

DATED 28<sup>th</sup> December 2006

BROADLAND DISTRICT COUNCIL

- AND -

NORFOLK COUNTY COUNCIL

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

Relating to the development of land off  
Post Office Road and St Edmunds Road  
Lingwood Norfolk

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Broadland District Council  
Thorpe Lodge  
Yarmouth Road  
Norwich  
NR7 0DU



THIS AGREEMENT is made the 28<sup>th</sup> day of December 2006

BETWEEN:

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

NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich Norfolk NR1 2DH ("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)
"Affordable Housing Land"	the area of land shown outlined in blue on Plan No 2
"Application"	the outline planning application received 10 June 2005 for planning permission for change of use of agricultural land to recreational use (access via Post Office Road) and erection of 20 dwellings accessed via St Edmunds Road Lingwood in accordance with the plans deposited with the Council bearing reference number 20050843
"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
"Development"	the development permitted by the Planning Permission
"Director"	the Council's Strategic Director (Community Services) or other officers of the Council acting under his hand
"Open Space"	the open space to be provided within the area edged green on Plan No 1
"Inflation Provision"	the increase (if any) in the RICs All In Tender Price Index between August 2003 and the date upon which a payment of money is made pursuant to this Agreement
"Library Service Contribution"	the sum of one thousand pounds (£1,000) together with an additional £50 per Residential Unit over 20 Residential Units
"Off-Site Open Space Contribution"	the sum calculated in accordance with the formula set out in Schedule 1 to this Agreement
"Education Contribution"	the sum of £41,787.00 together with an additional £1,950.00 for each additional house or bungalow having more than one bedroom and £975.00 for each additional flat or apartment with more than one bedroom over 20 Residential Units



"Plan No 1"	the plan annexed to this Agreement and marked No 1
"Plan No 2"	the plan annexed to this Agreement and marked No 2
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Registered Social Landlord"	a registered social landlord in the register kept by the Housing Corporation under Part 1 of the Housing Act 1996 (or any statutory re-enactment or modification thereof) as approved by the Council
"Residential Units"	a self-contained house bungalow or flat to be provided on the Site pursuant to the Planning Permission
"Site"	the land adjacent to St Edmunds and Post Office Road Lingwood Norfolk comprising 3.6 hectares which is shown for the purposes of identification only edged red on Plan No 1
"Enforcing Authority"	means the Council until the County Council ceases to have an interest in the Site after which time it means the County Council

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
- (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 and is the Local Planning Authority for the purposes of determining the Application and by whom the obligations contained in Clause 13.1 are enforceable and until such time as the County Council ceases to have an interest in the Site it is the Local Planning Authority by whom the obligations contained in 13.2 of this Agreement are enforceable
- B. Norfolk County Council is the local highway authority for the purposes of the Act and the education and library service provider for the area which includes the Site and, from such time as it ceases to have an interest in the Site, it is the Local Planning Authority by whom the obligations contained in 13.2 of this Agreement are enforceable
- C. The Owner is the freehold owner of the Site
- D. The Owner has submitted the Application



- E. 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 and covenants of the Owner hereunder are planning obligations for the purpose of the Act and enforceable by the Enforcing Authority and 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 it has parted with its 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



2.7 The Owner hereby covenants that it is the freehold owner of the Site and has full power to enter into this Agreement and that the Site is free from all mortgages changes or other encumbrances and that there is no person other than the Owners having any interest in the Site other than those notified in writing to the Solicitor to the Council and the County Council prior to the date hereof

### 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, the County Council or the Enforcing Authority 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, the County Council or



24 OCT 2005  
05843 A.P.  
ANNING CONTROL

NPS Property Consultants Ltd.  
on behalf of Norfolk County Council  
County Hall, Martineau Lane, Norwich, NR1 2SF.

AMENDED  
PLAN

Superseded by drawing no.  
RE/MISC/035



SITE FOR 15  
AFFORDABLE  
HOUSING UNITS

POST  
OFFICE  
ROAD

LAND FOR  
RECREATIONAL USE

SITE FOR 20  
DWELLINGS (0.67HA)

Lingwood

This Plan is not determinate of the actual legal boundaries as defined by HMLR

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## LINGWOOD

Land Off Post Office Road (20 Dwellings and Recreational Use)  
Land Off School Road (15 Affordable Housing Units)

THIS MAP IS TAKEN FROM ORDNANCE SURVEY DIGITAL DATA.  
NATIONAL GRID REFERENCE: TG. 3629 0861

PLAN No. RE/SP/20 REVa DATE: 24/10/2005 SCALE: 1:5000 DRAWN BY: D Slade



Property Consultants Ltd

PLAN No 1



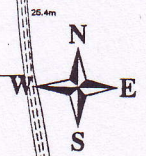
BROADLAND COUNCIL

NPS Property Consultants Ltd.  
on behalf of Norfolk County Council,  
County Hall, Martineau Lane, Norwich. NR1 2 SF.

