



Section 106 Agreement

Broadland District Council

and

Norfolk County Council

and

Lovell Partnerships Limited

and

Anglian Leisure Limited

relating to the development of land at Holt
Road, Horsford

2011

THIS DEED is made the

11th

day of

March

2011

BETWEEN

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("Council");
- (2) **NORFOLK COUNTY COUNCIL** of County Hall Martineau Lane Norwich NR1 2DH ("County Council");
- (3) **LOVELL PARTNERSHIPS LIMITED** (Co. Regn. No. 0238733) whose registered office is at Kent House 14-17 Market Place London Greater London W1W 8AJ ("Developer"); and
- (4) **ANGLIAN LEISURE LIMITED** (Co. Regn. No. 03233923) whose registered office is at The Old Rectory Watton Road Little Melton Norwich Norfolk NR9 3PB ("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 and the County Council is the relevant highway authority library service provider education authority and is also a local planning authority for the purposes of the Act
- (B) The Owner is the freehold owner of the Site shown outlined in red on the Plan
- (C) The Developer submitted the Application and the Council has resolved to grant the Planning Permission subject to the entering into this Deed

NOW THIS DEED WITNESSES AS FOLLOWS

1. INTERPRETATION

- 1.1 In this Deed the following words and expressions shall have the following meanings:

"Act" means the Town and Country Planning Act 1990 (as amended)

"Affordable Housing" means 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" means those Dwellings which are to be provided as Affordable Housing in accordance with schedule 1 and consisting of thirty (30) Affordable Rental Units and eight (8) Shared Ownership Units

"Affordable Rental Units" means Affordable Housing Units to be constructed or provided on the Site as part of the Development and to be let for a rent upon either a weekly basis or monthly tenancy basis not exceeding the TSA's target rents in accordance with the Registered Provider's normal letting policy

"Application" means the hybrid application for planning permission dated 3 June 2010 for 63 dwellings with associated parking, landscaping and access (detailed) and light industrial building (outline) in accordance with the plans deposited with the Council bearing reference number 20100774 (and any application for modification or amendment in connection with the Development)

"Commencement of Development" means the date on which any material operation (as defined in Section 56(4) of the Town and Country Planning Act 1990) forming part of

the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, 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 enclosures, the temporary display of site notices or advertisements, and "Commencement of Development" shall be construed accordingly

"Council Monitoring Fee" means £620

"County Council Monitoring Fee" means £600

"Development" means the development permitted by the Planning Permission or any amendment or modification permitted by the Planning Permission

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

"Due Date" the date upon which the payment due under any provisions of this Deed is to be made

"Dwelling" means any residential dwelling approved pursuant to the Planning Permission

"Final Staircasing" means the purchase of 100% of the freehold or headleasehold interest or otherwise 100% of the equity in a Shared Ownership Unit from a Registered Provider pursuant to the terms of a Shared Ownership Lease

"Fire Hydrant Contribution" means the sum of Two Thousand Two Hundred and Ninety Eight Pounds (£2,298) for the provision of two fire hydrants on a minimum 90mm main and one fire hydrant on a 150mm main

"Highways Contribution" means the sum of Seventeen Thousand Five Hundred Pounds (£17,500) Index Linked for the provision of a solar powered bus shelter

"Index Linked" means payments and contributions subject to increase in accordance with clause 14

"Inflation Provision" means the increase (if any) in the Department for Business Innovation and Skills (BIS) Output Price Index for Public Works: All Public Works between the date of this Deed and the date upon which a payment of the Open Space Maintenance Contribution is made pursuant to this Deed

"Library Contribution" means the sum of Three Thousand Seven Hundred and Eighty Pounds (£3,780) Index Linked to be used for the provision of additional library books or facilities

"Occupation" means occupation of a dwelling (but not including occupation by contractors for construction or fitting out purposes or as a showroom or sales office) and "Occupied" shall be construed accordingly

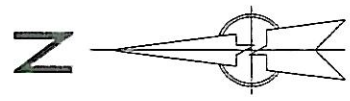
"Open Space Maintenance Contribution" means the sum of Eighty Five Thousand Four Hundred and Forty Seven (£85,447) increased in accordance with the Inflation Provision

"Open Market Dwellings" means residential dwellings (comprising a bungalow, flat, maisonette or house) erected or provided on the Site as part of the Development other than for the provision of Affordable Housing

