

**PLANNING AGREEMENT**

**between**

(1) [ ] DISTRICT COUNCIL

and

(2) LINCOLNSHIRE COUNTY COUNCIL

and

(3) [ ] (LAND OWNER)

and

(4) [ ] (if required details of developer, applicant,  
mortgagee and any relevant lessee etc)

Agreement under  
Section 106 Town & Country Planning Act 1990

relating to land at

[ ]

Legal Services Lincolnshire  
County Offices  
Newland  
Lincoln  
LN11YS

REF [ ]

[ THE REQUIREMENT FOR A CONTENTS PAGE TO BE INSERTED HERE MAY ARISE IF THE DEED IS SUBSTANTIAL ENOUGH THAT THIS WOULD AID FUTURE READERS OF IT – AS A GUIDE MORE THAN 6 OBLIGATIONS MAY GIVE RISE TO A CONTENTS PAGE ]

**THIS DEED** is made the                      day of                      2009

**BETWEEN**

- 1) [                      ] DISTRICT COUNCIL of [                      ] (“the Council”)
- 2) **LINCOLNSHIRE COUNTY COUNCIL** of **County Offices Newland Lincoln LN1 1YQ** (“the County Council”)
- 3) [                      ] of/whose registered office is at [                      ] (Company Number [                      ]) (“the Owner”)
- 4) [                      ] (any other...)

**RECITALS**

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Site is situated and by whom the obligations and covenants contained in [                      ] are enforceable
- (B) The Council is the housing authority for the purposes of the Housing Act 1985 and a local authority for the purposes of the 1972 Act and the 2000 Act
- (C) The County Council is the highway authority for the purposes of the Highways Act 1980 / (the local waste authority for the purpose of [                      ]) / (the mineral planning authority for the purpose of the 1990 Act) / (the hazardous substances authority for the purpose of the Hazardous

Substances Act 1990) / ( the local education authority for the purposes of the Education Act 2004 and a local authority for the purposes of the 1972 Act and 2000 Act for the area in which the Site is situated

- (D) The Owner is the [freehold] owner of the Site
- (E) [describe any one else with an interest and a party to the agreement]
- (F) The Owner has submitted the Planning Application to the Council
- (G) The facilitate the Development the parties have agreed to enter into this Deed to secure the provision of [ ] on the Site and the payment of contributions towards [ ]
- (H) The [ ] resolved to grant the Planning Permission on [ ] subject to the prior completion of this Deed

## **OPERATIVE PART**

### **NOW THIS DEED WITNESSETH AS FOLLOWS:**

#### **1. DEFINITIONS AND INTERPRETATION**

1.1. In this Deed the following terms and expressions shall have the following meaning: -

(delete/insert as appropriate)

1.2. Where in this Deed reference is made to any clause paragraph schedule plan or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule recital or plan in this Deed

- 1.3. Where in any Schedule or part of any Schedule reference is made to a paragraph such reference shall (unless the context requires otherwise) be to a paragraph of that Schedule or (if relevant) part of that schedule
- 1.4. References to any party to this Deed shall include reference to their successors in title and assigns and to persons claiming or deriving title through or under them and in respect of the Council and/or the County Council shall include the successors to their respective statutory functions
- 1.5. Words importing the singular meaning where the context so admits include the plural meaning and vice versa
- 1.6. Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner
- 1.7. Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise
- 1.8. Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it

## **2. LEGAL BASIS**

- 2.1. This Deed is made pursuant to Section 106 of the Act Sections 111 and 120 and 139 of the 1970 Act and Section 2 of the 2000 Act
- 2.2. The covenants restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to section 106 of the

Act and are intended to be enforceable by the Council and the County Council as local planning authority

3. **CONDITIONALITY**

3.1. This Deed is conditional upon:

3.1.1. the grant of the Planning Permission substantially in the form as annexed at Schedule 2

3.1.2. the Commencement of Development

**SAVE FOR** the provisions of clauses [ ] which shall come into effect immediately upon completion of this Deed

4. **AGREEMENTS AND DECLARATIONS**

4.1. The parties agree and declare that:

4.1.1. the provisions of this Deed shall not enforceable under the Contracts (Rights of Third Parties) Act 1999

