

Dated

23 February

2016

**BROADLAND DISTRICT COUNCIL**

**-and-**

**OMC INVESTMENTS LIMITED**

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

relating to land at Repton House, Parkside Drive, Old Catton, Norfolk, NR6 7DP

AK/JL/49010

THIS DEED is dated

23 February

2016

**PARTIES:**

- (1) **BROADLAND DISTRICT COUNCIL** Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew NORWICH NR7 0DU (referred to as "the Council")
- (3) **OMC INVESTMENTS LIMITED** (Company registration number 00991581) whose registered office is at Springfield House Springfield Road Horsham West Sussex RH12 2RG (referred to as "the Owner")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is a local planning authority for the area within which the Site is located
- (B) Lawson Planning Partnership Limited has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (C) the Owner owns the freehold of the Site which is registered at the Land Registry under title number NK369990

**1. DEFINITIONS**

In this Deed the following expressions have the following meanings:

"Act"

the Town and Country Planning Act 1990

"Commencement"

the date on which a material operation as defined in Section 56(4) of the Act is first carried out, except operations consisting of:  
site clearance  
demolition

	<p>archaeological investigations</p> <p>ground surveys</p> <p>removal of contamination</p> <p>erection of temporary fences</p> <p>and 'Commence' and 'Commenced' will be construed accordingly</p>
"Development"	the development of the Site in accordance with the Permission
"Dwelling"	a dwelling to be built on the Site as part of the Development
"Inflation Provision"	<p>The increase (if any) in the Royal Institute of Chartered Surveyors Build Cost Information Service; All Construction TPI: All New Construction from January 2015 and the date upon which a payment of each commuted sum is made</p>
"Nominated Officer"	the senior officer of the Council responsible for development management or other officer of the Council notified to the Owner
"Occupation"	<p>Occupation of the Site, or any part of it, for any purpose authorised by the Permission, but excluding occupation for the purposes of:</p> <p>construction</p> <p>internal and external refurbishment</p> <p>decoration</p> <p>fitting-out</p> <p>marketing</p> <p>and 'Occupy' and 'Occupied' will be construed accordingly</p>

"Permission"

the full planning permission to be granted by the Council for demolition of the existing buildings and erection of seven Dwellings (including one shared ownership tenure property) alterations to existing vehicular access and formation of two vehicular access points associated garaging car parking private amenity space landscaping and ancillary infrastructure works and allocated reference number 2015/1733 or if the Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development

"Plan"

the plan attached to this Deed (drawing number 1353-A-PL06 proposed block plan)

"Site"

the land known as Repton House Parkside Drive Old Catton Norfolk NR6 7DP and registered at Land Registry under title number NK369990 shown edged red on the Plan with Plot 1 edged in green

"Trigger"

means the Commencement date and any trigger or threshold in this Deed linked to the taking of specified steps, payment of money, or linked to the prohibition of a specified action

## **2. LEGAL BASIS**

- 2.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council
- 2.2 It is agreed by the Parties:
- 2.2.1 That there are four planning obligations pursuant to Section 106 of the Act and each planning obligation is set out in a separate Schedule to this Deed
  - 2.2.2 That each Schedule to this Deed which sets out how the planning obligation will be performed and sets out the infrastructure or infrastructure project which will be effected will not amount to more than one planning obligation per Schedule for the purposes of Regulation 123 of the Community Infrastructure Levy Regulations 2010, as amended.
- 2.3 Covenants given by more than one party can be enforced against them individually or jointly
- 2.4 A reference to an act of Parliament includes any later modification or re-enactment, including any statutory instruments made under that act, and reference to a gender or person includes all genders or classes of person
- 2.5 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done
- 2.6 This Deed shall be registered as a local land charge by the Council

- 2.7 This Deed is governed by and interpreted in accordance with the law of England

### **3. COVENANTS**

- 3.1 The Owner covenants with the Council for itself and its successors in title to observe and perform the obligations and stipulations contained in this Deed
- 3.2 The Council covenant with the Owner to comply with their respective requirements contained in this Deed

### **4. OTHER PROVISIONS**

- 4.1 No person will be liable for any breach of this Deed if he no longer has an interest in the Site (unless the breach occurred before he disposed of his interest)
- 4.2 The Owner confirms that he is the owner of the Site with full power to enter into this Deed and that there is no person or body with an interest in the Site whose consent is necessary to make this Deed binding on all interests in the Site
- 4.3 This Deed will not bind anyone who acquires an interest in part of the Site for the purpose of the supply of utility services
- 4.4 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed
- 4.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 4.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions

- 4.7 No waiver, express or implied, by the Council constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed

## **5. DISPUTES**

- 5.1 If any dispute is not resolved between the Parties, any of the Parties may refer it for determination by an expert. The expert will be appointed by agreement between the parties or, in default of agreement, by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's decision shall be final and binding