"Plan" means the plan annexed to this Deed



Drawing No: PH050	
Rev: A	Approved: N/A
Scale: 1:1250	Date: 28.02.11
Drawn: CWP	Checked: N/A
Job No: CP057	
Project Title: Pinelands Estate Development, Horsford	
For: ---	
Do Not Scale:	Rev Description
All figures dimensions to be checked on site and Lovell Partnership Ltd notified of any variation	A Change of Title
This drawing is the copyright of Lovell Partnership Ltd and should not be reproduced without prior consent	---



M. Brings
 HEAD OF CORPORATE SERVICES
 & MONITORING OFFICER

"Planning Permission" means the hybrid planning permission to be granted pursuant to the Application or any amendment or modification granted for the Development

"Public Open Space" means an area or areas within the Site identified in any plan approved by the Council for use as Public Open Space and provided in accordance with the requirements of schedule 2

"Qualifying Occupiers" means in relation to any person housed in an Affordable Housing Unit, any person (including their family and dependents) 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 (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002)

"Registered Provider" means a registered provider in the register kept by the Homes and Communities Agency (or any successor body performing its functions) under Part 1 of the Housing Act 1996 (or any statutory re-enactment or modification thereof) as approved by the Council such approval not to be unreasonably withheld or delayed

"Shared Ownership Units" means Affordable Housing Units to be let to Qualifying Occupiers on Shared Ownership Leases to be provided on the Site as part of the Development

"Shared Ownership Lease" means a lease of a Shared Ownership Unit granted at a premium whereby up to a maximum of fifty per cent (50%) on first purchase of the equitable interest in the Shared Ownership Unit is paid by the tenant upon completion of such lease or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the lessee to purchase the freehold of a Shared Ownership Unit by instalments at some future date or dates and allows a rental premium to be charged on the remainder of the equitable interest not exceeding the TSA's target rents

"Site" means the land at Pinelands Industrial Estate, Holt Road, Horsford shown for the purposes of identification only edged red on the Plan and more particularly defined as being the land comprised within title number NK120704 and other land

In this Deed unless the context otherwise requires:

- (a) references to any party shall include the successors in title and assigns of that party
- (b) references to clauses and schedules are references to clauses in and schedules to this Deed
- (c) 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
- (d) headings in this Deed shall not form part of or affect its construction

"TSA" means the Tenant Services Authority or any successor body performing its functions

2. **GENERAL PROVISIONS APPLICABLE TO THIS DEED**

- 2.1 This Deed 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 under Section 106 of the Act and are enforceable by the Council and the County Council against the Owner and its successors in title and assigns

- 2.3 The provisions of this Deed are conditional upon:

- (a) the grant of the Planning Permission; and
- (b) the Commencement of Development

But provided always that all clauses save for 13.1 and 13.2 shall come into effect immediately upon the date hereof

- 2.4 This Deed shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.5 This Deed shall be registered as a charge in the Council's Register of Local Land Charges
- 2.6 In the event that this Deed comes to an end the Council if so requested by the Owner will execute a deed of release (or partial release) from the relevant provisions of this Deed and procure that a note thereof shall be registered on the Council's Register of Local Land Charges
- 2.7 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Council's Register of Local Land Charges in respect of this Deed
- 2.8 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or County Council under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed
- 2.9 This Deed shall remain in full force and effect notwithstanding the terms and conditions of any planning permission which may be or has been at any time issued by the Council or by any other appropriate person or authority pursuant to the provisions of the Act

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 Deed shall prejudice or affect the rights powers duties and obligations of the Council or the County Council in the exercise of their functions as Local Planning Authority and Highway 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 Deed

- 3.2 Invalidity or Unenforceability of any of the Terms of this Deed

If any provision in this Deed 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 or the County Council of any breach or default by the Owner in performing or observing any of the covenants in this Deed 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

3.4 No Continuing Liability

- (a) No party shall be liable under this Deed for any breach of the covenants contained in this Deed 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
- (b) The County Council shall not be liable to any person under this Deed after that person has parted with all interest in the Site but without prejudice to any liability arising prior thereto.

