

DATED 7<sup>TH</sup> JULY 2009

BROADLAND DISTRICT COUNCIL

- AND -

SAFFRON HOUSING TRUST LIMITED

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

Relating to the development of land at Ethel Tipple Court  
Sherwell Road, Hellesdon, Norwich

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Broadland District Council  
Thorpe Lodge  
Yarmouth Road  
Norwich  
NR7 0DU

THIS AGREEMENT is made the 7<sup>TH</sup> day of JULY 2009

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the first part

SAFFRON HOUSING TRUST LIMITED of Saffron Barn, Swan Lane, Long Stratton, Norwich Norfolk NR15 2XP, Company No: 04740454 ("the Owner") of the second part

1. INTERPRETATION AND DEFINITIONS

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

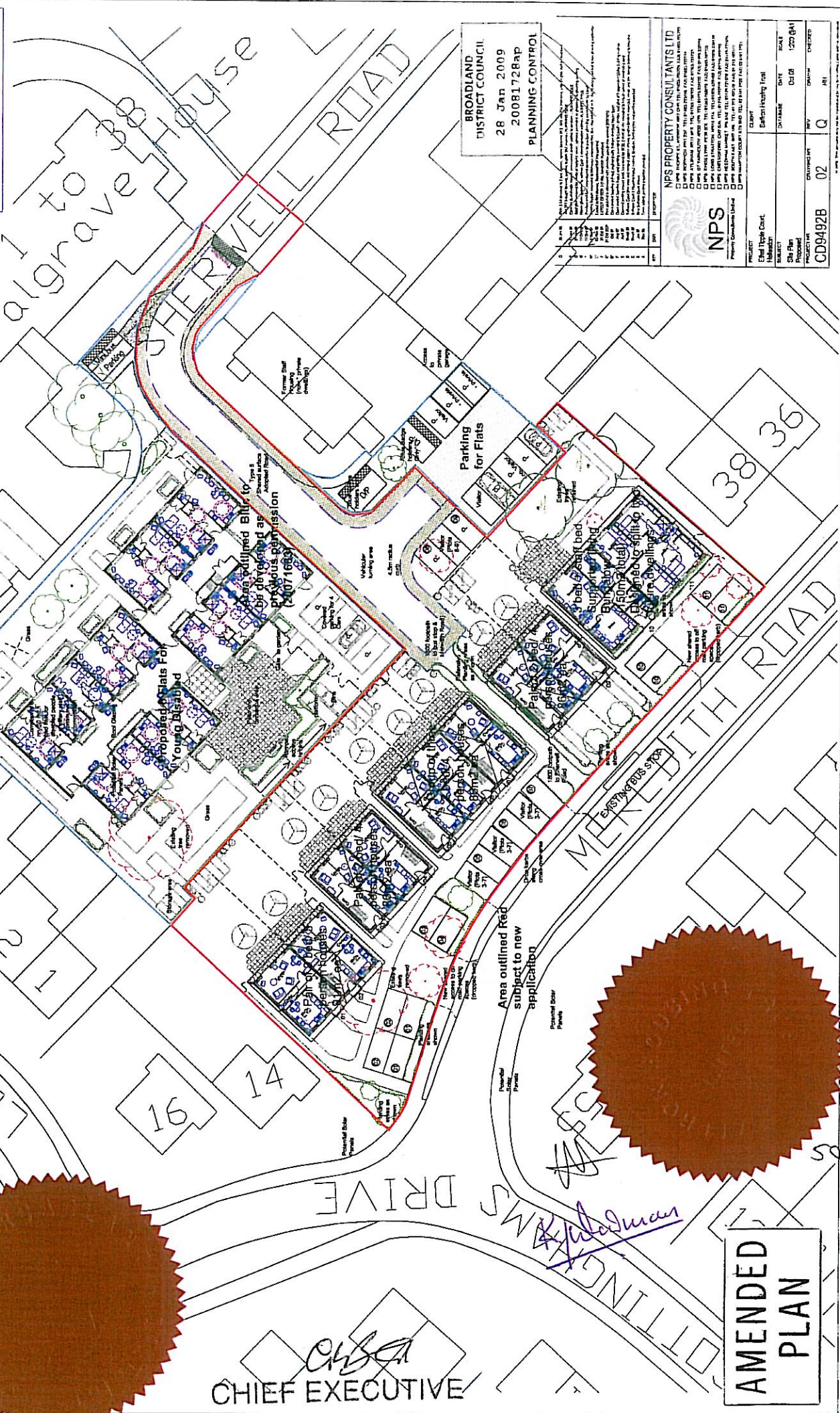
"Act"	the Town and Country Planning Act 1990 (as amended)
"Application"	the detailed planning application received on the 16 <sup>th</sup> December 2008 for the erection of ten Dwellings including one bungalow for supported living and car parking (revised proposal) under reference number 20081728
"Commencement 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" and "commencement" shall be interpreted in

"Development"	accordance with this definition the development permitted by the Planning Permission
"Director"	the Council's Strategic Director and Chief Planner or other officers of the Council acting under his hand
"Dwelling"	Dwelling constructed on the Land pursuant to the Planning Permission
"Inflation Provision"	the increase (if any) in the Department for Business Enterprise and Regulatory Reform (BERR) Output Price Index for Public Works between 30.9.06 and the date upon which a payment of money for recreational open space/facilities is made pursuant to this Agreement
"Off-Site Recreational Facilities Contribution"	the sum of £45,904.00
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the detailed planning permission to be granted pursuant to the Application
"Site"	the land 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





BROADLAND  
DISTRICT COUNCIL  
28 Jan 2009  
20081728ap  
PLANNING CONTROL

[illegible]

PROJECT	SUBJECT	DRAWING NO.	REV	DATE	SCALE
Eldridge Court Housing Harrison	Site Plan Proposed	02	Q	03-08	1/32" = 1'-0"
Eldridge Housing Trust					
CHECKED					

*Chen*  
CHIEF EXECUTIVE

AMENDED  
PLAN



- (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
- B. The Owner is the freehold owner of the Site
- C. NPS Property Consultants Limited has submitted the Application on behalf of the Owner
- 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

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

### 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 Strategic Director and Chief Planner  
Thorpe Lodge Yarmouth Road Thorpe St  
Andrew Norwich Norfolk  
NR7 0DU

The Owner

Director of Housing and Finance  
Saffron Housing Trust Limited  
Saffron Barn  
Swan Lane

- 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 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. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

- 10.1 prior to the commencement of Development of the fifth Dwelling on the Site to pay to the Council the Off-Site Recreational Facilities Contribution as increased by the Inflation Provision.

11. THE COUNCIL'S OBLIGATIONS

- 11.1 The Council agrees with the Owner that the Off-Site Recreational Facilities Contribution shall be applied towards the provision and maintenance of new recreational facilities in the Parish of Hellesdon

12. MONITORING FEE

- 12.1 The Owner covenants with the Council to pay the Council the Monitoring Fee, which Fee is required for checking the implementation and compliance with the terms of this Agreement.

- 12.2 The Monitoring Fee shall be paid to the Council prior to the Commencement Date

12.3 The total sum of £300 to be paid by way of a Monitoring Fee for the main contribution specified in this Agreement.

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

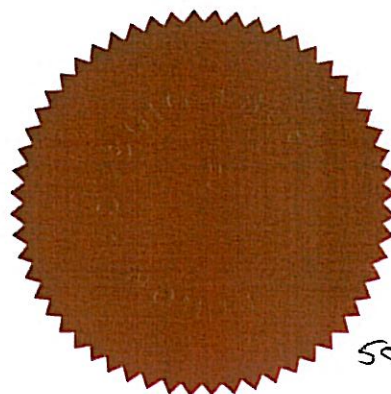
THE COMMON SEAL of )  
BROADLAND DISTRICT COUNCIL )  
was hereunto affixed in the presence of )

*CHB*  
CHIEF EXECUTIVE  
Head of Corporate Services  
and Monitoring Officer



6174

THE COMMON SEAL of )  
SAFFRON HOUSING TRUST LIMITED )  
was hereunto affixed to this Agreement )  
in the presence of )



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*K. J. W. S. M. C.*  
\_\_\_\_\_  
Director

*AA*