4.1.2. The covenants given in this Deed shall cease to have effect if

4.1.2.1. the Planning Permission is quashed revoked or otherwise withdrawn at any time; or

4.1.2.2. the Planning Permission expires prior to the Commencement of Development; or

4.1.2.3. the Planning Permission is modified by any statutory procedure without the consent of the Owner

4.1.3. this Deed shall be registrable as a land charge by the Council and/or the County Council as local planning authority

4.1.4. Following the performance and satisfaction of all of the obligations contained in this Deed the Council and/or County Council shall at the Owners expense effect the cancellation of all relevant entries made in the Register of Local Land Charges in respect of this Deed

- 4.1.5. no person or party shall be liable for a breach of the restrictions and obligations contained in this Deed after that person or party has parted with all of his interest in the Site or the part in respect of which the breach occurs but without prejudice to any liability for any breach committed prior to such parting
- 4.1.6. the Developer agrees to give the Council immediate written notice of any change in ownership of its interest in the Site occurring before all the obligations under this Deed have been discharged
- 4.1.7. nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed
- 4.1.8. nothing contained in this Deed shall prejudice or affect the rights powers duties and obligations of the Council and/or County Council in the exercise of its functions as local authority and its rights powers duties and obligations under all public and private statutes byelaws and regulations may be as fully and effectually exercised as if the Council and/or County Council were not a party to this Deed
- 4.1.9. if any severable provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired
- 4.1.10. no waiver unless in writing by the Council of any breach or default by the Developer in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions or from acting upon any subsequent breach

- 4.1.11. the obligations in this Deed shall not be enforceable against a statutory undertaker after the transfer of the statutory apparatus and any land upon or in which the statutory apparatus is situated by the Developer to that statutory undertaker nor enforceable against any highway authority which may be responsible for any public highway maintainable at the public expense
- 4.1.12. where the agreement approval consent or expression of satisfaction is required by the Owner from the Council under the terms of this Deed such agreement approval consent or expression of satisfaction shall not be unreasonably withheld or delayed
- 4.1.13. any notices requests demands or other written communications pursuant to this Deed shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party
- 4.1.14. if any payment due under this Deed is paid late Interest will be payable from the date payment is due until the date payment is made
- 4.1.15. any sum referred to in this Deed shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such that sum is payable

5. **COUNCIL'S COVENANTS**

The Council covenants to comply with its obligations set out in Schedules [            ]

6. **COUNCIL'S COVENANTS**

The County Council covenants to comply with its obligations set out in Schedules [                            ]

7. **OWNER'S COVENANTS**

- 7.1. The Owner covenants with the Council and/or the County Council so as to bind the land into whosoever hands the same may fall to comply with its obligations as set out in Schedules [ ]
- 7.2. to pay to the Council on the completion of this Deed the reasonable legal costs of the Council in preparing, negotiating and completing this Deed
- 7.3. to pay to the County Council on the completion of this Deed the reasonable legal costs of the Council in preparing negotiating and completing this Deed
- 7.4. to pay to the Council on the completion of this Deed the sum of [£ .00] [ pounds only] as a contribution towards the reasonable administration enforcement and monitoring costs in respect of the obligations created by this Deed
- 7.5. to pay to the County Council on the completion of this Deed the sum of [£ .00] [ pounds only] as a contribution towards the reasonable administration enforcement and monitoring costs in respect of the obligations created by this Deed
- 7.6. to notify the Council of the Commencement of Development within 7 days of the same occurring
- 7.7. to notify the Council of any changes in ownership of any part of the Site within 7 days of the same occurring.