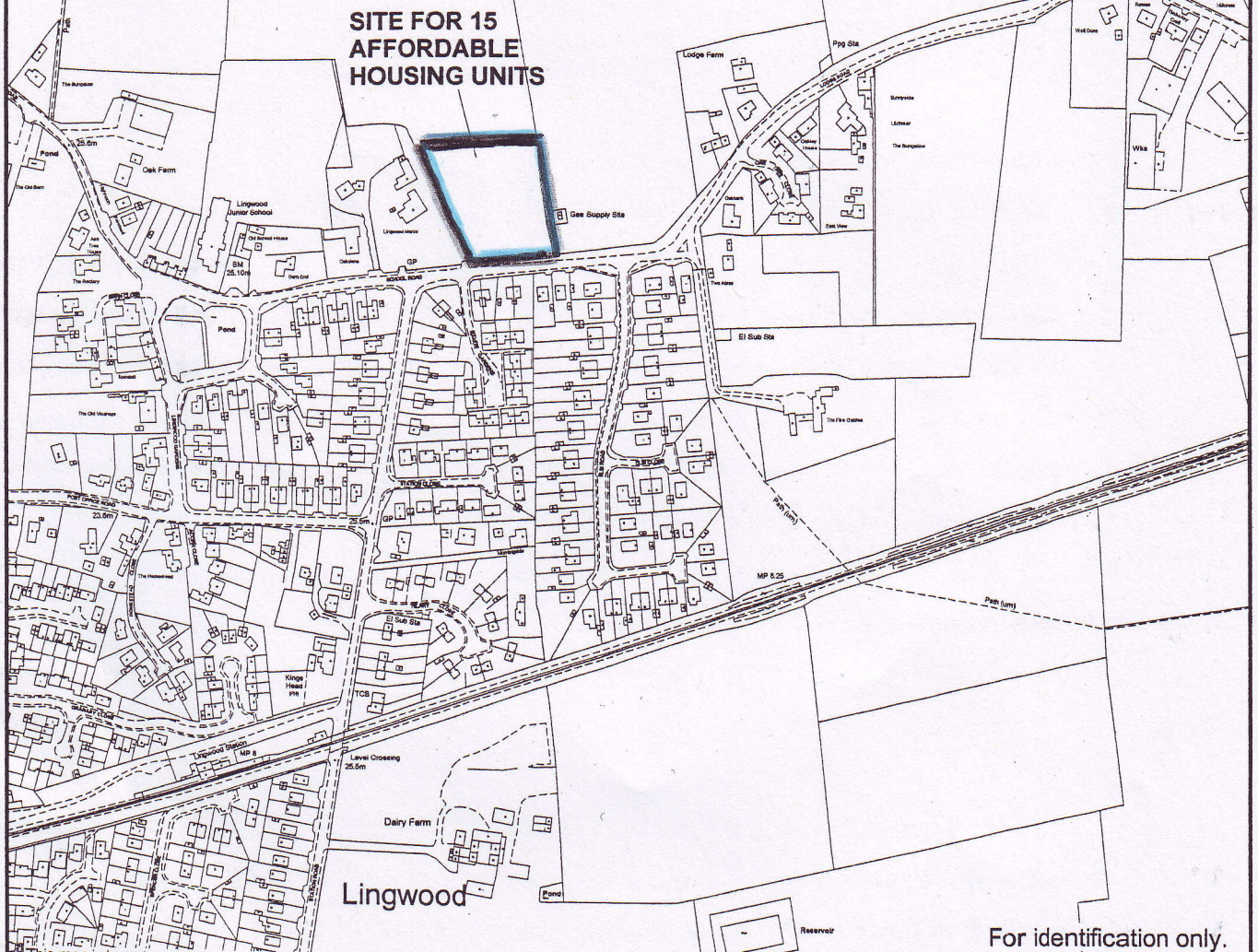
26 OCT 2005

PLANNING CONTROL

AMENDED  
PLAN



SITE FOR 15  
AFFORDABLE  
HOUSING UNITS



For identification only.

