

DATED 7th April 2014

BROADLAND DISTRICT COUNCIL

- and -

NORFOLK COUNTY COUNCIL

- and -

M.J. and J.R. KEELER

- and -

BDW TRADING LIMITED

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

relating to the development of land
at Mill Lane, Horsford, Norfolk

THIS AGREEMENT is made the 7th day of April 2014
BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk NR7 0DU (the "Council")
2. NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich NR1 2DH (the "County Council")
3. MICHAEL JOHN KEELER of The Flagcutters, 360 Holt Road, Horsford, Norfolk NR10 3ES and JOANNE ROSE KEELER of Sharps Hall Farm, Horsford, Norfolk NR10 3ES ("the Owners")
4. BDW TRADING LIMITED (Company Registration No 3018173) of Barratt House, Cartright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("the Developer")

WHEREAS:-

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated and the County Council is the relevant Highway Authority, Education Authority and is also a Local Planning Authority for the purposes of the Act
- B. The Owners are the freehold owners of the Site
- C. The Developer has an option to purchase the Site
- D. With the full knowledge and consent of the Owners the Developer has submitted the Application to the Council
- E. The parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement

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 provided in accordance with the requirements of Schedule 1 to this Agreement 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 Provider ("AHP")	either: (i) a registered provider as defined by S.80 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 Agreement
"Affordable Housing Provision"	the provision of thirty nine (39) Dwellings constructed or provided as part of the Development as Affordable Housing (of which thirty four (34) units will be Affordable Rental Units and five (5) units will be Shared Ownership or Shared Equity Dwellings) (2 of which Shared Ownership or Shared Equity Dwellings are to be bungalows suitable for use by those using wheelchairs ("Wheelchair Adaptable Bungalow") and built to the Lifetime Homes Design Criteria as set out in the Lifetime Homes Design Guide published by LHS BRE Press in November 2011 and written by Habinteg Housing Association)

"Affordable
Housing
Scheme"

a detailed scheme securing the Affordable Housing Provision submitted to and approved by the Council for the provision of Affordable Housing on the Site which complies with the requirements of Schedule 1 and Schedule 3 (the Affordable Housing Mix/Tenure) and also specifies:

- the number of Affordable Housing Units to be constructed as part of the Development;

- the location of each of the Affordable Housing Units within the Development

- the timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Housing Units;

or such amended or replacement Affordable Housing Scheme as the Council approves in writing from time to time

"Affordable
Housing Units"

individual units of residential accommodation constructed or provided as part of the Development as Affordable Housing

"Affordable
Rental Units "

Thirty four (34) Affordable Housing Units to be constructed or provided as part of the Development pursuant to the Affordable Housing Provision and the Affordable Housing Scheme and to be let for a rent by or on behalf of an AHP as Affordable Rented Housing (as defined in the National Planning Policy Framework (2012)) or any equivalent rental tenure at rents up to 80% of market rents but not exceeding local housing allowance for the area in accordance with the requirements of Schedule 1 on a weekly or monthly tenancy basis at affordable rents (being not more than 80% of the local market rent inclusive of service charges) in accordance

with the requirements of Schedules 1, 2 and 3

"Application"	the application for full planning permission dated 23 April 2013 and bearing reference number 20130547 for the development of the Site by the erection of 125 Dwellings, associated roads, parking, pumping station, open space and landscaping
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government dated December 2006
"Commencement of Development"	the date on which any Material Operation forming part of the Development begins to be carried out and "Commence Development" shall be construed accordingly
"Development"	the development of the Site permitted by the Planning Permission
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"Dwelling"	any unit of residential occupation (including an Affordable Housing Unit) being a self-contained house maisonette bungalow or flat constructed as part of the Development and "Dwelling" shall be construed accordingly
"HCA Standards"	the "Housing Quality Indicators" and "Design & Quality Standards" specified by the Homes and Communities Agency and issued in April 2007
"Index Linked"	the indexation adjustment to the contributions payable under the various provisions of this Agreement in accordance with the requirements of Clause 14 and 'Indexation' shall be

