

DATED 14th JUNE 2013

BROADLAND DISTRICT COUNCIL

- AND -

NORFOLK COUNTY COUNCIL

- AND -

THE TRUSTEES OF LINGWOOD VILLAGE HALL AND GROUNDS
MANAGING TRUSTEE COMMITTEE

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

Relating to the development of land at Norwich Road/Station Road
Lingwood Norfolk
Norfolk

Nplaw
County Hall
Martineau Lane
Norwich
NR1 2DH

THIS AGREEMENT is made the 14th day of JUNE 2013

BETWEEN:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road
Norwich NR7 0DU ("the Council")
- (2) NORFOLK COUNTY COUNCIL of County Hall Martineau Lane
Norwich NR1 2DH ("the County Council")
- (3) BENJAMIN RICHARD BETHELL of 62 Station Road Lingwood
Norwich Norfolk NR13 4AZ and SUSAN DAWN FOUNTAIN of Church
Farm House Church Road South Burlingham Norwich Norfolk NR13
4EU the Trustees of Lingwood Village Hall and Grounds Managing
Trustee Committee ("the Owners")

WHEREAS:

- A. The Council and the County Council are Local Planning Authorities for the purposes of the Act for the area within which the Site is situated
- B. The Owners are the freehold owner of the Site
- C. Lingwood and Burlingham Parish Council have submitted the Application
- D. The Council has resolved to approve the Planning Application subject to the completion of this Agreement

1. INTERPRETATION AND DEFINITIONS

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

"100% Staircaser"	a person who has obtained 100% of the legal and equitable interest in a Shared Ownership Dwelling
"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 an AHP
"Affordable Housing Overall Provision"	the provision of thirty three per cent (33%) of the total number of Residential Units on the Site as Affordable Housing Units
"Affordable Housing Scheme"	a detailed scheme meeting the requirements of the Affordable Housing Overall Provision submitted to and approved by the Council for the provision of Affordable Housing for the Development which complies with the requirements of Part 1 of Schedule 1 hereof.
"Affordable Housing Units"	individual units of accommodation constructed or provided as part of the Development as Affordable Housing
"Affordable Rental Units"	Affordable Rental Units to be constructed or provided as part of the Development and to be let for a rent by or on behalf of an AHP in accordance with the AHP's normal letting policy

"Affordable Housing Provider" "(AHP) "	<p>either:</p> <ul style="list-style-type: none"> (i) a registered provider as defined by S80 of the Housing and Regeneration Act 2008; or (ii) another body whose object is or contains the provision and/or operation of affordable housing and which has been approved by the Council for the provision and/or operation of affordable housing within the administrative area of Broadland or has otherwise been approved by the Council for the purposes of this Agreement
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government in November 2012 (or any replacement Code for Sustainable Homes)
"Commencement Date"	<p>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, archaeological investigations, remedial works, erection of any temporary means of enclosure, temporary display of notices or advertisements or clearance of the Site) and "Commence" and "Commencement" shall be interpreted in accordance with this definition</p>
"Community Infrastructure Levy"	a levy of that name or called by any other name charged by a competent authority under the Planning Act 2008 or other statutory powers on any person in

	respect of the development of land to fund the provision of infrastructure to support the development of an area
"Council's Monitoring Fee"	the sum of Three Hundred and Thirty Two Pounds (£332)
"County Council's Monitoring Fee"	the sum of Three Hundred Pounds (£300)
"Development"	the development permitted by the Planning Permission
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"HCA Standards"	the appropriate and applicable "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Communities Agency or their successors or such other standard as may be agreed with the Registered Provider
"Index Linked"	Index-linked from 14 th JUNE 2013 until such time that payment is made such index linking to be equivalent to any increase in such sums in proportion to the increase in the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Price Index in relation to the Library Contribution (or if such indices cease to be published such other indices as the County Council shall reasonably determine)
"Inflation Provision"	the increase (if any) in the Department for Business Innovation and Skills (BIS) Output Price Index for New