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## LINGWOOD Land Off School Road (15 Affordable Housing Units)

THIS MAP IS TAKEN FROM ORDNANCE SURVEY DIGITAL DATA.  
NATIONAL GRID REFERENCE: TG 3629 0861

PLAN No. RE/MISC/035 DATE: 26/10/2005 SCALE: 1:5000 DRAWN BY: A Johnson



PLAN No 2



the Enforcing Authority 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 (Community  
Services) Thorpe Lodge Yarmouth Road  
Thorpe St Andrew Norwich Norfolk

The Owner and The County Norfolk County Council County Hall  
Council Martineau Lane Norwich Norfolk

4.3 Any notice or other written communication to be given by the Council, the County Council or the Enforcing Authority shall be deemed to be valid and effective if on its face it is signed on behalf of the Council, the County Council or the Enforcing Authority 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. The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of the Agreement are hereby waived

## 11. DISPUTE RESOLUTION



- 11.1 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
- 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 Clauses 11.1 and 11.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## 12. INDEX LINKING

- 12.1 Subject to clause 12.2 any sum to be paid pursuant to clause 13.3 hereof shall be increased by reference to the changes in the Royal Institution of Chartered Surveyor's Building cost Information Service all-in Tender Price Index ("the Index") from the date of this deed until the date such sums are paid
- 12.2 If there shall be no such Index at any time during the period from the date of this deed until the said sums are paid or the increase shall for any other reason be incapable of ascertainment then the payment shall be increased by



such a sum as shall be determined by an independent chartered surveyor as being the sum to which its payment would have been increased had there been an Index at the time on which the relevant calculation should have been applied

### 13. PLANNING OBLIGATIONS

13.1 The Owner hereby covenants with the Council as follows:

13.1.1 Prior to the occupation of any Residential Unit on the Site to pay to the Council the Off-Site Open Space Contribution as increased by the Inflation Provision

13.1.2 Not to construct or allow to be constructed any Residential Units on the Site until a vehicular access from Post Office Road to the Open Space edged green on Plan No 1 has been laid out and constructed to the Council's satisfaction

13.1.3 Not to construct or allow to be constructed any Residential Units on the Site until such time as the Affordable Housing Land shown outlined in blue on Plan No 2 has been transferred for a nominal consideration to a Registered Social Landlord

13.1.4 Not to construct or allow to be constructed any Residential Units on the Site until the Open Space shown edged green on Plan No 1 has been transferred for a nominal consideration to Lingwood and Burlingham Parish Council

13.2 The Owner hereby covenants with the Enforcing Authority as follows:

13.2.1 Prior to the occupation of any Residential Unit on the Site to pay to the County Council (in its capacity as library service provider) the Library contribution as Index-Linked pursuant to clause 12 hereof



13.2.2 Prior to the occupation of any Residential Unit on the Site to pay to the County Council the Education Contribution as Index Linked pursuant to clause 12 hereof

#### 14. COVENANTS BY THE COUNCIL

14.1 The Council hereby agrees with the Owner that the Off-Site Open Space Contribution shall be applied towards the provision and maintenance of new open space in the Parish of Lingwood and Burlingham or towards the improvement and maintenance of existing open space in the Parish of Lingwood and Burlingham

#### 15. COVENANTS BY THE COUNTY COUNCIL

15.1 The County Council agrees to pay the whole or any part of the Education Contribution received into a designated interest bearing account and shall apply the principal and interest thereon towards the improvement and provision of education facilities within the area of Norfolk

15.2 In the event that the Education Contribution has not been committed (by way of a contract or by the expenditure of the monies) within ten years of the date of receipt of the balance of the Education Contribution then the County Council shall repay to the payer so much of the Education Contribution as shall remain uncommitted together with any accrued interest thereon

15.3 The County Council shall pay the whole or any part of the Library Contribution received into a designated interest bearing account and shall apply the principal and interest thereon towards the improvement and provision of library facilities within the area of Norfolk

15.4 In the event that the Library Contribution has not been committed (by way of a contract or by the expenditure of the monies) within ten years of the date of receipt of the balance of the Library Contribution then the County Council shall



repay to the payer so much of the Library Contribution as shall remain uncommitted together with any accrued interest thereon

## 16. GENERAL

- 16.1 It is hereby agreed between the parties hereto that the Open Space shall not be used otherwise than for the provision of amenity open space or for amenity play space



SCHEDULE 1

For each 1 bedroom dwelling comprised in the Development	£2,354
For each 2 bedroom dwelling comprised in the Development	£2,354
For each 3 bedroom dwelling comprised in the Development	£3,530
For each 4 bedroom dwelling comprised in the Development	£3,530
For each 5 bedroom dwelling comprised in the Development	£4,707

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 )



5765

Head of Corporate Services  
and Monitoring Officer

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

authorised to sign  
on behalf of: Head of Law