construed accordingly

"Informal Landscaped Area"	that part of the Site identified in a scheme and a plan approved by the Council prior to the Commencement of Development comprising a strip of land approximately [seven] metres wide along the boundary between the Site and the adjoining dwellings to the south west in 'shrublands' required to be kept open as a services strip for access for maintenance and repair or services which is to be provided as an informal landscaped area to which the general public is not to have access and which is to be transferred to the Management Company (in accordance with the requirements at Schedule 7).
"Local Lettings Policy"	the Policy of the Council (as amended from time to time) which inter alia and together with the Council's Housing Allocations Policy specifies the manner in which the Affordable Housing Units are to be let
"Local Lettings Policy Eligibility Cascade"	by reference to the Local Lettings Policy the order in which the Affordable Housing Units are to be allocated and which is set out under the title "Local Lettings Policy Eligibility Cascade" at Schedule 2 to this Agreement as amended from time to time
"Management Company"	a company or companies established or identified by the Owners for the purposes of managing and maintaining the Open Space and Play Areas (and/or such other areas as shall be agreed between the Owners and/or the Management Company and the Council).
"Market Rent"	the estimated price or premiums for which a property or space within a property should lease on the date of valuation between a willing lessor and a willing lessee on appropriate

lease terms in an arm's length transaction after proper marketing where the parties had acted knowledgeably prudently and without compulsion

"Material
Operation"

a material operation as defined in Section 56(4) of the Act save that for the purposes of this Agreement 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"

occupation of a building as a Dwelling Unit (but not including occupation by contractors or for construction or fitting out purposes or as a showroom or sales office) and "Occupy" and "Occupied" shall be construed accordingly

"Open Market
Dwellings"

Dwellings other than Affordable Housing Units

"Open Space"

that part of the Site identified in a scheme and a plan approved by the Council prior to the Commencement of Development as being set out or provided as open space to which the general public is to have free and unrestricted access and to be transferred to the Management Company (in accordance with the requirements at Schedule 7), with easy and adequate pedestrian and vehicular access thereto

"Plan"	the plan annexed to this Agreement
"Planning Permission"	the full planning permission to be granted pursuant to the Application
"Play Areas"	a minimum of 400 square metres of formal and informal play space within the Site and laid out and equipped in accordance with a scheme and plans agreed in writing prior to Commencement of the Development with the Council for recreational use for toddlers and children of the parish of Horsford including occupiers of the Development, such areas to be transferred to the Management Company in accordance with the requirements at Schedule 7
"Practical Completion"	The issue of a certificate of practical completion by or on behalf of the Owners and "Practically Complete" shall be construed accordingly
"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 (as amended from time to time and as formulated pursuant to the provisions of the Housing Acts 1985, 1996 and 2004 and the Homelessness Act 2002) or where such persons have been exhausted any person as nominated by the Council within one month after a written request to the Council by the AHP or if none are so nominated by the Council persons that the AHP owning or managing the Affordable Housing Units on the Site is entitled to house within its rules

"Shared Equity
Dwellings"

the provision of Affordable Housing by the sale of a share of the equity, initially 75% secured either by the grant of a Shared Ownership lease or Shared Equity mortgage or charge in terms generally acceptable to mortgage lenders who are members of the Council of Mortgage Lenders, in accordance with details approved by the Council acting reasonably in accordance with paragraph 10² of Schedule 1, and in respect of which:-

JRK mjk. Laytons

- (a) any retained equity interest (whether freehold reversion to a shared ownership lease or shared equity mortgage or charge) shall be transferred to an AHP or (if none can be secured to take such transfer) the Council
- (b) no rent shall be charged on such retained equity share
- (c) the buyer of the unit shall have the ability to acquire the retained equity share and
- (d) the retained equity share shall be available to a mortgagee of the owner of the dwelling if there is a shortfall on realisation of such owner's interest following default

"Shared
Ownership
Dwellings"

Affordable Housing Units to be constructed or provided as part of the Affordable Housing Scheme and to be let on a Shared Ownership Lease

"Shared
Ownership
Lease"

a lease or sublease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 50% (fifty per cent) of the equity is granted on first purchase of the equitable interest in the Shared Ownership Dwelling and 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 lessee

to purchase the freehold of a Shared Ownership Dwelling and acquire up to 100% of the legal and equitable interest by instalments at some future date or dates and allows a rental premium to be charged on the remainder of the equitable interest not exceeding 2.75% of the value of the equity retained by the Affordable Housing Provider, such rent not to be increased by more than the percentage increase in the Consumer Price Index (or such other index as the Council may determine) plus 1.0% of the current annual rent from time to time

