

DATED

23<sup>rd</sup> June

2010

NORFOLK COUNTY COUNCIL

-AND-

BROADLAND DISTRICT COUNCIL

- AND -

GLADEDALE (ANGLIA) LIMITED

- AND -

BANK OF SCOTLAND PLC

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

Relating to the development of land at  
School Road, Drayton, Norfolk

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Broadland District Council  
Thorpe Lodge  
Yarmouth Road  
Norwich  
NR7 0DU

THIS AGREEMENT is made the 23<sup>rd</sup> day of June 2010

BETWEEN:

NORFOLK COUNTY COUNCIL ("the County Council") of County Hall Martineau Lane Norwich NR1 2DH of the first part and BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the second part and GLADEDALE (ANGLIA) LIMITED (Co. Regn. No. 3216236) of Ashley House, Ashley Road, Epsom, Surrey, KT18 5AZ ("the Owner") of the third part and BANK OF SCOTLAND PLC of Corporate Real Estate 21-23 Hill Street Mayfair London W1J 5JW ("the Mortgagee") of the fourth part

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)
"Application"	the detailed planning application received on the 3 <sup>rd</sup> June 2009 for the erection of 28 dwellings comprising 2 detached houses, 1 pair of semi-detached houses and 24 age restricted apartments with associated access, garages, parking and landscaping under reference number 20090511
"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

"Development"

the development permitted by the Planning Permission

"Director"

the Council's Strategic Director and Chief Planner (Community Services) or other officers of the Council acting under his hand

"Index Linked"

Index-linked from 13 May 2009 until such time the 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)

"Inflation Provision"

the increase (if any) in the BIS (Department for Business Innovation and Skills) Output Index for Public Works: All Public Works between 30 September 2006 and the date upon which a payment of the Off-Site Open Space Contribution is made pursuant to this Agreement

"Monitoring Fee"

the sum of six hundred pounds (£600)

"Off-Site Open Space Contribution"	the sum of £67,605
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Library Contribution"	the sum of £1,680 such sum to be Index Linked
"Residential Unit"	a self-contained house or flat approved pursuant to the Planning Permission
"Site"	the land at 35 School Road, Drayton, Norfolk NR8 6EF 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 and the County Council is the relevant Highway Authority and is also a Local Planning Authority for the purposes of the Act
- B. The Owner is the freehold owner of the Site pursuant to Title number NK291876 and the Mortgagee has a charge over 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 and the County Council against the Owner 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 have immediate effect upon completion of this Agreement

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

2.7 The County Council shall not be liable to any person under this Agreement after that person has parted with all interest in the Site but without prejudice to any liability arising prior thereto

### 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 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 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





*M. Murre*  
 HEAD OF CORPORATE SERVICES  
 & MONITORING OFFICER



Application No: 20090511  
 Firbanks, 35 School Road, Drayton

Scale:  
 1:1250  
 Date:  
 20-Oct-09



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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 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 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 Strategic Director and Chief Planner  
(Community Services) Broadland District  
Council Thorpe Lodge 1 Yarmouth Road  
Thorpe St Andrew Norwich Norfolk  
NR7 0DU

The Owner

Gladedale (Anglia) Limited  
Ashley House, Ashley Road  
Epsom Surrey KT18 5AZ



The County Council

Head of Law Norfolk County Council  
County Hall Martineau Lane Norwich  
NR1 2DH

The Mortgagee

Bank of Scotland PLC  
21-23 Hill Street Mayfair London W1J  
5JW

- 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. COSTS

- 6.1 The Owner shall on completion of this Agreement pay to the Council and the County Council its legal and administrative costs 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 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 which is registered at the Land Registry under title numbers NK 291876 subject to the Mortgagee's interest and has full power to enter into this Agreement and that save for the Mortgagee's interest the Site is free from all mortgages charges or other encumbrances

## 13. NOTIFICATION

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

## 14. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

14.1 prior to the occupation of any Residential Unit on the Site to pay to the Council the Off-Site Open Space Contribution as increased by the Inflation Provision.

- 14.2 to put in place prior to the occupation of the first Residential Unit on the Site appropriate arrangements for the underground pumping station within the Site to be maintained in perpetuity
- 14.3 the Monitoring Fee which is required for checking the implementation and compliance with the terms of this Agreement shall be paid to the Council prior to commencement of the Development on the Site

## 15. PLANNING OBLIGATIONS

The Owner hereby covenants with the County Council as follows:

- 15.1 The Library Contribution as Index Linked shall be paid prior to the occupation of the tenth Residential Unit erected on the Site

## 16. THE COUNCIL'S OBLIGATIONS

- 16.1 The Council agrees with the Owners that the Off-Site Open Space Contribution shall be applied towards the provision of new open space in the Parish of Drayton or towards the improvement and maintenance of existing open space in the Parish of Drayton

## 17. MORTGAGEE

- 17.1 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the mortgage over the Site shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall have no liability under this Agreement unless it takes possession of the Site in which case it too shall be bound by the obligations