3.5 Statutory Undertakers

The obligations and restrictions under this Deed shall not be enforceable against any statutory undertaker which acquires any part of the Site for the purposes of its statutory undertaking or functions

4. **NOTICES**

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Deed 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 Deed shall be as follows:

The Council:

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

The County Council:

Head of Law
County Hall
Martineau Lane
Norwich
NR1 2DH

The Developer:

For the attention of Peter Graves
69-75 Thorpe Road
Norwich
Norfolk
NR1 1UA

The Owner:
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Company Secretary
The Old Rectory
Watton Road
Little Melton
Norwich
Norfolk
NR9 3PB

- 4.3 Any notice or other written communication to be given by the Council or County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or County Council by a duly authorised officer of the Council or County Council

5. **THIRD PARTIES**

- 5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed (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 Deed pursuant to the provisions of the said Act

6. **COSTS**

- 6.1 The Developer shall on completion of this Deed pay:

- (a) the Council's and the County Council's reasonable legal and administrative costs properly and reasonably incurred in the preparation negotiation and completion of this Deed;
- (b) the Council Monitoring Fee
- (c) the County Council Monitoring Fee

7. **PAYMENT OF INTEREST**

- 7.1 Interest at the rate of 4 per cent above HSBC Bank base rate for the time being in force shall be paid on any monies due from the Owners under the provisions of this Deed in the event of late payment for the period from the Due Date to the date the money is received

8. **VAT**

- 8.1 All consideration given in accordance with the terms of this Deed 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 Deed, 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. **GOVERNING LAW**

- 9.1 This Deed is to be governed by and interpreted in accordance with the law of England and Wales

10. **TITLE WARRANTY**

- 10.1 The Owner hereby warrants that it is the freehold owner of the Site and has full power to enter in to this Deed 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 as notified in writing pursuant to clause 4.2 prior to the date hereof

11. WAIVER

- 11.1 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 Deed are hereby waived

12. DISPUTES

- 12.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed 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 Deed between the parties or in default of Deed 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 in respect thereof

13. OBLIGATIONS

- 13.1 The Developer and the Owner hereby covenant jointly and severally with the Council to carry out and comply with the obligations and restrictions set out in schedules 1, 2, and 6 to this Deed
- 13.2 The Developer and the Owner hereby covenant jointly and severally with the County Council and the Council to carry out and comply with the obligations and restrictions set out in schedules 3, 4 and 5 to this Deed
- 13.3 The Council hereby covenants with the Developer and the Owner as set out in schedule 7
- 13.4 The County Council hereby covenants with the Developer and the Owner as set out in schedule 7

14. INDEX LINKED

- 14.1 Unless otherwise stated all contributions payable under the provisions of this Deed to the County Council as appropriate will be Index Linked in accordance with the following parts of this clause
- 14.2 Save for the Open Space Maintenance Contribution for the purposes of applying indexation the index will have the following meanings:
- (a) for the Library Contribution the RICS Building Cost Information Service All in Tender Index
 - (b) for the Highways Contribution the Retail Price Index (All Items) published by the Office for National Statistics

or in the event that any such index ceases to be published then in its place such reasonably equivalent index as the County Council shall specify

- 14.3 Indexation will commence from 24th November 2010 and will end on the date or dates when the relevant contributions or other sums are paid
- 14.4 The relevant contribution will be increased by an amount equivalent to the percentage difference between the published (index) from 24th November 2010 and the published (index) at the date of payment

SCHEDULE 1

1. AFFORDABLE HOUSING

- 1.1 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission and current applicable scheme development standards and building regulations in force at the time of building
- 1.2 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units and/or Shared Ownership Units
- 1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.4 The Owner shall not dispose of its freehold interest in the Affordable Housing Units (except by way of mortgage or where the disposal is of the final tranche of equity of a Shared Ownership Unit) other than to a Registered Social Landlord
- 1.5 Paragraphs 1.2 and 1.3 and 1.4 above shall not be binding upon:
 - (a) any mortgagee in possession of the Affordable Housing Units or part thereof nor
 - (b) any receiver or manager (including an administrative receiver) for such mortgagee nor
 - (c) any of the Affordable Housing Units where the Owner shall be required to dispose of such units pursuant to a right to buy under Part 5 of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right or statutory right which may be applicable nor
 - (d) any person exercising Final Staircasing rights nor
 - (e) any and all successors in title of all persons or parties referred to in the whole of this paragraph 1.5
- 1.6 No Open Market Dwelling shall be Occupied until the Owner has entered into a contract with a Registered Social Landlord approved by the Council (such approval not to be unreasonably withheld or delayed) for the provision of Affordable Housing on the site to a Registered Social Landlord
- 1.7 No Open Market Dwellings shall be Occupied prior to the completion of the construction of the Affordable Housing Units on the Site pursuant to the Planning Permission so that each Affordable Housing Unit is ready and available for Occupation in accordance with the provisions of this Deed (which shall be deemed to have occurred on the issue of a cover note from NHBC or the equivalent from any other building warranty provider.)

