

DATED 21 March 2011

BROADLAND DISTRICT COUNCIL

- AND -

ALAN GEORGE ABEL

AGREEMENT UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990
Relating to the development of land at Mill Farm
Mill Lane Felthorpe Norfolk

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

THIS AGREEMENT is made the 21 day of March 2011

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") and ALAN GEORGE ABEL of 9 Mill Lane Felthorpe ^{Mill Farm} ~~Brookes Road Horsford~~ Norwich Norfolk NR10 3DS ("the Owner")
4DL *A. G. Abel*

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 a Registered Provider

"Affordable Housing Units" the two individual units of accommodation shown as Plots 4 and 5 on the plan accompanying the Application constructed or provided as part of the Development

"Affordable Rents " rents and security of tenure that complies with Homes and Communities Agency (or their successors) guidance on social rented or affordable rented housing (or if such guidance ceases to be available such other measure of affordable rents as the Council shall reasonably

determine)

"Application"	the application registered on 7 December 2010 for planning permission for residential development in accordance with the plans deposited with the Council bearing reference No 20101723
"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 Six hundred and twenty pounds (£620)
"Development"	the development permitted by the Planning Permission
"HCA Standards"	the "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Communities Agency or their successors
"Inflation Provision"	the increase (if any) in the Department for Business Innovation and Skills (BIS) Output Price Index for New Construction (2010) : All

new construction between 1 September 2006 and the date upon which a payment of the Off-Site Open Space Contribution is made pursuant to this Agreement

"Off-Site Open Space Contribution"

the sum of Thirty two thousand six hundred and eighty five pounds seventy one pence (£32,685.71)

"Open Market Dwellings"

those Residential Units to be constructed on the Site pursuant to the Development which are to be provided and occupied as general market housing

"Plan"

the plan annexed to this Agreement

"Planning Permission"

the planning permission to be granted pursuant to the Application

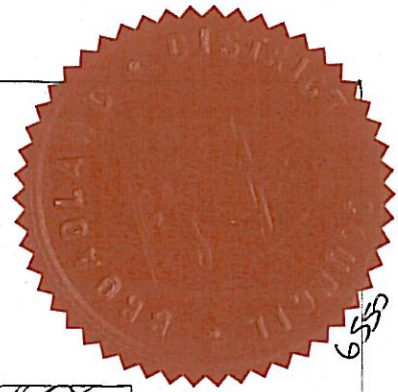
"Qualifying Occupiers"

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

"Registered Provider"

a provider of social housing registered in the register kept by the Regulator of Social Housing as provided for in Chapter 3 of the Housing and Regeneration Act 2008

MILL FARM, FELTHORPE



M. J. Durrant
 HEAD OF CORPORATE SERVICES
 & MONITORING OFFICER



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GEORGE DURRANT & SONS LTD

A. G. Durrant

"Residential Unit"	a self-contained house bungalow or flat
"Site"	the land at Mill Farm Felthorpe Norfolk 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
- (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
- B. The Owner is the freehold owner of the Site
- C. The Council have 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 enforceable by the Council jointly and severally against the Owner and their respective successors in title and assigns
- 2.3 Save for the covenants in the Schedule of this Agreement which shall continue to bind the Affordable Housing Units no person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with his 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

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 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 Strategic Director and Chief Planner
(Community Services) Thorpe Lodge
Yarmouth Road Thorpe St Andrew Norwich
NR7 0DU

Alan George Abel

Mill Farm Mill Lane Felthorpe M. G. H.
~~9 Brookes Road Horsford~~ Norwich Norfolk
NR10 3DS 4 DL

- 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 the Council's 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. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

- 11.1 To notify the Council of the Commencement Date as soon as reasonably practicable after it has occurred
- 11.2 To pay to the Council
- 11.2.1 prior to the occupation of the first Residential Unit within the Development the Off-Site Open Space Contribution as increased by the Inflation Provision
- 11.2.2 before the Commencement Date the Council's Monitoring Fee

- 11.3 To carry out and comply with the obligations and restrictions set out in the Schedule to this Agreement

12. THE COUNCIL'S OBLIGATIONS

The Council agrees with the Owner

- 12.1 that the Off-Site Open Space Contribution shall be used for the improvement of existing open space and outdoor recreational facilities or the provision and maintenance of new open space and outdoor recreational facilities in the Parish of Felthorpe
- 12.2 that the Council's Monitoring Fee shall be used for checking the implementation of and compliance with the terms of this Agreement

SCHEDULE 1

1. AFFORDABLE HOUSING

- 1.1 Not to occupy or allow to be occupied any Open Market Dwellings on the Site until such time as all of the Affordable Housing Units comprised within the Development have been constructed and are ready for occupation and have been transferred to a Registered Provider
- 1.2 Not to use the Affordable Housing Units for any purpose other than for Affordable Housing for rent on a weekly or monthly basis at Affordable Rents
- 1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.4 The Registered Provider shall not dispose of its interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Provider
- 1.5 Paragraphs 1.2 1.3 and 1.4 above shall not be binding upon any mortgagee in possession of the Affordable Housing Units or part thereof nor any receiver or manager (including an administrative receiver) for such mortgagee and shall cease to apply to any of the Affordable Housing Units where the Registered Provider shall be required to dispose of such Units pursuant to a right to buy statutorily available to a tenant
- 1.6 Under the transfer of an Affordable Housing Unit to the Registered Provider such transfer shall be free from encumbrances and shall contain (inter alia) the following provisions:-

A grant in favour of the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and reservations of all rights of

access and passage of services and rights of entry reasonably necessary for the purposes of the Development

- 1.7 The Affordable Housing Units provided shall be constructed to HCA standards and to the regulatory level of the Code

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

SIGNED by ALAN GEORGE ABEL)
in the presence of:-)

A. G. Abel

G. P. Ward

G. P. Ward
Conveyancing Executive
Foster
Solicitors
Wymondham