

DATED 29th July 2008

BROADLAND DISTRICT COUNCIL

- AND -

O M C INVESTMENTS LIMITED

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

Relating to the re-development of land at
Repton House Parkside Drive
Catton Norwich Norfolk

Broadland District Council
Thorpe Lodge
1 Yarmouth Road
Thorpe St Andrew
Norwich
NR7 0DU

THIS AGREEMENT is made the 29TH day of July 2008

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the first part and O M C INVESTMENTS LIMITED (Co. Regn. No. 00991581) whose registered office is located at the Third Floor South 1 Jubilee Street Brighton BN1 1GE ("the Owner") of the second part

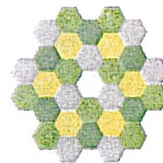
1. INTERPRETATION AND DEFINITIONS

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

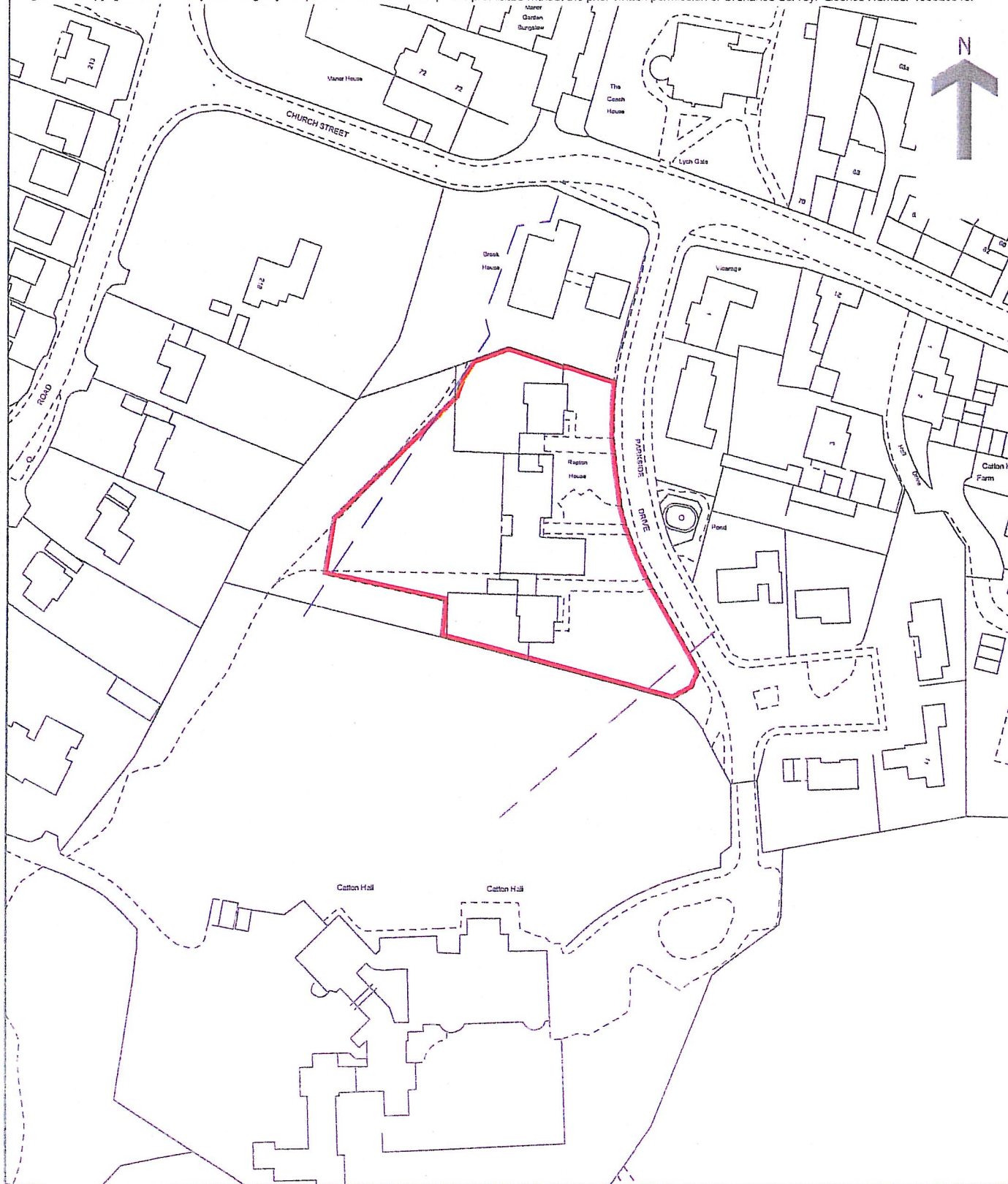
"Act"	the Town and Country Planning Act 1990 (as amended)
"Application"	the detailed application made on ^{3rd April} 1st March 2008 for planning permission for nine dwellings and associated works in accordance with the plans deposited with the Council bearing reference No 20080513
"Commencement Date"	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