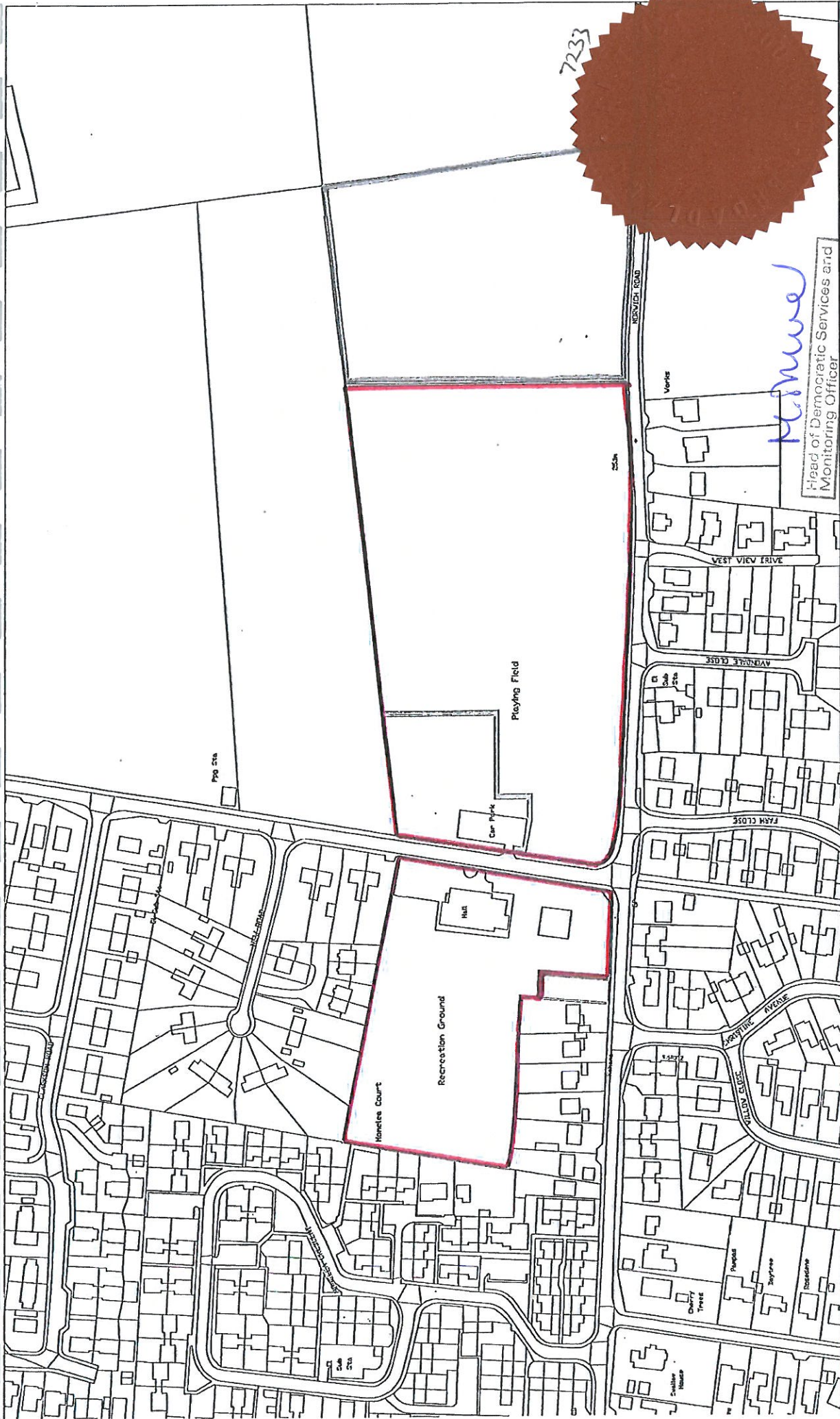
	Construction (2010) All New Construction between 1 September 2006 and the date upon which a payment of the Open Space Contribution is made pursuant to this Agreement (or if such index ceases to be published such other index as the Council shall reasonably determine)
"Library Contribution"	the sum of £60 for each Residential Unit such sum to be Index Linked
"Local Lettings Policy"	the order in which the Affordable Rental Units are to be allocated is set out under the title "Local Lettings Policy" at Schedule 4 to this Deed as amended from time to time
"Market Rent"	the estimated rent at which a property would be let on the date of valuation between a willing lessor and a willing lessee on appropriate tenancy terms in an arm's length transaction after proper marketing wherein the parties had acted knowledgeably prudently and without compulsion
"Occupation"	means Occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting-out or decoration or occupation for marketing or display or occupation in relation to security operations and "Occupy" and "Occupied" shall be construed accordingly
"Off-Site Open Space Contribution"	the sum calculated in accordance with the formula set out in Schedule 3 to this Agreement such sum to be subject to the Inflation Provision

"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
"Planning Application"	the outline planning application validated on the for the redevelopment of village hall site for residential development and erection of new replacement village hall on the adjacent playing field site under reference number 20121604
"Planning Permission"	the planning permission to be granted pursuant to the Planning Application
"Plan"	the plan annexed to this Agreement
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria 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 1996 and 2004 and the Homelessness Act 2002) and having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally
"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)