"Site" the land at Mill Lane Horsford Norfolk which is shown for the purposes of identification only edged red on the Plan

1.2 In this Agreement unless the context otherwise requires:

- a) references to any party shall include the successors in title and assigns of that party
- b) 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
- c) references to clauses and schedules are references to clauses in and schedules to this Agreement
- d) 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

- e) headings in this Agreement shall not form part of or affect its construction

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 Section 2 of the Local Government Act 2000 and any other enabling powers
- 2.2 The covenants, restrictions, requirements and obligations arising hereunder are planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and the County Council against the Owners and their respective successors in title and assigns
- 2.3 The provisions of this Agreement are conditional upon the grant of the Planning Permission and the Commencement of Development save for the provisions of clauses 6 (costs) and 9 (jurisdiction) which shall come into effect immediately upon completion of this Agreement
- 2.4 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.5 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges
- 2.6 In the event that this Agreement comes to an end the Council if so requested by the Owners 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

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 or the County Council in the exercise of their functions as Local Planning Authority and Highway 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 or the County 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 or the County Council of any breach or default by the Owners in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council or the County 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 restrictions or obligations 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 subsisting breach occurring prior to the parting with such person's interest in the Site or any part thereof in respect of which any such breach has taken place

3.5 The Council and the County Council shall not be liable to any person under this Agreement after that person has parted with all interest in the Site save in respect of any prior subsisting breach.

3.6 The obligations of the Owners hereunder shall not be enforceable against:-

3.6.1 The owner or occupier for the time being of one or more individual Dwellings and any mortgagee or chargee deriving title from them;

3.6.2 Any service companies or statutory undertakings who purchase or take a lease or otherwise become proprietor of any land on the Site for the purpose of providing services or facilities in connection with the Development;

3.6.3 (Save in respect of paragraphs 3, 6 to 10 inclusive and 13 of Schedule 1) A provider of Affordable Housing registered under the Housing and Regeneration Act 2008 acquiring or owning for the time being any Affordable Housing Unit the part of the Site upon which any Affordable Housing Unit or Units and their curtilages and common parts are to be built or any part thereof;

3.6.4 Any mortgagee or chargee of any Affordable Housing Unit or land for Affordable Housing or any receiver appointed by any such mortgagee or Charge or any person or persons deriving title or an interest in the whole or any part of any such land from such mortgagee, chargee or receiver

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

Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew,
Norwich, Norfolk NR7 0DU

The County Council	the Director of Environment, Transport and Development County Hall Martineau Lane Norwich NR1 2DH
The Owners	Each of their addresses shown above
The Developer	Barratt House, Cartright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF and to 7 Springfield Lyons Approach, Chelmsford CM2 5EY

- 4.3 Any notice or other written communication to be given by the Council or County Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council or County 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 Developer shall on completion of this Agreement pay the Council's and the County Council's reasonable legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

7. Payment of Interest

- 7.1 The Owners 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. Title Warranty

10.1 The Owners hereby warrant to the Council and to the County Council that they are the freehold owners of the Site under Land Registry title no NK382297 and have 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's Director and the County Council's Head of Law prior to the date hereof other than the Developer pursuant to its option agreement to purchase the Site

11. Disputes

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, 11.2 and 11.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings
12. Covenants
- 12.1 The Owners hereby covenant with the Council to carry out and comply with the obligations and restrictions on its part set out in this Agreement and set out in Schedules 1, and 7 hereto which are expressed to be given to or to be for the benefit of the Council and as a separate covenant with the County Council to carry out and comply with the obligations and restrictions on its part set out in this Agreement and set out in Schedules 4 and 6 hereto which are expressed to be given to or to be for the benefit of the County Council
- 12.2 The Developer acknowledges to the Council that its interest in the Site under its option agreement with the Owners to purchase the Site is bound by the terms of this Agreement

12.3 The County Council covenants to comply with the obligations and restrictions contained within the Fourth Schedule to this Deed.

