

DATED 7<sup>th</sup> March 2012

BROADLAND DISTRICT COUNCIL

- AND -

OMC INVESTMENTS LIMITED

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

Relating to the development of land at Repton House,  
Parkside Drive, Old Catton, Norwich, Norfolk NR6 7DP

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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 March 2012

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") and OMC INVESTMENTS LIMITED of Comewell House, North Street, Horsham, West Sussex, RH12 1RD ("the Owner")

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 to be owned and/or managed by an AHP

"Affordable Housing Unit" Dwellings to be provided as Affordable Housing in accordance with Schedule 1 and consisting of two Affordable Rental Units – these are identified as Units 8 and 9 on the approved Site Layout and Location Plan Drawing No. 2715/13A dated 03/2008

"Affordable Rental Units" two 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 either:  
Provider" "(AHP) "

- (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

"Application" the detailed planning application validated on the 1<sup>st</sup> August 2011 for the erection of nine residential dwellings under reference number 20111113

"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 on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not

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 enclosure, 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 thirty eight pounds (£638) Index Linked payable by the Owner to the District Council

"Development" the development permitted by the Planning Permission

"Director" the District Council's Chief Executive or other officers of the Council acting under his hand

"Dwelling" any unit of residential occupation being a self-contained house or bungalow constructed as part of the Development

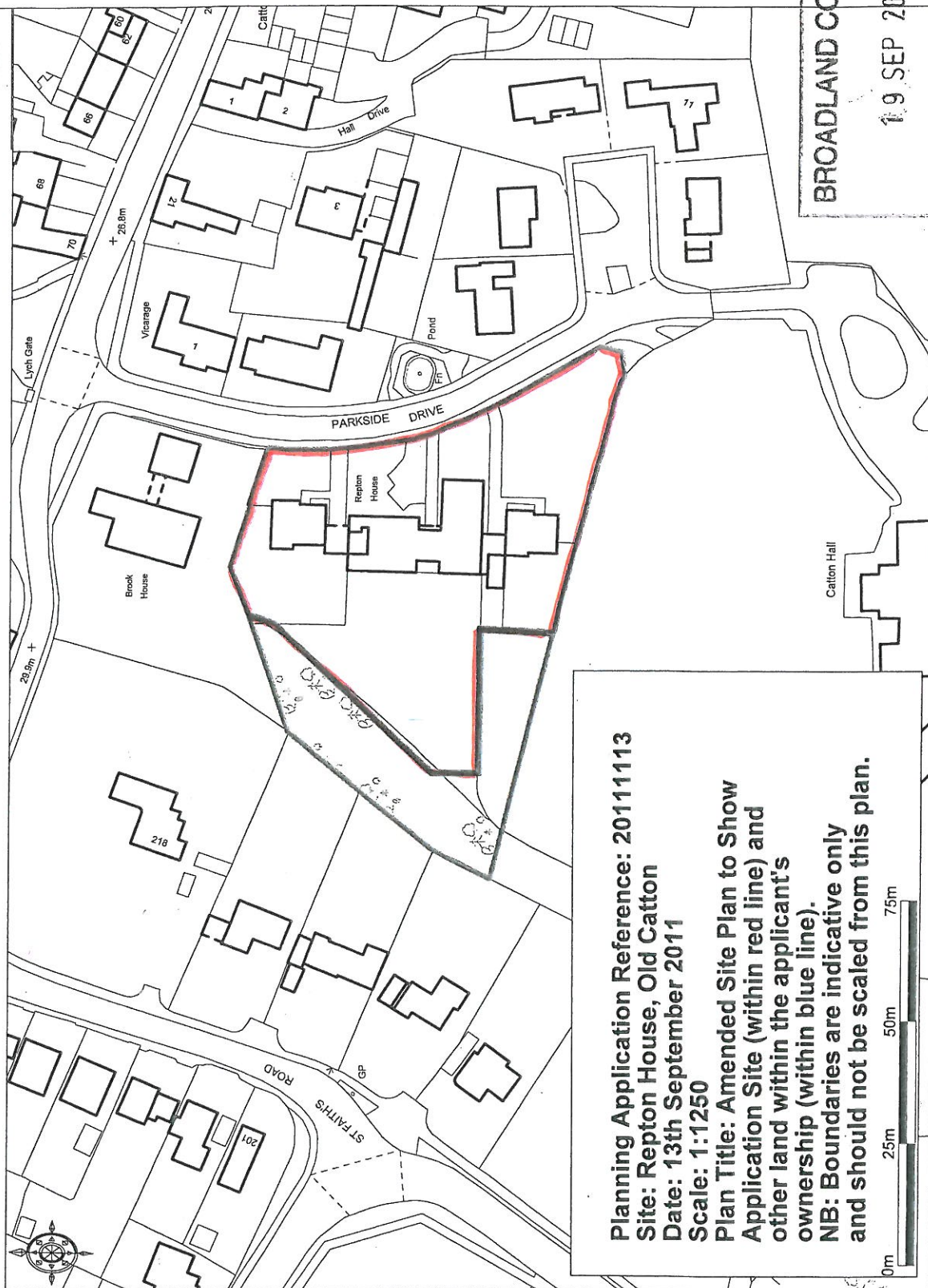
"HCA Standards" the "Housing Quality Indicators" and "Design and Quality Standards specified by the Homes and Communities Agency

