DATED 25th JUNE 2013

BROADLAND DISTRICT COUNCIL

-AND-

WHERRY HOUSING ASSOCIATION LIMITED

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

Relating to the Development of land at
21 – 34 Beighton Road, Acle, NR13 3DB;
land adjoining 16 Hillcrest, Acle, NR13 3DA
and land adjoining 1 Hillcrest, Acle, NR13 3DA

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

THIS DEED is made the 25th day of JUNE 2013

B E T W E E N:

(1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge 1 Yarmouth Road Norwich NR7 0DU ("the Council")

(2) **WHERRY HOUSING ASSOCIATION LIMITED** (Industrial and Provident Society Number 26622R) of Circle Anglia House, 1-3 Highbury Station Road London N1 1SE ("the Owner")

W H E R E A S:

A. The Council is a local planning authority for the purposes of the Act for the area within which the Sites are situated

B. The Owner is the freehold owner of the Sites registered with the Land Registry under title number NK88691

C. Circle Housing Group has submitted the Applications

D. The Council has resolved to approve the Applications subject to the completion of this Deed

1. INTERPRETATION AND DEFINITIONS

In this Deed 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"	means 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"	means Dwellings to be provided as Affordable Housing in accordance with Schedule 1 being Affordable Rental Units and "Affordable Housing Units" shall be construed accordingly;

"Affordable Rental Units"	means the eighteen (18) Affordable Housing Units to be constructed or provided pursuant to the Planning Permission and to be let for a rent by or on behalf of an AHP at rents that are not more than 80% of market rents;
"Affordable Housing Provider" or "(AHP)"	means: (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 Deed;
"Applications"	means the First Application, the Second Application and the Third Application;
"Code"	means the "Code for Sustainable Homes" published by the Department for Communities and Local Government in November 2010 (or any replacement Code for Sustainable Homes);
"Commencement Date"	means the implementation of the Planning Permissions by the carrying out on the Sites of a Material Operation;
"Development"	means the development permitted by the Planning Permissions;
"Director"	means the Council's Chief Executive or other officers of the Council acting under his hand;
"Dwelling"	means any residential dwelling (comprising a bungalow, flat, maisonette or house) constructed pursuant to the

Planning Permissions and "Dwellings" shall be construed accordingly;

"First Permission"	means the full planning permission to be granted pursuant to the First Application;
"First Site"	means the land shown edged red on Plan 1;
"HCA Standards"	means the appropriate and applicable "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Communities Agency or its successors or such other standard as may be agreed with the Affordable Housing Provider;
"Material Operation"	means a material operation as defined in Section 56(4) of the Act save that for the purposes of this Deed the following shall not constitute a material operation:- (a) site clearance (b) demolition of existing buildings (c) archaeological investigation (d) assessment of contamination (e) remedial action in respect of contamination (f) the erection of fences or other means of enclosure for site security (g) the diversion and laying of services (h) the erection of a site compound or site office or temporary buildings or structures;
"Occupation"	means occupation for the purposes permitted by the Planning Permissions 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 and "Occupy" and "Occupied" shall be construed accordingly;

"Plan 1"	means the plan annexed to this Deed and so marked;
"Plan 2"	means the plan annexed to this Deed and so marked;
"Plan 3"	means the plan annexed to this Deed and so marked;
"Planning Permissions"	means the First Permission, the Second Permission and the Third Permission;
"Qualifying Occupiers"	means in relation to any person housed in an Affordable Housing Unit, a person who meets the qualifying criteria 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 1996 and 2004 and the Homelessness Act 2002) and having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally;
"Second Permission"	means the full planning permission to be granted pursuant to the Second Application;
"Second Site"	means the land edged red on Plan 2;
"Sites"	means together the First Site, the Second Site and the Third Site;
"the First Application"	means the application for full planning permission registered 18 March 2013 and bearing reference number 20130364 for the erection of 14 affordable replacement dwellings at 21-34 Beighton Road, Acle, NR13 3DB on the First Site;
"the Second Application"	means the application for full planning permission registered 18 March 2013 and bearing reference number 20130367 for the erection of 2 affordable dwellings at land adjoining 16 Hillcrest, Acle, NR13 3DA on the Second Site;