13. Owners and Developers Indemnity

13.1 The Owners and the Developer agree that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Agreement are hereby waived

14. Index Linking

14.1 Where any sum specified to be payable by the Owners under the terms of this Agreement is expressed to be Index Linked, that sum shall be Index Linked from the completion of this Agreement until such time as the payment of that sum is made such Index Linking to be equivalent to any increase or decrease in the in the Building Cost Information Service All-In Tender Price Index (or in the event that the Index shall have ceased to be published at the date of the relevant payment, then the closest equivalent Index shall be used as agreed between the parties acting reasonably).

15. Issue of Approvals

15.1 Where any approval, consent, agreement or the like is required to be given by the Council or the County Council pursuant to the terms of this Agreement it shall be in writing and shall not be unreasonably withheld or delayed

16. Statutory Undertakers and Developers Consent

16.1 The obligations and restrictions in this Agreement shall not be enforceable against any statutory undertaker which acquires any part of the Site for the purposes of its statutory undertaking or function

16.2 The Developer hereby consents to the Site being bound by the provisions of this Agreement provided that the Developer shall have no liability under this Agreement unless and until it shall have acquired a legal interest in the Site

17. Notification

17.1 The Owners agree to give the Council and the County Council notice in writing no later than 14 days prior to the anticipated Commencement of Development, first Occupation of the Development and the reaching of any other Occupation or completion threshold or trigger relating to the obligations contained in this Deed PROVIDED THAT default in giving the requisite notice shall not prevent the Commencement of Development occurring or the triggering of obligations contained herein.

Mr. Veeber

DTL

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Alphie

M. M. M.

Head of Democratic Services and
Monitoring Officer

REV	DATE	DESCRIPTION	DRAWN	CHECKED BY
1		Revisions		

PLANNING

CF

Architects & Engineers & Quantity Surveyors

David Wilson Homes
Residential Development
Horford

Site Location Plan

4497

50

120413

1:1250@A2

pd

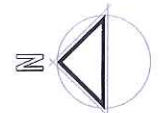
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30 York Road
Newport
NP23 7ET
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Fax: 01603 700091
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Also at:
London
Winchester
Great Yarmouth

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Site Plan 1:1250

SCHEDULE 1
Affordable Housing

The Owners hereby covenant with the Council as follows:

1. Not to Commence or allow Commencement of the Development unless and until the Affordable Housing Scheme has been submitted to the Council and has been approved by Council in writing ("the Approved Affordable Housing Scheme")
2. Not to Occupy or allow Occupation of the first Open Market Dwelling unless and until an exchanged unconditional contract for the sale of the Affordable Housing Units to an AHP has been supplied to the Council unless otherwise agreed in writing with the Council
3. Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission, the Affordable Housing Scheme (including the provisions of Schedule 3), to a minimum of level 3 of the Code and to HCA Design Quality Standards (April 2007)
4. Not to Occupy or allow Occupation of more than 35 of the Open Market Dwellings without the written agreement of the Council unless and until 12 of the Affordable Housing Units provided under the Approved Affordable Housing Scheme are Practically Complete and have been transferred to the AHP unless paragraph 14 applies
5. Not to Occupy or allow Occupation of more than 60 of the Open Market Dwellings without the written agreement of the Council unless and until the remaining Affordable Housing Units provided under the Approved Affordable Housing Scheme are Practically Complete and have been transferred to the AHP unless paragraph 14 applies
6. Not to use or allow or permit the Affordable Housing Units to be used for any purpose other than as Affordable Rental Units (34 units) or as Shared

Ownership/Shared Equity Dwellings (5 units) or such other form of tenure as may from time be agreed in writing by the Council