- 5.2 Nothing in this Clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## **6. INTEREST AND VAT**

- 6.1 If any payment due to the Council is paid late interest will be added from the date payment is due to the date of payment at the rate of 4% above the base lending rate of the Bank of England from time to time
- 6.2 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid

## **7. NOTIFICATIONS**

- 7.1 Any notice or written communication given under this Deed is validly given if hand delivered or sent by recorded delivery post to the address set out at the beginning of this Deed, unless written notification of another address has been received
- 7.2 The Owner will notify the Nominated Officer in writing within 7 days of reaching the Triggers in this Deed

- 7.3 If the Owner disposes of its interest in all or part of the Site it will notify the Nominated Officer within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site



## **SCHEDULE ONE**

### **Site Plan**

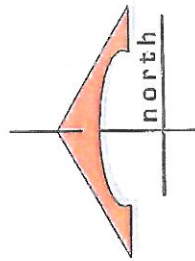
The plan attached to this Deed showing the land known as Repton House Parkside Drive Old Catton Norfolk NR6 7DP and registered at Land Registry under title number NK369990 shown edged red on the Plan with Plot 1 edged in green

# KEY

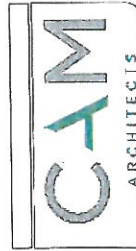
Application Site

Other Land in Applicants Ownership

Affordable Housing Plot



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100% Planning and Building Regulations Approved

Client:	QMC Investments Ltd
Project Details:	New Residential Development
Project Address:	Repton House, Parkside Drive, Old Catton, Norwich, NR6 7DP
Drawing Title:	S106 Agreement Plan
Drawn:	1353
Scale:	1:500
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M. J. J. J.

Head of Democratic Services and Monitoring Officer

## SCHEDULE TWO

### Affordable Housing

In this Schedule (and elsewhere in this Deed where the context permits) the following words and expressions shall have the following meanings:

"Affordable Dwelling"	the Dwelling to be constructed to Design & Quality Standards on the Site as Affordable Housing
"Affordable Housing"	housing to be provided to Eligible Households whose needs are not met by the market
"Affordable Housing Scheme"	<p>a scheme securing the Affordable Housing Provision and specifying:</p> <ul style="list-style-type: none"><li>- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwelling;</li><li>- the identity of the Provider (or such details as the Council requires to satisfy itself that the Affordable Dwelling will be secured as Affordable Housing in perpetuity);</li></ul> <p>AND, where the parties agree any amendment or alteration to the Affordable Housing Provision:</p> <ul style="list-style-type: none"><li>- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme</li></ul>
"Approved Housing Provision"	the construction and provision of one Affordable Dwelling on the Site equating to 1 x 1 Bedroom bungalow shown as Plot 1 on the Plan
"Approved Affordable Housing Scheme"	the Affordable Housing Scheme approved by the Council in accordance with paragraph 1.1 of this Schedule including any amendment, revision or

	substitution' approved by the Council in writing
"Complete"	a stage of construction such that a Dwelling has a complete roof and all windows and external doors installed and where further works do not ordinarily amount to "development" for the purposes of section 55(1) of the Act and "Complete" and "Completed" shall be construed accordingly
"Design & Quality Standards"	the appropriate standards as specified by the HCA or such other construction standards as the Council may specify
"Eligible Household"	a person or persons in need of accommodation who are unable to rent or buy on the local open market determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council
"HCA"	the Homes & Communities Agency or it's successor body or other appropriate body as the Council may nominate
"Open Market Dwelling"	Any Dwelling constructed as part of the Development which is not an Affordable Dwelling
"Provider"	a Registered Provider ; or another organisation that owns the Affordable Dwelling and has been approved in writing by the Council
"Public Subsidy"	funding provided by the Council, the HCA or any other public body or successor body towards the provision of Affordable Housing

"Registered Provider"	as defined in the Housing and Regeneration Act 2008
"Shared Ownership Dwellings"	Dwellings purchased on a Shared Ownership Lease
"Shared Ownership Lease"	<p>a lease in a form approved by the HCA or where there is no such form in a form approved by the Council such lease to provide for the following:</p> <ul style="list-style-type: none"> <li>- not more than 50% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Provider</li> <li>- power to the purchaser to increase their ownership up to 100% if they so wish</li> <li>- an initial rent not exceeding 2.75% of the value of the equity retained by the Provider subject to annual increases not exceeding Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% or such other rent as complies with the requirements from time to time of the HCA</li> </ul>

The Owner hereby covenants with the Council as follows:

- 1.1 Not to Commence the Development until the Affordable Housing Scheme has been submitted to and approved by the Council in writing
- 1.2 Not to Occupy the first Open Market Dwelling until an exchanged unconditional contract for the sale of the Affordable Dwelling to a Provider has

been supplied to the Council SAVE THAT where the Council agrees that the Affordable Dwelling is not to be transferred this obligation shall not apply

