

Dated 1 November 2012

BROADLAND DISTRICT COUNCIL

- AND -

NORFOLK COUNTY COUNCIL

-AND-

STEPFORD HOMES LIMITED

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

relating to the development of land at  
the former NCS Depot, 389 Drayton High Road  
Hellesdon Norwich Norfolk

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

THIS AGREEMENT is made the 1 day of November 2012  
BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road  
Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") and
2. NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich  
NR1 2DH (the Owner")
3. STEPFORD HOMES LIMITED of 7 The Office Village Forder Way Cygnet  
Park Hampton Peterborough PE7 8GX ("the Developer")

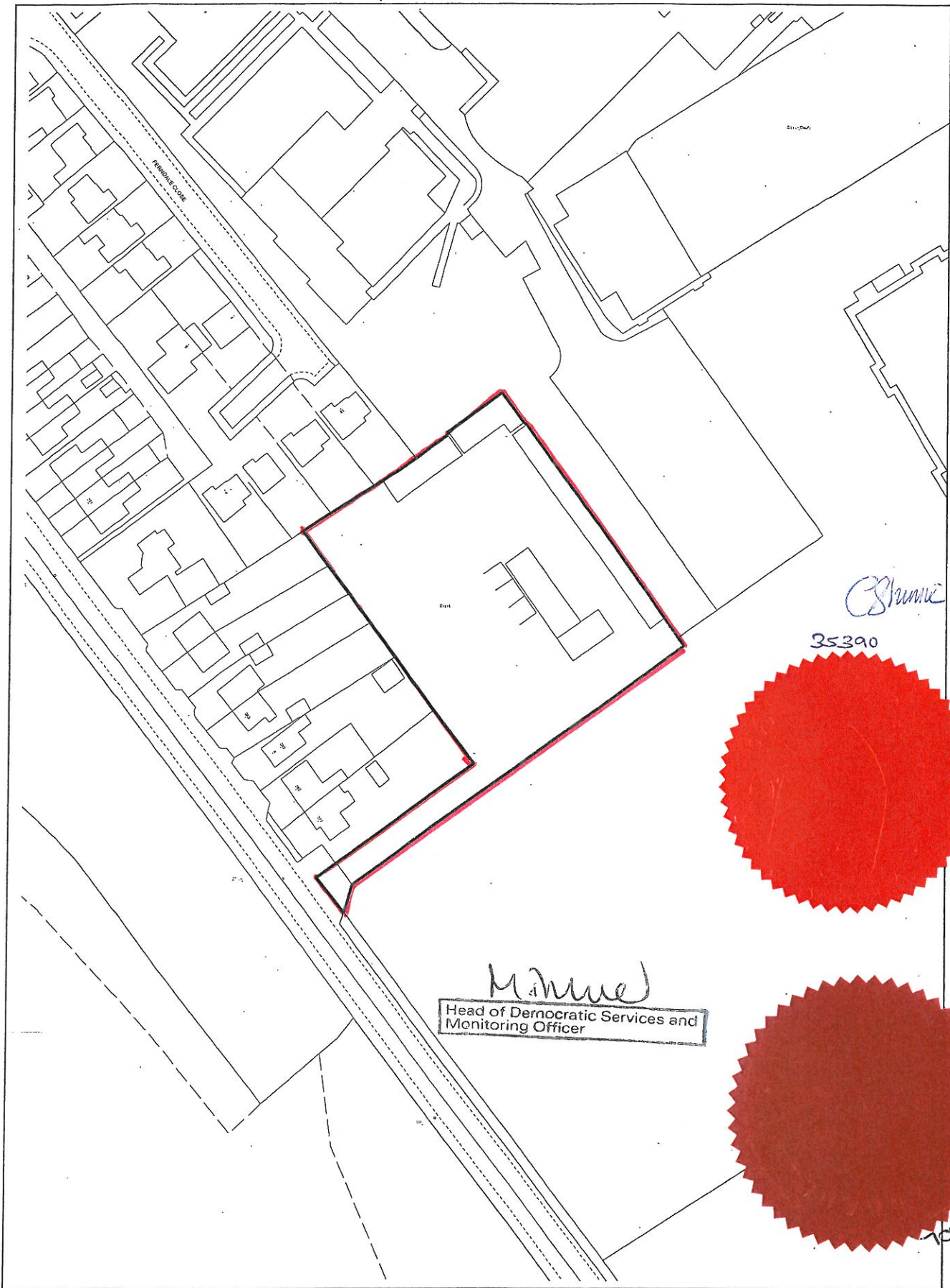
#### 1. INTERPRETATION AND DEFINITIONS

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
"Affordable Housing Scheme"	a scheme submitted to and approved by the Council prior to commencement of Development for the provision of Affordable Housing for the Development which complies with the requirements of Schedule 1
"Affordable Housing Units"	individual units of accommodation constructed or provided as part of the Affordable Housing Scheme