## 18. REPAYMENTS

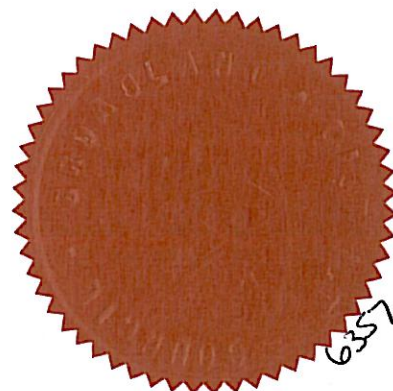
- 18.1 In the event that the Library Contribution has not been committed (by way of a contract or otherwise) towards the provision of additional library facilities within 5 years of final occupation of the Development then the County Council will repay so much of the Library Contribution as shall remain uncommitted together with any interest accrued
- 18.2 In the event that up to £27,388 (twenty seven thousand three hundred and eighty eight pounds) of the Off Site Open Space Contribution has not been spent or committed (by way of contract or otherwise) on the maintenance and/or improvement of existing and/or new open space in the Parish of Drayton within 21 years of receipt of the same by the Council then the Council will repay to the Owner so much of the unexpended balance of the £27,388 as shall remain and in the event that up to £40,217 of the Off Site Open Space Contribution has not been spent or committed (by way of contract or otherwise) towards the cost of provision of new Open Space and/or the cost of provision of equipment on existing and/or new Open Space in the Parish of Drayton within 10 years of receipt of the same by the Council then the Council will repay to the Owner so much of the unexpended balance of the £40,217 as shall remain

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. Moore*

Head of Corporate Services  
and Monitoring Officer



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

*Vick N*

Head of Law



29743

*Executed as a deed by*  
~~THE COMMON SEAL of~~  
GLADEDALE (ANGLIA) LIMITED  
~~was hereunto affixed in~~ *acting by a*  
~~the presence of Director and the~~  
*secretary*

*[Signature]*  
Director

*[Signature]*  
Secretary

EXECUTED as a DEED by  
BANK OF SCOTLAND PLC  
Authorised Signatory  
In the presence of:

*Paul*  
PAUL MURPHY  
DIRECTOR

Witness *PK*

Full Name *RITA PATEL*

Address *155 BISHOPSGATE EC2M 3YB*

Occupation *ANALYST*



**PARTICULARS OF EXECUTION BY ATTORNEY**

These presents are subscribed at Level 6, 155 Bishopsgate, London EC2M 3YB on 8 June 2010 by, Paul Murphy Director, London, before this witness:



Rita Patel

Bank of Scotland Corporate, Level 6, 155 Bishopsgate, London EC2M 3YB

**BANK OF SCOTLAND PLC**

**POWER OF ATTORNEY**

**EXECUTION OF DOCUMENTS**

By this Power of Attorney given on 18 December 2009, Bank of Scotland plc whose registered office is at The Mound, Edinburgh EH1 1YZ ('the Bank') hereby appoints the holders of the following offices in Bank of Scotland plc, HBOS plc, Lloyds TSB Bank plc or Lloyds TSB Commercial Finance Limited, as appropriate, for the time being:

Area Director  
Associate Director  
Business Development Manager  
Business Support Director  
Chief Business Officer  
Chief Operating Officer  
Chief Risk Officer  
Commercial Risk Director  
Corporate Finance Director  
Credit Director  
Credit & Trade Manager  
Credit Sanctioning Director  
Director  
Head of  
Head Relationship Director  
Implementation Director  
Investments Director  
Lead Director  
Lead Relationship Director  
Lead Relationship Manager  
Manager  
Managing Director  
Operational Risk and Compliance Director  
Property Director  
Regional Credit Director  
Regional Director  
Regional Managing Director  
Relationship Director  
Relationship Manager  
Risk Director  
Risk Management Director  
Senior Business Development Manager  
Senior Manager  
Strategy, Change and Integration Director  
Trade Director  
Trade Manager

(each the "Attorney") jointly and severally to be the Bank's attorney and on its behalf and in its name or otherwise to sign, seal, execute and deliver any deed or document specified below:

- (a) Facility Letters, Loan Agreements and any other agreements, letters, deeds or documents in any way connected with the banking facilities to be made available in terms of a Facility Letter and Loan Agreement;
- (b) Investment Agreements, Shareholder Agreements, Subscription Agreements, Investor Loan Agreements and any other agreements, letters, deeds or documents in any way connected with the investment funding to be made available;

- (c) Ranking Agreements and Deeds of Priority, Subordination Agreements and other inter-creditor arrangements;
- (d) Collateral Warranties and Substitution Agreements;
- (e) Discharges of Standard Securities/Legal Charges;
- (f) Deeds of Restriction / Disburdenment / Release or any other partial discharge of a security over land/buildings;
- (g) Memoranda of Satisfaction of any Floating Charge;
- (h) Letters of Non-Crystallisation for Bonds and Floating Charge/Debenture;
- (i) Performance Bonds, Letters of Credit and Guarantees;
- (j) Transfer Certificates and Risk Participation Agreements;
- (k) Leasing and Lease Purchase transactions, such expressions to include without limitation finance leasing, operating leasing, hire purchase and lease purchase transactions;
- (l) Sale and Purchase Agreements, Warranty and Guarantee Agreements and other related documentation relative to the Bank's exit or partial exit from its equity investments (including warrants, options, ordinary and preferred shareholdings and convertible loans);
- (m) Any other relevant documents, excluding the granting of Power of Attorney to non-Bank employees

and generally for all or any of the purposes aforesaid to act as attorney of the Bank.

This Power of Attorney will be valid for the period of 6 months from the date hereof.

This Power of Attorney shall take effect as a deed and shall be governed by, and construed in accordance with, English Law.

Executed as a deed on behalf of )  
Bank of Scotland plc by a Director )  
In the presence of )

  
.....Director  
George Truett Tate

Witness signature

Witness name:

Address:

*M. V. Gairley*  
*Marilyn Joy Gairley*  
*25 Gresham Street.*  
*London*  
*EC2V 7HN*