"Inflation Provision" the increase (if any) in the BIS (Department for Business Innovation and Skills) Output Price index for New Construction (2010) : All New Construction between 30 September 2006 and the date upon which a payment of the Open Space Contribution is made pursuant to this





GLASGOW CITY COUNCIL



Planning Application Reference: 201111113  
Site: Repton House, Old Catton  
Date: 13th September 2011  
Scale: 1:1250  
Plan Title: Amended Site Plan to Show  
Application Site (within red line) and  
other land within the applicant's  
ownership (within blue line).  
NB: Boundaries are indicative only  
and should not be scaled from this plan.

BROADLAND COUNCIL

19 SEP 2011

PLANNING CONTROL

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## Agreement

"Occupation and Occupied"

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

"Open Space Contribution"

the sum of forty five thousand and nine hundred and six pounds (£45,906)

"Plan"

the plan annexed to this Agreement

"Planning Obligations"

the planning obligations set out in clauses 14 hereof

"Planning Permission"

the planning permission to be granted pursuant to the Application

"Qualifying Occupiers"

in relation to any person housed in an Affordable Housing Unit, any person 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)

"Site"

the land at Repton House, Parkside Drive, Old

Catton, Norwich, Norfolk NR6 7DP 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
- (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. The Owner has submitted the Application
- 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 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 with the exception of the Planning Obligations which shall not come into effect until both the grant of the Planning Permission and the Commencement Date

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 Chief Executive Broadland District Council Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU
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The Owner	Comewell House, North Street, Horsham, West Sussex, RH12 1RD
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- 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. 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 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 Clause 11.1 and 11.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## 12. TITLE WARRANTY

12.1 The Owner hereby warrants that it is the freehold owner of the Site and has full power to enter into this Agreement

## 13. NOTIFICATION

13.1 The Owner shall notify the Council of the Commencement Date and upon first occupation of the first Dwelling

## 14. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

14.1(i) on the Occupation of the fourth Dwelling on the Site pursuant to the Planning Permission to pay to the Council £22,953 being 50% of the Open Space Contribution as increased by the Inflation Provision

- (ii) on the Occupation of the Seventh Dwelling on the Site pursuant to the Planning Permission to pay to the Council £22,953 being the remaining 50% of the Open Space Contribution as increased by the Inflation Provision

14.2 the Council's Monitoring Fee which is required for checking the implementation and compliance with the terms of this Agreement shall be paid to the Council on or prior to the Commencement Date

14.3 to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement

14.4 not to allow or permit Occupation of the seventh open market Dwelling until the two Affordable Rental Units have been constructed and are ready for Occupation

## 15. THE COUNCIL'S OBLIGATIONS

15.1 The Council agrees with the Owner that the Open Space Contribution shall be applied towards the provision and/or maintenance of new open space and/or outdoor recreational facilities in the Parish of Old Catton or towards the improvement and/or maintenance of existing open space and/or outdoor recreational facilities in the Parish of Old Catton and that if the Open Space Contribution or any amount of it has not been spent after five years from the payment of the triggered Contributions to the Council then the Council shall repay the unexpended balance to the payer

## **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 the Code to HCA standards



- 1.2 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental 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 other than to an AHP
- 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

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

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)  
)  
)



~~Head of Corporate Services  
and Monitoring Officer~~

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

THE COMMON SEAL of  
OMC INVESTMENTS LIMITED  
was hereunto affixed  
in the presence of

)  
)  
)  
)



Director

*[Signature]*

Secretary

*[Signature]*