effect if:
- 2.6.1 the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.6.2 the Planning Permission shall expire prior to the Commencement Date
- 2.7 This Agreement shall be registered by the Council 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 their 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

3.4 Sales of Residential Units

Nothing contained or implied in this Agreement shall affect the rights and discretions of the Owner to negotiate and complete the sales of Residential Units on such terms as the Owner shall think fit

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  
Thorpe Lodge  
Yarmouth Road  
Thorpe St Andrew  
Norwich  
NR7 0DU

The Owner

Stanley House  
Stanley Street  
Lowestoft  
Suffolk NR32 2DZ  
unless otherwise notified

- 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 their legal and administrative costs reasonably incurred in the preparation negotiation and completion of this Agreement

## 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 of actual payment

## 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

## 11. DISPUTE RESOLUTION

- 11.1 The parties to this Agreement 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

11.3.1 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 to a chartered surveyor who shall be a member of the Royal Institution of Chartered Surveyors having not less than 10 years relevant experience and who shall be appointed on the application of either party by the president of the Royal Institution of Chartered Surveyors

11.3.2 The Appointed Expert shall:

- (a) afford to each of the parties to the dispute an opportunity to make representations to him in writing and if he so directs submissions upon one another’s representations;
- (b) be entitled to stipulate the periods of time for the making of such representations as is reasonable in the circumstances;
- (c) be bound to have regard to such representations;
- (d) have the power of making directions as to the responsibility for costs of his award;
- (e) in making of his award not be liable save to the extent in law provided in relation to the decisions of an expert;

(f) make awards which are final and conclusive as between the parties to such dispute (except that such awards shall not remove the parties' rights of appeal on matters of law); and

(g) be replaced by a fresh appointee in the event of his becoming at any time unable or unwilling for any reason to proceed to discharge his function such fresh appointee to be appointed in the manner prescribed in clause 11.3.1 above

11.4 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

## 12. TITLE WARRANTY

12.1 The Owner hereby warrants that they are the freehold owners of the Site which is registered at the Land Registry under title number NK121987 and have full power to enter into this Agreement and that the Site is free from all mortgages charges or other encumbrances

## 13. PLANNING OBLIGATIONS

13.1 The Owner covenants with the Council to comply with the provisions of Schedule 1

## 14. THE COUNCIL'S OBLIGATIONS

14.1 The Council covenants with the Owner to comply with the provisions of Schedule 2

## **SCHEDULE 1**

### **Owner covenants with the Council**

#### **OFF-SITE OPEN SPACE CONTRIBUTION**

1. Prior to Commencement to pay to the Council the Off-Site Open Space Contribution
2. Not to Commence or allow Commencement until the Off-Site Open Space Contribution has been paid to the Council

#### **MONITORING FEE**

3. Prior to Commencement to pay to the Council the Council's Monitoring Fee.
4. Not to Commence or allow Commencement until the Council's Monitoring Fee has been paid to the Council

#### **AFFORDABLE HOUSING**

5. Prior to the Disposal of the final Residential Unit to pay to the Council the Affordable Housing Payment (unless that sum has not be agreed or determined by that date in which case payment shall be made within 14 days of the agreement or determination of the amount thereof)
6. To notify the Council within seven days of the Disposal of the penultimate Residential Unit
7. Not to make or allow any Disposal of the final Residential Unit unless the Affordable Housing Payment has been paid to the Council or (where the amount of the Affordable Housing Payment has not been agreed or determined prior to the date of that Disposal) unless 75% of the Owner's

reasonable estimate of the amount of the Affordable Housing Payment has been paid to the Council

8. To keep full and accurate records of the Sale Price of each Residential Unit and to supply to the Council copies of such records as the Council may reasonably require for the purposes of verifying the Sale Price of each Residential Unit
9. If prior to the Disposal of the final Residential Unit the Owner has paid only 75% of the Owner's estimate of the Affordable Housing Payment in accordance with paragraph 7 the Owner will within fourteen days of the date on which the amount of the Affordable Housing Payment is agreed or determined pay to the Council the difference between the Affordable Housing Payment and the interim amount paid on account pursuant to paragraph 7

## **SCHEDULE 2**

### **Council's covenants with the Owner**

1. The Council agrees with the Owner that the Off-Site Open Space Contribution shall be applied towards the provision of new open space in the Parish of Thorps St Andrew or towards the improvement and maintenance of existing open space in the Parish of Thorpe St Andrew
2. The Council agrees with the Owner that the Affordable Housing Payment shall be applied towards the provision of affordable housing in the Parish of Thorpe St Andrew
3. If the Council has not used all of the Off-Site Open Space Contribution for the provision of public open space within 10 years of the date of Disposal of the last of the Residential Units it will within 28 days repay the balance to the person who paid it with accrued interest earned thereon
4. If the Council has not used all of the Affordable Housing Sum for the provision of affordable housing within five years of the date of Disposal of the last of the Residential Units it will within 28 days repay the balance to the person who paid it with accrued interest earned thereon



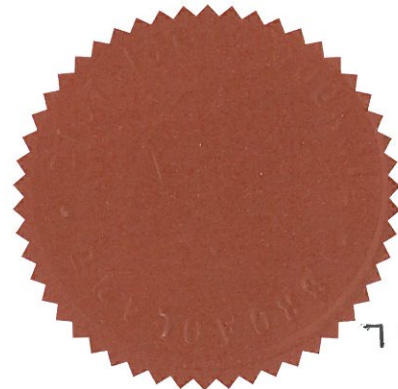
EXECUTED by the parties hereto as a deed on the date written above

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

)  
)  
)  
)  
)

*M. Mue*

Head of Democratic Services and  
Monitoring Officer  
Authorised Officer



7131

**SIGNED AS A DEED BY**

~~THE COMMON SEAL of~~  
BADGER BUILDING  
(E.ANGLIA) LIMITED

)  
)  
)  
)  
)

~~Was hereunto affixed~~

~~In the presence of~~ *acting by*  
*two directors*

Director

*[Signature]*

Director/Secretary

*[Signature]*