PLAN 1

Broadland District Council
– leading the way –
broadland.gov.uk

Application No: 20130364

21-34 Beighton Road,Acle,NR13 3DB

Scale: 1:1250

Date: 22-Mar-13

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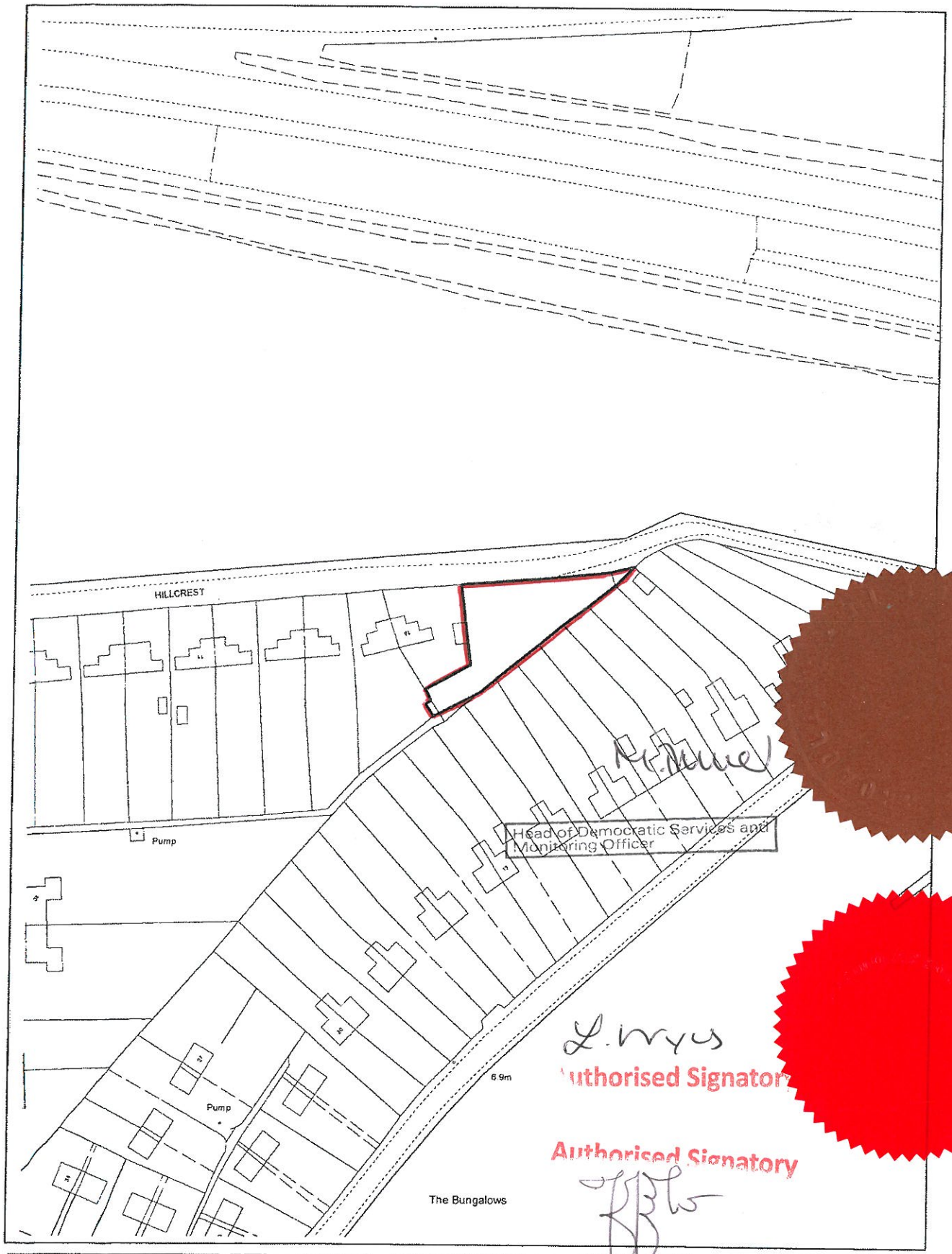
PLAN 2



Broadland District Council – leading the way – broadland.gov.uk	**Application No: 20130367** **Land Adj. 16 Hillcrest,Acle,NR13 3DA**	**Scale:** 1:1250 **Date:** 22-Mar-13	N