"Regulator"	the Social Housing Regulator or such other body as shall from time to time be a Regulator of Social Housing within the meaning of Section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers
"Residential Development"	means the Residential Units to be constructed on the Site and for the avoidance of doubt does not include the construction of the village hall
"Residential Unit"	a unit of residential nature approved pursuant to the Planning Permission
"Site"	the land known as Land at Norwich Road/Station Road Lingwood Norfolk 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



Head of Democratic Services and
Monitoring Officer

Address: Land at Norwich Road / Station Road Lingwood Norfolk

Title: Location Plan



NPS Property Consultants LTD
☐ NORWICH LANCASTER HOUSE TEL: 01603 700000 FAX: 01603 700001
☐ NORWICH COUNTY HALL TEL: 01603 222413 FAX: 01603 222719
☐ LONG STRATTON TEL: 01508 536000 FAX: 01508 535110
☐ AYLSHAM TEL: 01263 730000 FAX: 01263 731722
☐ KING'S LYNN TEL: 01553 770240 FAX: 01553 778241

REV	DATE	DESCRIPTION
1	01-01-13	2-1211/01
Plan No.		
Scale	1:2500 @ A4	
Drawn By	RG	
Checked By	JG	
Date:	Oct 2012	

SCALE IN METRES
 0 20 40 60 80 100

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- (iv) headings in this Agreement shall not form part of or affect its construction

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 Section 2 of the Local Government Act 2000 and any other enabling powers
- 2.2 The obligations of the Owners hereunder are planning obligations for the purposes of the Act and enforceable by the Council and the County Council against the Owners and their 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 by the Council 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 or the County Council in the exercise of their respective 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 and 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 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 Owners 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

- 3.4 If Community Infrastructure Levy shall be charged and paid in relation to the development of any part of the Site pursuant to the Planning Permission or any consent granted pursuant to an application made under s73 of the Act the Council or the County Council shall pay to the Owners (meaning in this context the person paying the Community Infrastructure Levy and not any person deriving title from the Payer) within 14 days of a written demand for the same a sum equal to the Community Infrastructure Levy so charged and paid to the extent that not to do so would result in "double payment" as a result of the terms of this Agreement and the statutory obligation to pay Community Infrastructure Levy

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 County Council

The Chief Executive Norfolk County
Council County Hall Martineau Lane
Norwich NR1 2DH

The Owners

Benjamin Richard Bethell, 62 Station
Road, Lingwood, Norwich, Norfolk
NR13 4AZ

Susan Dawn Fountain, Church Farm
House, Church Road, South
Burlingham, Norwich, Norfolk NR13
4EU

Rogers & Norton, The Old Chapel, 5-7
Willow Lane, Norwich NR2 1EU (Ref:
Bruce Faulkner)

- 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 Owners shall on completion of this Agreement pay to the Council and the County Council their respective legal and administrative costs reasonably incurred in the preparation negotiation and completion of this Agreement

7. PAYMENT OF INTEREST

- 7.1 The Owners 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 of actual payment

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

11. DISPUTE RESOLUTION

- 11.1 The parties to this Agreement 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, 11.2 and 11.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

12. TITLE WARRANTY

12.1 The Owners hereby warrant that they are the freehold owners of part of the Site which is registered at the Land Registry under title number NK36329 and NK410830 and have full power to enter into this Agreement and save for the restrictive covenants referred to in the Charges Register of the said registered title as of 18th January 2013 and 17th January 2013 respectively that the Red Land is free from all mortgages charges or other encumbrances and there is no person having any interest in the Red Land other than as notified in writing to the Council and then County Council's Chief Executive prior to the date hereof

13. NOTIFICATION

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

14 PLANNING OBLIGATIONS

The Owners hereby jointly and severally covenant with the Council as follows:

- 15.1 prior to the occupation of the first of the Open market Dwellings on the Site to pay the Council the Off-Site Open Space Contribution as increased by the Inflation Provision
- 15.2 The Owners covenant with the Council to comply with the provisions of Schedule 2, Schedule 4 and Schedule 5
- 15.3 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
- 15.4 The Owners hereby jointly and severally covenant with the County Council to comply with the provisions of Schedule 1
- 15.5 Where a covenant has to be complied with which relates to the Occupation of a number of Residential Units, no further Residential Units shall be occupied until it has been complied with

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 Lingwood or towards the improvement and maintenance of existing open space in the Parish of Lingwood