Land Registry
Official copy of
title plan

Title number **NK369990**
Ordnance Survey map reference **TG2312SW**
Scale **1:1250**
Administrative area **Norfolk: Broadland**



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This official copy issued on 5 June 2008 shows the state of this title plan on 5 June 2008 at 16:13:27. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.

This title is dealt with by Land Registry, Kingston upon Hull Office.

"Director"	Permission the Council's Strategic Director (Community Services) or other officers of the Council acting under his hand
"Inflation Provision"	the increase (if any) in the DTI Output Price Index for Public Works between <u>30</u> September 2006 and the date upon which a payment of the Off-Site Open Space Contribution is made pursuant to this Agreement
"Off-Site Open Space Contribution"	the sum of forty eight thousand and forty two pounds (£48,042.00)
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission to be granted pursuant to the Application
"Residential Unit"	a self-contained house bungalow or flat
"Site"	the land at Repton House Parkside Drive Catton Norwich Norfolk shown for the purposes of identification only edged red on the Plan and comprising 0.37 hectares or thereabouts

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
- (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 with title absolute registered at Kingston upon Hull District Land Registry with title number NK 369990.
- C. The Owner's agents have submitted the Application
- D. The Council have 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 enforceable by the Council against the Owner and its respective 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 his 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

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

The Owner

O M C Investments Limited
Third Floor South
1 Jubilee Street
Brighton
BN1 1GE

- 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 the Council's 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 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.

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. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

- 12.1 To pay the sum of three hundred pounds (£300) to the Council in payment of the Monitoring Fee upon completion of this Agreement
- 12.2 Prior to the occupation of the fourth Residential Unit of the Development on the Site to pay to the Council the Off-Site Open Space Contribution as increased by the Inflation Provision

13. THE COUNCIL'S OBLIGATIONS

- 13.1 The Council agrees with the Owner that the Off-Site Open Space Contribution shall be applied within ten years of receipt towards the provision of new open space in the Parish of Catton or towards the improvement and subsequent maintenance of existing open space in the Parish of Catton and any part of the Off-Site Open Space Contribution not so applied within the said time period shall be returned by the Council to the payer together with any accrued interest thereon

EXECUTED by the parties hereto as a deed on the date written above

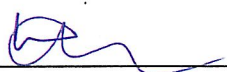
THE COMMON SEAL of)
BROADLAND DISTRICT COUNCIL)
was hereunto affixed in the presence of)

Head of Corporate Services
and Monitoring Officer

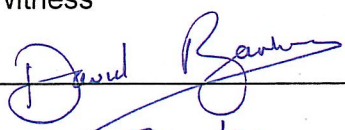


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Signed by)
OMC INVESTMENTS LIMITED)
Acting by a single director)

Director 

Witness


Seal

96 Church Street
Brighton