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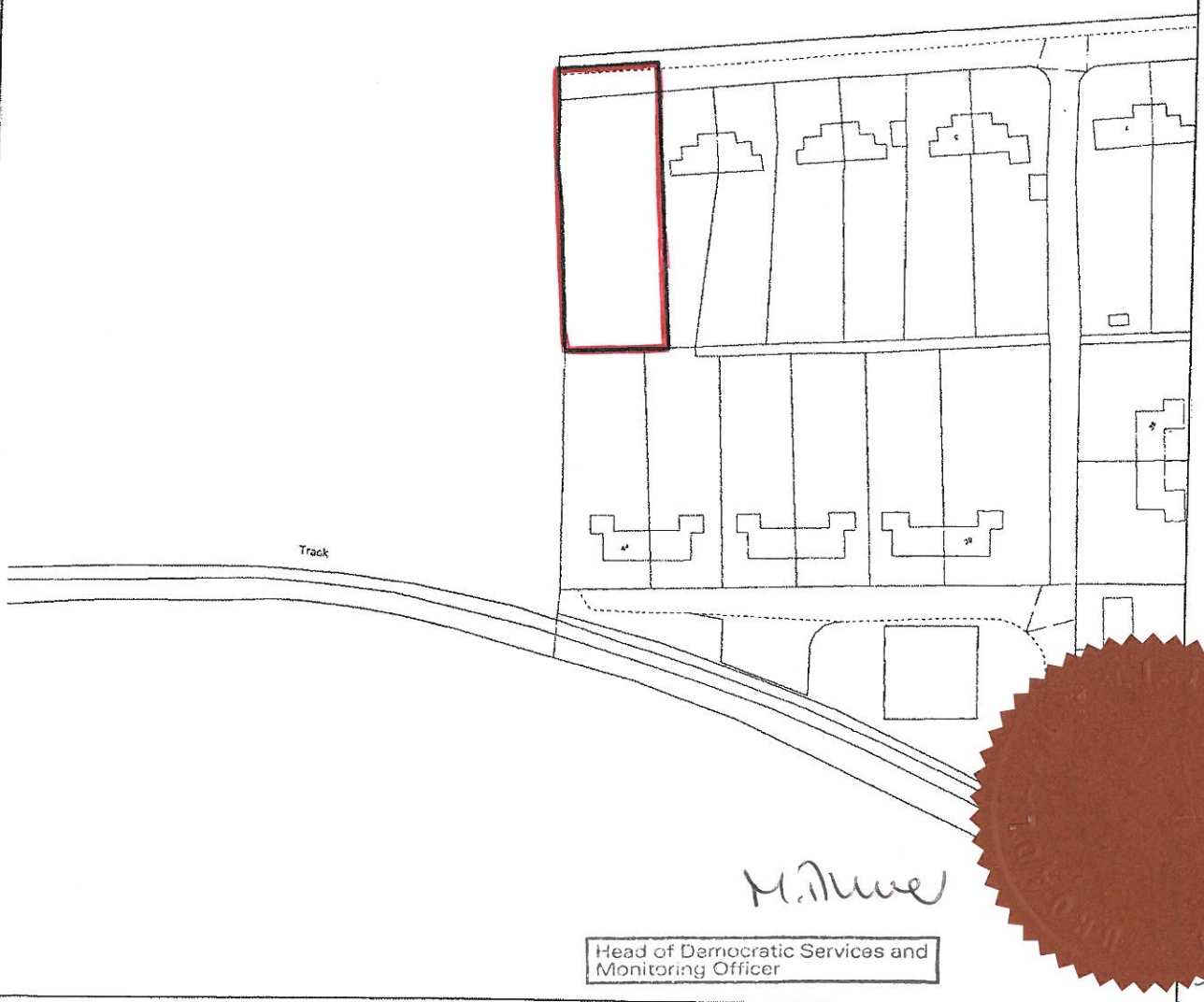
PLAN 3

Authorised Signatory

Authorised Signatory

Authorised Signatory

11298



Head of Democratic Services and Monitoring Officer

9237

Broadland District Council
- leading the way -
broadland.gov.uk

Application No: 20130368

Land Adj. 1 Hillcrest,Acle,NR13 3DA

Scale: 1:1250

Date: 22-Mar-13

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"the Third Application"	means the application for full planning permission registered 18 March 2013 and bearing reference number 20130368 for the erection of 2 affordable dwellings at land adjoining 1 Hillcrest, Acle, NR13 3DA on the Third Site;
"Third Permission"	means the full planning permission to be granted pursuant to the Third Application;
"Third Site"	means the land edged red on Plan 3

In this Deed unless the context otherwise requires:

(i) references to any party shall include the successors in title and assigns of that party;

(ii) covenants given or made by any party which includes more than one person (whether natural or artificial) shall be deemed to be given or made jointly and severally;

(iii) references to clauses and schedules are references to clauses in and schedules to this Deed except where otherwise specified;

(iv) 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; and

(v) headings in this Deed shall not form part of or affect its construction

2. GENERAL PROVISIONS APPLICABLE TO THIS DEED

2.1 This Deed is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 Section 1 of the Localism Act 2011 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 in respect of that part of the Site in which a breach occurs

2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Deed 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 Deed shall have immediate effect upon completion of this Deed 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 The provisions of this Deed shall apply to the First Site upon:

(a) the grant of the First Permission; and

(b) the commencement of the First Planning Permission

2.6 The provisions of this Deed shall apply to the Second Site upon:

(a) the grant of the Second Permission; and

(b) the commencement of the Second Planning Permission

2.7 The provisions of this Deed shall apply to the Third Site upon:

(a) the grant of the Third Permission; and

(b) the commencement of the Third Planning Permission

2.8 The provisions of this Deed shall cease to have effect in respect of:

(a) the First Site if the First Permission is quashed, revoked or otherwise withdrawn;

(b) the Second Site if the Second Permission is quashed, revoked or otherwise withdrawn; and

(c) the Third Site if the Third Permission is quashed, revoked or otherwise withdrawn

2.9 This Deed shall be registered by the Council 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 Deed 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 was not a party to this Deed

3.2 Invalidity or Unenforceability of any of the terms of this Deed

If any provision in this Deed 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 Deed 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 Deed 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 Deed shall be as follows:-

The Council	The Chief Executive Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich NR7 0DU
The Owner	Wherry Housing Association Limited Circle Anglia House 1-3 Highbury Station Road London N1 1SE

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 Deed and no person who is not a party to this Deed (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 Deed pursuant to the provisions of the said act

6. COSTS

6.1 The Owner shall on completion of this Deed pay to the Council its legal and administrative costs reasonably and properly incurred in the preparation negotiation and completion of this Deed

7. JURISDICTION

7.1 This Deed is to be governed by and interpreted in accordance with the law of England

8. DISPUTE RESOLUTION

8.1 The parties to this Deed will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the parties who have authority to settle the same

8.2 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 for effective Dispute Resolution

8.3 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

8.4 Nothing in Clause 8.1, 8.2 and 8.3 shall prevent the parties from commencing or continuing court proceedings for injunctive relief in respect of the breach of the obligations in Schedule 1

9. TITLE WARRANTY

9.1 The Owner hereby warrants that it is the freehold owner of the Sites which are registered at the Land Registry under title number NK88691 and has full power to enter into this Deed and that it has power to bind all interests in the Sites

10. PLANNING OBLIGATIONS

10.1 The Owner hereby covenants with the Council to comply with the obligations and restrictions set out in Schedule 1 to this Deed

SCHEDULE 1

1. AFFORDABLE HOUSING

The Owner covenants with the Council:

1.1 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Code and 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 Not to allow or permit the Affordable Housing Units to be occupied other than by Qualifying Occupiers and in accordance with the Local Lettings Policy

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 or successors in title to the mortgagee in possession;

(b) any receiver or manager (including an administrative receiver) for such mortgagee referred to at paragraph 1.5(a); or

(c) any individual owner or occupier of the Affordable Housing Units who has purchased the Affordable Housing Unit pursuant to a right to buy claim under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

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)

Authorised Officer

Head of Democratic Services and Monitoring Officer

THE COMMON SEAL of)
WHERRY HOUSING ASSOCIATION)
LIMITED)
was hereunto affixed)
in the presence of)

Authorised Signatory

Authorised Signatory

Appendix 1

Local Lettings Policy

1. Allocations will be made to applicants on the housing list managed and maintained by Broadland District Council on the following priority basis:

1.1 Residents of Acle who have lived in the parish of Acle for a total of at least 3 of the last 10 years.

1.2 Former residents of Acle who have had their main home in the parish of Acle for 3 of the last 10 years.

1.3 Households who need to move to the parish of Acle to give/receive support from family/relatives.

1.4 Residents of the adjacent parishes of Beighton, Halvergate, Lingwood and Burlingham, and Upton with Fishley who have lived in these parishes for the last three years.

1.5 People working in the parish of Acle who have done so for a year or more.

1.6 Residents of Acle who have lived in the parish of Acle for less than three years.

1.7 Residents of the adjacent parishes of Beighton, Halvergate, Lingwood and Burlingham, and Upton with Fishley who have lived in these parishes for less than 3 years.

1.8 Residents of the adjacent parishes of Blofield, Brundall, Cantley, Freethorpe, Hemblington, South Walsham, and Strumpshaw, who have lived in these parishes for the last three years.

1.9 Residents of the adjacent parishes of Blofield, Brundall, Cantley, Freethorpe, Hemblington, South Walsham, and Strumpshaw who have lived in these parishes for less than 3 years.

1.10 Residents of Broadland District.

1.11 Any other person.

2. Administrative Procedure for Nominations

2.1 The administrative procedure for nominations shall be in accordance with the operational procedures of the allocations scheme as amended from time to time or in accordance with alternative procedures as the Council and the AHP shall agree between them.