SCHEDULE 1

PART 1

- 1 the Developer shall notify the County Council within 14 days of reaching:-
 - 1.1 Commencement of the Residential Development
 - 1.2 first Occupation of the Residential Development
 - 1.3 any other occupation or completion threshold contained within this
Deed

PART 2

LIBRARY CONTRIBUTION

The Developer covenants with the County Council as set out in this part of Schedule 1:

1. The Developer shall pay the Library Contribution to the County Council in a single lump sum payment prior to the Occupation of the 1st dwelling comprised in the Development

The County Council covenants with the Developer as follows:

2. to hold the Library Contribution in an interest bearing account and apply it and any interest accrued only towards the provision of library facilities serving the Development
3. in the event that the Library Contribution or any part of it has not been committed (by way of a contract to provide additional library facilities or by the expenditure of the monies) to the provision of the additional

library facilities referred to in paragraph 2 above within five years of completion of the Development then the County Council will repay to the Developer so much of the Library Contribution as shall remain uncommitted together with any accrued interest thereon

SCHEDULE 2

1.AFFORDABLE HOUSING

- 1.1 Not to commence Development on the Site pursuant to the Planning Permission until a scheme for the provision and long-term management of the Affordable Housing Units has been submitted and approved (such approval not to be unreasonably withheld or delayed) by the Chief Executive of the Council ("the Affordable Housing Scheme") which Scheme for the avoidance of doubt shall deal with and include the timing of the Development and the location of the Affordable Housing within the Site and in accordance with the Affordable Housing Overall Provision and upon approval such scheme shall be deemed to be incorporated into the provisions of this Agreement
- 1.2 Upon approval of the Affordable Housing Scheme by the Council to implement the Affordable Housing Scheme as approved and in accordance with the provisions contained in the Affordable Housing Scheme
- 1.3 Not to Occupy more than 15 Open Market Dwellings on the Site pursuant to the Planning Permission until all the of the Affordable Housing Units have been constructed and ready for Occupation.

- 1.4 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission and the Code to HCA standards
- 1.5 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units
- 1.6 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.7 The Owner shall not dispose of its freehold interest in the Affordable Housing Units other than to an AHP
- 1.8 Paragraphs 1.5 and 1.6 and 1.7 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

SCHEDULE 3

Off Site Open Space Contributions

For each 1 Bedroom dwelling comprised in the Development

£2,574

For each 2 bedroom dwelling comprised in the Development

£3,432

For each 3 bedroom dwelling comprised in the Development

£4,290

For each 4 bedroom dwelling comprised in the Development

£5,148

For each 5 or more bedroom dwelling comprised in the Development

£6,006

SCHEDULE 4

Local Lettings Policy

1. Allocations will be made to applicants on the Housing List managed and maintained by Broadland District Council on the following priority basis:
 - 1.1 residents who currently live in the parish of Lingwood
 - 1.2 residents who work in the parish of Lingwood
 - 1.3 residents who need to move to Lingwood to give/receive support to/from close family/relatives
 - 1.4 residents within the Broadland District

SCHEDULE 5

Replacement Village Hall

1. Not to commence Development on the Site pursuant to the Planning Permission until a scheme for the provision of the village hall has been submitted and approved (such approval not to be unreasonably withheld or delayed) by the Chief Executive of the Council. For the avoidance of doubt such scheme shall deal with and include the timing of the construction the replacement village hall (such construction to commence within six months of the sale of the land to the west of Station Road) and the location within the Site of proposed the village hall. Upon approval such scheme shall be deemed to be incorporated into the provisions of 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

)
)
)
)



M. Mue

Head of Democratic Services and Monitoring Officer

THE COMMON SEAL of
NORFOLK COUNTY COUNCIL

was hereunto affixed
in the presence of

)
)
)
)



authorised to sign
on behalf of: *[Signature]*

Authorised Signatory

SIGNED as a DEED by
BENJAMIN RICHARD BETHELL
in the presence of

witness signature

name:

Address:

Occupation:

SIGNED as a DEED by
SUSAN DAWN FOUNTAIN
in the presence of

witness signature

name:

Address:

Occupation:

) x *[Signature]* +
)
) x *[Signature]* +
x JOAN WARD
x 15 CLARKSON ROAD
x LINGWOOD
x NORWICH NR13 4BA
x RETIRED
) x *[Signature]* F +
)
) x *[Signature]* +
x ANN HUGHES
x 15 NEVES CLOSE, LINGWOOD
x NORWICH NR13 4AW
ADMINISTRATOR.