1.3 Not to construct the Affordable Dwelling otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales and details set out therein

1.4 Not to Occupy the sixth Open Market Dwelling until the Affordable Dwelling to be provided under the Approved Affordable Housing Scheme is Complete and has been transferred to the approved Provider (or where no transfer is required their ongoing provision has been secured) in accordance with and subject to the following terms:

- a) for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed;
- b) free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Dwelling as Affordable Housing;
- c) with the benefit of all necessary easements, rights and utilities; and
- d) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme

1.5 Not to use the Affordable Dwelling for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme PROVIDED THAT the obligations contained in this Schedule shall not be binding upon:

- 1.5.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire;

1.5.2 an Eligible Household who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest

1.5.3 a mortgagee or chargee (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security (each a "Receiver") of the whole or any part of the Affordable Dwelling or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT it is has first complied with the following:

- a) such mortgagee or chargee or Receiver shall first give notice to the Council of its intention to dispose of the Affordable Dwelling and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Dwelling to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest, costs and expenses; and
- b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Dwelling free from the obligations contained in this Schedule which provisions shall determine absolutely in relation to the affected Affordable Dwelling



### **SCHEDULE THREE**

#### **Children's Play Space**

1. In this Schedule the following expression has the following meaning:

"Off-Site Children's Play Space Contribution"	the sum of £1,990.44 subject to the Inflation Provision to be paid to the Council towards the provision of equipped children's play space
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2. The Owner covenants with the Council as follows:

- 2.1 To pay the Off-Site Children's Play Space Contribution to the Council  
prior to first Occupation of the fourth Open Market Dwelling



## **SCHEDULE THREE**

### **Children's Play Space**

#### **Part 2 - Council's Covenants**

#### **1. REPAYMENT OF CONTRIBUTIONS**

- 1.1 Not to use the Off-Site Children's Play Space Contribution (and any interest accrued) for any purpose other than for the provision or enhancement of children's play space within the parish of Old Catton.
- 1.2 Upon receipt to pay the Off-Site Children's Play Space Contribution into an interest bearing account
- 1.3 To repay with any interest accrued to the Owner such amount of the Off-Site Children's Play Space Contribution which has not been committed (by way of expenditure of the monies or by way of contract) within five years of the date of receipt by the Council of such payment
- 1.4 The Council shall within 28 days of written request provide to the Owner details of the expenditure of the Off-Site Children's Play Space Contribution

**SCHEDULE FOUR**  
**Formal Recreational Space**

1. In this Schedule the following expression has the following meaning:

"Off-Site Formal Recreational Space Contribution"	the sum of £9,839.00 subject to the Inflation Provision to be paid to the Council towards the provision of formal recreational space
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2. The Owner covenants with the Council as follows:

- 2.1 To pay the Off-Site Formal Recreational Space Contribution to the  
Council prior to first Occupation of the fourth Open Market Dwelling

**SCHEDULE FOUR**  
**Formal Recreational Space**

**Part 2 - Council's Covenants**

**1. REPAYMENT OF CONTRIBUTIONS**

- 1.1 Not to use the Off-Site Formal Recreational Space Contribution (and any interest accrued) for any purpose other than for the provision or enhancement of formal recreational space within the parish of Old Catton
- 1.2 Upon receipt to pay the Off-Site Formal Recreational Space Contribution into an interest bearing account
- 1.3 To repay with any interest accrued to the Owner such amount of the Off-Site Formal Recreational Space Contribution which has not been committed (by way of expenditure of the monies or by way of contract) within five years of the date of receipt by the Council of such payment
- 1.4 The Council shall within 28 days of written request provide to the Owner details of the expenditure of the Off-Site Formal Recreational Space Contribution

**SCHEDULE FIVE**  
**Green Infrastructure**

1. In this Schedule the following expression has the following meaning:

"Green Infrastructure Contribution"	the sum of £14,957.95 subject to the Inflation Provision to be paid to the Council
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**2 The Owner covenants with the Council as follows:**

- 2.1 To pay the Green Infrastructure Contribution to the Council upon first Occupation of the fourth Open Market Dwelling

**SCHEDULE FIVE**  
**Green Infrastructure**

**Part 2 - Council's Covenants**

**1. REPAYMENT OF CONTRIBUTIONS**

- 1.1 Not to use the Green Infrastructure Contribution (and any interest accrued) for any purpose other than for the provision of green infrastructure within the Broadland district
- 1.2 Upon receipt to pay the Green Infrastructure Contribution into an interest bearing account
- 1.3 To repay with any interest accrued to the Owner such amount of the Green Infrastructure Contribution which has not been committed (by way of expenditure of the monies or by way of contract) within ten years of the date of receipt by the Council of such payment
- 1.4 The Council shall within 28 days of written request provide to the Owner details of the expenditure of the Green Infrastructure Contribution