SCHEDULE 2

2. PUBLIC OPEN SPACE

- 2.1 The Open Space Maintenance Contribution shall be paid by the Owner to the Council prior to the Occupation of the thirtieth Dwelling on the Site
- 2.2 Not to occupy or allow to be Occupied more than thirty Dwellings on the Site until the Public Open Space has been laid out to the reasonable satisfaction of the Council in accordance with detailed plans and a scheme to be submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed)
- 2.3 To maintain the Public Open Space and keep the same at all times clean cultivated fed and watered and to replace as necessary any dead or diseased planting or any defective equipment or surfacing to the reasonable satisfaction of the Council until the said Public Open Space is transferred to the Council or such other body as the Council may nominate
- 2.4 Subject to compliance with clause 2.2 above either party may serve notice on the other (the Public Open Space Notice) offering (or requiring) the transfer of the Public Open Space to the Council on the terms and conditions set out in schedule 6 hereof
- 2.5 Neither the Owner nor the Council shall unreasonably delay prevent the completion of or unreasonably refuse to complete a deed of Transfer of the Public Open Space to the Council following the service of the Public Open Space Notice

SCHEDULE 3

1. LIBRARY CONTRIBUTION

Not to allow occupation of the 10th Dwelling unless and until the Library Contribution has been paid to the County Council

SCHEDULE 4

1. HIGHWAYS CONTRIBUTION

Not to allow first Occupation of any Dwelling unless and until the Highways Contribution has been paid to the County Council

SCHEDULE 5

1. FIRE HYDRANT CONTRIBUTION

Not to allow Commencement of the Development unless and until the Fire Hydrant Contribution has been paid to the County Council

SCHEDULE 6

1. LAND TRANSFER PROVISIONS

- 1.1 Completion of the transfer of any land required by this Deed to be transferred to the Council shall take place on such date as shall be agreed in writing between the Council and the relevant Owner or Owners or in default of such agreement upon such date as shall be specified in a notice in writing given by the Council to the Owner(s) or by the Owner(s) to the Council such notice to be given not later than 28 days before the date specified for completion
- 1.2 The land shall be transferred for consideration of one pound with full title guarantee and with vacant possession
- 1.3 The transfer shall contain all such rights and easements whatsoever (including without prejudice to the generality of the foregoing the provision of all rights of access of services and service installations thereto) as are required to facilitate the use of the land transferred for the purpose it is being transferred
- 1.4 The transfer will if so required by the Owner(s) contain a covenant by the Council restricting the use of the land transferred to the purpose for which it is transferred and for no other use whatsoever except in the case of open space land as defined in the Open Spaces Act 1906
- 1.5 The standard conditions of sale (fourth edition) shall apply to any transfer under the provisions of this schedule so far as they are applicable to a sale by private treaty and are not varied by or inconsistent with the express terms of this Deed
- 1.6 All reasonable costs incurred in connection with the transfer of land including but not limited to legal fees and land registry disbursements shall be paid by the Owner

SCHEDULE 7

1. COUNCIL COVENANTS

1.1 The Council and County Council (as appropriate) hereby covenant with the Owner as follows:

- (a) To use all sums received under the terms of this Deed for the purposes specified in this Deed for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council or County Council shall agree
- (b) To provide to the payer evidence confirming the expenditure of the said sums paid by the payer pursuant to this Deed

1.2 The County Council hereby covenants with the Owner as follows

- (a) In the event that the Library Contribution or any part of it has not been committed in accordance with this Deed (by way of a contract or expenditure of the monies) within five years of final Occupation of the Development the County Council will repay to the payer such unexpended sum together with any interest accrued thereon
- (b) In the event that the Highways Contribution or any part of it has not been committed in accordance with this Deed (by way of a contract or expenditure of the monies) within five years of final Occupation of the Development the County Council will repay to the payer such unexpended sum together with any interest accrued thereon

EXECUTED and delivered 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:

[Signature]

Head of Corporate Services
and Monitoring Officer

The common seal of **NORFOLK**
COUNTY COUNCIL was hereunto
affixed in the presence of:

[Signature]

authorised to sign
on behalf of

Head of Law

Signed as a deed by **LOVELL**
PARTNERSHIPS LIMITED acting by:

Authorised Signatory
Director

Director/Secretary

Signed as a deed by **ANGLIAN**
LEISURE LIMITED acting by:-

Director

Director/Secretary