8. **MORTGAGEE CONSENT AND EXEMPTION CLAUSE**

- 8.1. The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed **PROVIDED THAT** the mortgagee shall otherwise have no liability under



this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner

8.1.1. The provisions of [Schedule [ ] (affordable housing and any other relevant provision)] shall not be binding upon a mortgagee (or a receiver appointed by such mortgagee exercising a power of sale and seeking to dispose of its interest and the person or persons deriving title under such mortgagee shall not be bound by the provisions of this Deed  
**PROVIDED THAT**

8.1.1.1. the mortgagee shall prior to seeking to dispose of the Affordable Housing pursuant to any default under the terms of its mortgage or charge give not less than 6 months prior notice to the Council as Housing Authority of its intention to dispose and

8.1.1.2. in the event that the Council responds within 4 months from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing can be made in such a way as to safeguard the units or dwellings as Affordable Housing then the mortgagee shall co-operate with such arrangements and use its reasonable endeavours to secure such transfer PROVIDED THAT any arrangements in relation to such transfer shall have regard to the duty of the mortgagee to secure a proper price in exercising its power of sale

8.1.1.3. if the Council does not serve its response to the notice within the 4 month period then the mortgagee shall be entitled to dispose free of the restrictions set out Schedule [ ]

8.1.1.4. if the Council or any other person cannot within 4 months of the date of service of its response secure such transfer then provided that the mortgagee shall have complied with its obligations then the mortgagee shall be entitled to dispose free of the restrictions set out in Schedule [ ]

9. **JURISDICTION**

This Deed shall be governed by and interpreted in accordance with the law of England and Wales

10. **WAIVER**

No waiver (whether expressed or implied) by the Council the County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default

11. **DISPUTE RESOLUTION**

11.1. In the event of there being a dispute arising out of this Deed or the subject matter thereof the following provisions shall apply:

11.1.1. The parties shall use their reasonable endeavours to resolve the dispute by agreement

11.1.2. If agreement cannot be reached the matter in dispute shall be referred to and settled by a single expert to be nominated by the President of the Royal Institution of Chartered Surveyors on the application of either party after giving notice in writing to the other party to this Deed

11.1.3. The person to be appointed pursuant to clause 11.1.2 shall be a person having five years or more post qualification experience of projects comprising works of the scale and nature of the Development

11.1.4. Reference to the expert shall be on terms that determination shall take place within 28 working days of the expert accepting his instructions

- 11.1.5. The expert shall have the power to award costs of the determination in favour of either party to the dispute at the expense of the other party and failing such determination such costs shall be borne by the parties in equal shares
- 11.1.6. The expert shall be limited in his findings to the matter in dispute referred to him and shall provide written reasons for his decision
- 11.1.7. The findings of the expert shall (other than in the case of a manifest material error) be final and binding on the parties to the dispute

**12. VAT**

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

**13. EXECUTION AND DELIVERY**

This document is executed as a deed and is delivered on the date stated at the beginning of this Deed

**14. [INDEMNITY**

14.1. The Developer for itself and its successors hereby covenants with the Owner [and the Mortgagee]:

14.1.1. to observe and perform the covenants restrictions and requirements imposed on the Owner under this Deed and set out in [ ] both during the Development and in respect of those which survive completion of the Development until such time as they shall cease and

14.1.2. to indemnify the Owner and/or the Mortgagee against all costs actions claims demands liabilities or obligations howsoever arising out of any breach or non-observance by the Developer of the covenants restrictions and requirements in this Deed and of the provisions of clause 14.1.1

above including the costs actions claims demands liabilities or obligations arising directly or indirectly out of the Developer not complying therewith or failing to do so or to do so properly any works required thereby (and including the costs to the Owner/Mortgagee of legal and surveyor's advice both in consideration of and completion of this Deed and otherwise arising out of this indemnity.]

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written

**FIRST SCHEDULE**

**DETAILS OF THE OWNERS TITLE AND DESCRIPTION OF THE SITE**

**SECOND SCHEDULE**  
**DRAFT PLANNING PERMISSION**

**THIRD SCHEDULE**  
**(INSERT AS APPROPRIATE)**

THE COMMON SEAL OF )  
**LOCAL PLANNING AUTHORITY** )  
was affixed in the presence of: )

Authorised Signatory:

THE COMMON SEAL OF )  
**LINCOLNSHIRE COUNTY COUNCIL** )  
was affixed in the presence of: )

Authorised Signatory:

EXECUTED AS A DEED by )  
**[OWNER]** )  
in the presence of: )

Director:

Director/Secretary: