Dated 14 July **2011**

BROADLAND DISTRICT COUNCIL

- AND -

NORFOLK COUNTY COUNCIL

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

relating to the development of land at
the former NCS Depot, 389 Drayton High Road
Hellesdon Norwich Norfolk

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

CS/JR/34079
Created : 20/04/11

THIS AGREEMENT is made the 14 day of July 2011

BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") and
2. NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich NR1 2DH (the Owner")

1. INTERPRETATION AND DEFINITIONS

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

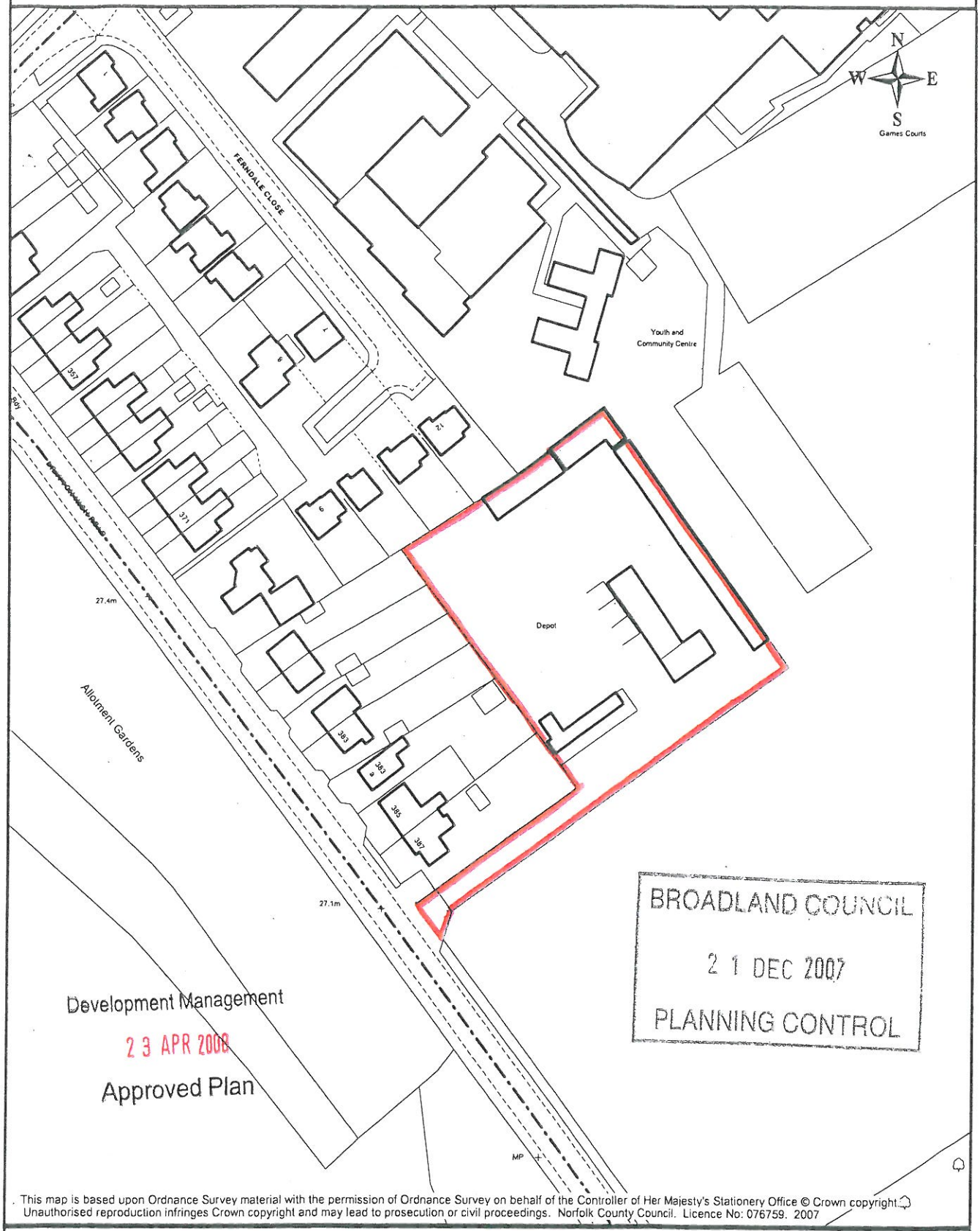
"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market
"Affordable Housing Scheme"	a scheme submitted to and approved by the Council prior to commencement of Development for the provision of Affordable Housing for the Development which complies with the requirements of Schedule 1
"Affordable Housing Units"	individual units of accommodation constructed or provided as part of the Affordable Housing Scheme
"Affordable Rents"	rents and security of tenure that comply with the Regulator's (or their successors) guidance on

	social rented or affordable rented housing (or if such guidance ceases to be available such other measure of affordable rents as the Council shall reasonably determine)
"Affordable Rental Units"	Affordable Housing Units to be let at Affordable Rents by a Registered Provider
"Application"	the application for outline planning permission received on 18 February 2011 for residential development on the Site and given the reference number 20110244
"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 of a material operation within the meaning of Section 56(4) of the Act (but not including operations relating to clearance of the Site, archaeological investigations or 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 or 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)
"Development"	the development permitted by the Planning

	Permission
"Director"	the Council's Strategic Director and Chief Planner (Community Services) or other officers of the Council acting under his hand
"Discounted Market Dwellings"	Affordable Housing Units to be constructed or provided as part of the Affordable Housing Scheme as residential units for sale in perpetuity at a price which is 20% (twenty per cent) less than the Open Market Value of such Unit
"Dwelling"	means any residential dwelling (comprising a bungalow, flat, maisonette or house) constructed on Site pursuant to the Planning Permission as part of the Development
"HCA Standards"	the "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Communities Agency or their successors
"Inflation Provision"	the increase (if any) in the Department for Business Innovation and Skills (BIS) Output Price Index for New Construction (2010) : All New Construction between 1 September 2006 and the date upon which a payment of the Off-Site Open Space Contribution is made pursuant to this Agreement
"Intermediate Affordable Housing"	includes Intermediate Rental Units, Discounted Market Dwellings and Shared Ownership Dwellings

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

20071795



BROADLAND COUNCIL
21 DEC 2007
PLANNING CONTROL

Development Management
23 APR 2008
Approved Plan

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Outline Planning Application

NCS Depot, Drayton High Road, Hellesdon

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

DATE: 14/12/2007 SCALE: 1:1250

NPS GROUP Property Consultants

"Intermediate Rental Units"	Affordable Housing Units to be constructed or provided as part of the Affordable Housing Scheme and to be available for rent at rents 20% (twenty per cent) below Market Rent
"Market Rent"	the estimated rent at which a property would be let on the date of valuation between a willing lessor and a willing lessee on appropriate tenancy terms in an arm's length transaction after proper marketing wherein the parties had acted knowledgeably prudently and without compulsion
"Occupation"	Occupation of a Dwelling for the purposes as authorised by the Planning Permission and excludes occupation for the purposes of construction, internal and external refurbishment, decoration, fitting-out, marketing or any other activity preparatory to the use of the Site for the purposes as authorised by the Planning Permission and the words "Occupy and Occupied" shall be construed accordingly
"Off-Site Open Space Contribution"	the sum calculated in accordance with the formula set out in Schedule 2 to this Agreement as increased by the Inflation Provision
"Open Market Dwellings"	dwellings erected or provided on the Site as part of the Development other than for the provision of Affordable Housing
"Open Market Value"	the best price at which the sale of an interest in a residential unit would have been completed

	unconditionally for cash consideration on the date of valuation assuming (i) a willing seller and a willing buyer (ii) any restrictions imposed on a residential unit by this Agreement are disregarded (iii) there has been a reasonable period to completion within which to negotiate the sale (iv) the residential unit has been freely exposed to the market (v) both the buyer and the seller acted knowledgeably prudently and without compulsion
"the Plan"	the plan annexed to this Agreement
"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 or any person on the Broadland Housing Register nominated by the Council
"Registered Provider"	a provider of social housing registered in the register kept by the Regulator of Social Housing as provided for in Chapter 3 of the Housing and Regeneration Act 2008 (or any statutory re-enactment or modification thereof)
"Regulator"	The Tenant Services Authority or such other body as shall from time to time be a regulator of

	Social Housing within the meaning of Section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers
"Shared Ownership Dwellings"	those Affordable Housing Units to be let on a Shared Ownership Lease
"Shared Ownership Lease"	a lease or sub-lease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 50% (fifty per cent) on first purchase of the equitable interest in the Shared Ownership Dwelling is paid by the tenant upon completion of such lease or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% (one hundred percent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and shall allow a rent to be charged on the remainder of the equitable interest such rent not to exceed Homes and Communities Agency target rents (or if such targets cease to be set such other measures of affordable rents as the Council shall reasonably determine) and in any event to be not higher than an annual sum calculated at 2.75% of the value of the equity retained by the Owner at the date of the grant of the Shared Ownership Lease and any increase of the said annual rent shall be no more than the percentage increase in the Retail Price Index (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% of the

	current annual rent from time to time
"Site"	the land at 389 Drayton High Road Hellesdon Norwich Norfolk 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

(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. Norfolk County Council (acting through its agents NPS Property Consultants Limited) submitted the Application and the Council has resolved to grant the Planning Permission subject to the entering into 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 successors in title and assigns

2.3 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn

2.4 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges

2.5 In the event that this Agreement comes to an end the Council if so requested by the Owner will execute a deed of release (or partial release) from the relevant provisions of this Agreement and procure that a note thereof shall be registered on the Council's Register of Local Land Charges

2.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any renewal thereof or any reserved matters approval with respect thereto) granted after the date of this Agreement in respect of which development this Agreement will not apply

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

3.4 No party shall be liable under this Agreement for any breach of the covenants contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any person's interest in the Site or any part thereof in respect of which any such breach has taken place

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 and Chief Planner (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
The Owner	The Senior Planning Consultant NPS Property Consultants Ltd Lancaster House 16 Central Avenue St Andrews Business Park Norwich NR7 0HR

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 reasonable legal 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 that remain unpaid for a period exceeding 28 days following a formal demand from the Council until payment of the outstanding sums has been made

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. TITLE WARRANTY

The Owner hereby warrants that it is the freehold owner of the Site and has full power to enter in to this Agreement and that the Site is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Site other than as notified in writing to the Council prior to the date hereof

12. DISPUTES

12.1 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

12.2 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

12.3 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.

12.4 Nothing in Clauses 12.1 and 12.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

13. PLANNING OBLIGATIONS

13.1 The Owner hereby covenants with the Council to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement

13.2 The Owner hereby covenants with the Council to pay to the Council the Off-Site Open Space Contribution prior to the Occupation of any Dwellings on the Site

13.3 The Owner hereby covenants with the Council to pay to the Council the Council's Monitoring Fee before the Commencement Date

14. COUNCIL OBLIGATIONS

14.1 The Council hereby covenants with the Owner that it will deposit the Off-Site Open Space Contribution into an interest bearing account and will apply the capital and any interest accrued wholly and exclusively towards the improvement of existing open space and outdoor recreational facilities and/or the provision and maintenance of new open space and outdoor recreational facilities in the Parish of Hellesdon

14.2 The Council hereby further covenants with the Owner that in the event that

14.2.1 the element of the Off-Site Open Space Contribution attributed by the Council for the provision and/or improvement of open spaces has not been so committed within 10 years of the date of receipt of the balance then the Council will repay to the payer so much of the sum as shall remain uncommitted together with all interest accrued

14.2.2 the element of the Off-Site Open Space Contribution attributed by the Council for the maintenance of open spaces has not been so committed within 21 years of the date of receipt of the balance then the

Council will repay to the payer so much of the sum as shall remain uncommitted together with all interest accrued

14.3 The Council hereby further covenants with the Owner that the Council's Monitoring Fee shall be used wholly and exclusively for checking the implementation of and compliance with the terms of this Agreement

SCHEDULE 1

1. AFFORDABLE HOUSING

1.1 Not to commence the Development until a scheme for the provision and long-term management of the Affordable Housing Units has been submitted to and approved by the Director, such approval not to be unreasonably withheld or delayed. The details shall comply with the following requirements:-

1.1.1 In the event of the Development comprising not more than nine Dwellings, at least 20% of the Dwellings shall comprise Affordable Housing Units

1.1.2 In the event of the Development comprising ten or more Dwellings, at least 30% of the dwellings shall comprise Affordable Housing Units

1.1.3 In each case at least 60% of the Affordable Housing Units shall comprise Affordable Rental Units and the remainder of the Affordable Housing Units shall comprise Intermediate Affordable Housing

1.2 Before granting approval the Council may require the Owner to enter into such supplementary agreements as it reasonably requires to give effect to the Affordable Housing Scheme and the Owner shall be required to pay the Council's reasonable legal costs in connection with such agreements

1.3 Once approved, the Affordable Housing Schee shall be complied with by the Owner

1.4 Not more than 25% Open Market Dwellings shall be occupied unless and until either

1.4.1 the land on which the Affordable Rental Units are to be provided has been transferred to a Registered Provider together with all rights service installations and access up to at least the boundary of the Land so as to be available in all respects for the provision of Affordable Housing; or

1.4.2 the Owner has entered into a contract with a Registered Provider for the provision of the Affordable Rental Units

1.5 Not to permit the Affordable Housing Units to be used or occupied for any purpose other than as Affordable Rental Units and Intermediate Affordable Housing as appropriate

1.6 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers

1.7 The Affordable Rental Units shall be constructed to the HCA Standards and to the regulatory level of the Code (unless agreed otherwise in writing by the Owner and the Council pursuant to the Affordable Housing Scheme)

1.8 Paragraphs 1.5 and 1.6 above shall not be binding upon any mortgagee in possession of the Affordable Housing Units or part thereof nor any receiver or manager (including an administrative receiver) for such mortgagee and shall cease to apply to any of the Affordable Housing Units where the Owner shall be required to dispose of such Units pursuant to a "statutory right to buy"

SCHEDULE 2

For each 1 bedroom dwelling comprised in the Development	£3,203
For each 2 bedroom dwelling comprised in the Development	£4,270
For each 3 bedroom dwelling comprised in the Development	£5,338
For each 4 bedroom dwelling comprised in the Development	£6,405
For each 5 or more bedroom dwelling comprised in the Development	£7,473

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

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

Head of Law