“Application”	the application for planning permission received on 12 July 2012 for the construction of 16 dwellings on the Site and given the reference number 20121002
“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 of a material operation within the meaning of Section 56(4) of the Act (but not including operations relating to clearance of the Site, archaeological investigations or investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure or the temporary display of site notices or advertisements) and “Commence” shall be interpreted in accordance with this definition
“Council’s Monitoring Fee”	the sum of six hundred and sixty four pounds (£664)
“Development”	the development permitted by the Planning Permission
“Dwelling”	means any residential dwelling (comprising a bungalow, flat, maisonette or house) constructed on the Site pursuant to the Planning Permission as part of the Development

“HCA Standards”	the “Housing Quality Indicators” and “Design and Quality Standards” specified by the Homes and Communities Agency or their successors
“Head of Planning”	the Council’s Head of Planning or other officers of the Council acting under his hand
“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
“Occupation”	Occupation of a Dwelling for the purposes as authorised by the Planning Permission and excludes occupation for the purposes of construction, internal and external refurbishment, decoration, fitting-out, marketing or any other activity preparatory to the use of the Site for the purposes as authorised by the Planning Permission and the words “Occupy and Occupied” shall be construed accordingly
“Off-Site Open Space Contribution”	the sum calculated in accordance with the formula set out in Schedule 2 to this Agreement as increased by the Inflation Provision
“the Plan”	the plan annexed to this Agreement
“Planning Permission”	the planning permission to be granted pursuant to the Application



on behalf of: Head of Town

*Shumie*

35390

*M. Anne*  
Head of Democratic Services and  
Monitoring Officer



Application No: 20121002

389 Drayton High Road, Hellesdon, NR6 5BJ

Scale:  
1:1250

Date:  
12-Jul-12



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*A. J. Finch*



“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 (or any statutory re-enactment or modification thereof)

“Site” the land at 389 Drayton High Road Hellesdon Norwich 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) covenants given by the Owner and the Developer are given jointly and severally
- (v) headings in this Agreement shall not form part of or affect its construction

## 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
- C. The Developer has entered into a contract with the Owner to acquire the Site
- D. The Developer has submitted the Application and the Council has resolved to grant the Planning Permission subject to the entering into 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 and the Developer hereunder are planning obligations enforceable by the Council against the Owner and the Developer and their successors in title and assigns
- 2.3 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.4 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges
- 2.5 In the event that this Agreement comes to an end the Council if so requested by the Owner and the Developer will execute a deed of release (or partial release) from the relevant provisions of this Agreement and procure that a note thereof shall be registered on the Council's Register of Local Land Charges

- 2.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any renewal thereof or any reserved matters approval with respect thereto) granted after the date of this Agreement in respect of which development this Agreement will not apply

### 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 or the Developer 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 No party shall be liable under this Agreement for any breach of the covenants contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any person's interest in the Site or any part thereof in respect of which any such breach has taken place

#### 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	The Senior Planning Consultant NPS Property Consultants Ltd Lancaster House 16 Central Avenue St Andrews Business Park Norwich NR7 0HR
The Developer	Stepford Homes Limited 7 The Office Village Forder Way Cygnet Park Hampton Peterborough

- 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 Developer shall on completion of this Agreement pay the Council's reasonable legal costs incurred in the preparation negotiation and completion of this Agreement

7. PAYMENT OF INTEREST

- 7.1 The Owner and the Developer 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 that remain unpaid for a period exceeding 28 days following a formal demand from the Council until payment of the outstanding sums has been made

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 and the Developer agree 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. TITLE WARRANTY

The Owner hereby warrants that it is the freehold owner of the Site and has full power to enter in to this Agreement and that the Site is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Site other than the Developer

## 12. DISPUTES

- 12.1 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

- 12.2 If the matter is not resolved through negotiation 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 for Dispute Resolution

- 12.3 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.
- 12.4 Nothing in Clauses 12.1 and 12.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

### 13. PLANNING OBLIGATIONS

- 13.1 The Owner and the Developer hereby covenant with the Council to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement
- 13.2 The Owner and the Developer hereby covenant with the Council to pay to the Council the Off-Site Open Space Contribution prior to the Occupation of any Dwellings on the Site
- 13.3 The Owner and the Developer hereby covenant with the Council to pay to the Council the Council's Monitoring Fee before the Commencement Date

### 14. COUNCIL OBLIGATIONS

- 14.1 The Council hereby covenants with the Owner and the Developer that it will deposit the Off-Site Open Space Contribution into an interest bearing account and will apply the capital and any interest accrued wholly and exclusively towards the improvement of existing open space and outdoor recreational facilities and/or the provision and maintenance of new open space and outdoor recreational facilities in the Parish of Hellesdon

14.2 The Council hereby further covenants with the Owner and the Developer that in the event that

14.2.1 the element of the Off-Site Open Space Contribution attributed by the Council for the provision and/or improvement of open spaces has not been so committed within 10 years of the date of receipt of the balance then the Council will repay to the payer so much of the sum as shall remain uncommitted together with all interest accrued

14.2.2 the element of the Off-Site Open Space Contribution attributed by the Council for the maintenance of open spaces has not been so committed within 21 years of the date of receipt of the balance then the Council will repay to the payer so much of the sum as shall remain uncommitted together with all interest accrued

14.3 The Council hereby further covenants with the Owner and the Developer that the Council's Monitoring Fee shall be used wholly and exclusively for checking the implementation of and compliance with the terms of this Agreement

## **SCHEDULE 1**

### **1. AFFORDABLE HOUSING**

1. The Site shall not be used except for the provision of Affordable Housing by a Registered Provider
2. Not to commence the Development until a scheme for the provision and long term management of the Affordable Housing Units has been submitted to and approved by the Head of Planning (such approval not to be unreasonably withheld or delayed)
3. The Affordable Housing Scheme must comply with the following requirements:-
  - 3.1 All of the Affordable Housing Units will be let at affordable rents (being a maximum of 80% of market rents)
  - 3.2 The Affordable Housing Units will be occupied by persons nominated by the Council from its general needs housing list
  - 3.3 Up to one third of the Affordable Housing (as chosen by the Council) will be let on first occupation in accordance with the local lettings policy set out below:
    - 3.3.1 firstly allocations will be made to people living in the Parish of Hellesdon
    - 3.3.2 if there are no suitable persons in paragraph 3.3.1 allocations will be made to people who work in the Parish of Hellesdon
    - 3.3.3 if there are no suitable persons in paragraphs 3.3.1 and 3.3.2 allocations will be made to people who need to move to the Parish of Hellesdon to give/receive support to/from close families
    - 3.3.4 if there are no suitable persons in paragraphs 3.3.1 to 3.3.3 allocations will be made to people who live in the Broadland District.



4. Once approved the Affordable Housing Scheme must be complied with
5. The Affordable Housing Units must be constructed to the HCA Standards and to the regulatory level of the Code (unless the Council agrees otherwise in granting approval to the Affordable Housing Scheme)
6. Paragraphs 1, 3 and 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 nor any person deriving title under any of them respectively and shall cease to apply to any of the Affordable Housing Units where an Affordable Housing Unit is disposed of pursuant to a "statutory right to buy or acquire".

## SCHEDULE 2

For each 1 bedroom dwelling comprised in the Development	£3,203
For each 2 bedroom dwelling comprised in the Development	£4,270
For each 3 bedroom dwelling comprised in the Development	£5,338
For each 4 bedroom dwelling comprised in the Development	£6,405
For each 5 or more bedroom dwelling comprised in the Development	£7,473

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. M. M. M.*  
 Head of Corporate Services  
 and Monitoring Officer



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

*C. Shunne*  
 on behalf of  
 Head of Law



EXECUTED as a DEED by )  
 STEPFORD HOMES LIMITED )  
 acting by a Director in the )  
 presence of: )

W. S. S. S.  
 T. S. S. S.  
 D. S. S. S.  
 S. S. S. S.

*A. V. Knich*  
*Blake*  
 P. RATE  
 578 Broadgate  
 Weston Hills  
 Spalding PE12 6DA.