7. That the Affordable Housing shall not be Occupied other than by eligible persons in accordance with the Affordable Housing Scheme and where applicable (having regard to the provisions of paragraph 8 below) the Local Lettings Policy Eligibility Cascade
8. Subject to Paragraph 11 that where Affordable Housing Units have been transferred to an AHP the AHP shall not thereafter dispose of its interest in the relevant Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other AHP
9. That up to 33% (thirty three per cent) of the Affordable Rental Units will be let in accordance with the Local Lettings Policy Eligibility Cascade (PROVIDED THAT and for the avoidance of doubt the Council shall solely determine the number of Affordable Rental Units (not exceeding 33%) which will be subject to the Local Lettings Policy Eligibility Cascade)
10. That it will use reasonable endeavours to recycle any recyclable grant or proceeds from the disposal of the Affordable Housing Units in line with the requirements of the Homes and Communities Agency's Capital Funding Guide and that it will use reasonable endeavours to reinvest these sums by no later than 10 years from the date of receipt within the administrative area of the Council.
11. Where Affordable Housing Units have been transferred to an AHP as part of the Affordable Housing Scheme paragraphs 6, 7, 8 and 9 above shall not be binding upon:

- 11.1 any mortgagee exercising its power of sale in respect of the Affordable Housing Units or part thereof:
 - 11.2 any receiver or manager (including an administrative receiver) for such mortgagee;
 - 11.3 any of the Affordable Housing Units where the AHP shall be required to dispose of such Affordable Housing Units pursuant to a statutory right to buy;
 - 11.4 by a person who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold of the Shared Ownership Dwelling or has acquired 100% of a Shared Equity Dwelling
 - 11.5 any mortgagee of a Shared Ownership leaseholder lawfully exercising the mortgagee protection provisions within the Shared Ownership Lease;
 - 11.6 any successor in title to persons referred to in 11.1 to 11.5 above
12. Any proposal for Shared Equity Dwellings shall include provision for checking the eligibility of prospective purchasers by reference to the qualifying eligibility criteria previously agreed with the Council and for providing such information to the Council to enable it to confirm whether any prospective purchaser is eligible (which the Council shall provide within 10 working days of a written request for approval being submitted to the Council) and the Owners and the Council shall co-operate in agreeing the procedure for obtaining evidence of eligibility and notifying prospective buyers.
13. Any sale to an AHP shall be for a consideration at a level which ensures that no public subsidy is required to enable the transaction to be completed and to enable Affordable Rented Dwellings and Shared Equity Dwellings or Shared Ownership Dwellings to be let or sold as the case may be at a cost low enough for Eligible Persons to afford PROVIDED ALWAYS that this restriction

shall not apply if at the date of such sale subsidy is available in which case such subsidy may be applied towards the cost of the relevant Affordable Housing Units for which it is available

14. Notwithstanding the provisions of paragraphs 4 and 5 above if the Affordable Housing Scheme permits the construction and provision of Shared Equity Dwellings:
 - 14.1 Under paragraph 4 the (12) Affordable Housing Units referred to may include any Dwellings sold as Shared Equity Dwellings which shall be both Practically Complete and have been sold or transferred to a first purchaser but such Dwellings need not have been transferred to an AHP before more than 35 Open Market Dwellings can be Occupied
 - 14.2 Under paragraph 5 it will be sufficient for all or any of the Dwellings constructed and provided as Shared Equity Dwellings to be Practically Complete but without the need for such Dwellings to have been sold or transferred to a first purchaser before the remainder of the Open Market Dwellings can be Occupied
 - 14.3 Notwithstanding the provisions of paragraphs 14.1 and 14.2 the retained equity in any Shared Equity Dwellings shall be transferred to an AHP not later than two months after the completion of a sale to the first purchaser

SCHEDULE 2

Local Lettings Policy Eligibility Cascade for Land at Mill Lane, Horsford

1. Up to one third (or such other amount as the Council shall reasonably require but not in excess of one third) of the Affordable Rented Dwellings (as chosen by the Council) shall be let on first Occupation in accordance with the local lettings policy set out below:
 - (i) first allocations shall be made to people living in the Parish of Horsford;
 - (ii) if there is no suitable person in paragraph (i) allocations will be made to people who work in the Parish of Horsford;
 - (iii) if there are no suitable persons in paragraphs (i) and (ii) allocations will be made to people who need to move to the Parish of Horsford to give/receive support to/from close family;
 - (iv) if there are no suitable persons in paragraph 4(i), (ii) and/or (iii) allocations will be made to households living within the administrative area of the Council in accordance with the Council's policies relating to housing allocations.
2. Administrative Procedure for Nominations
 - 1.2 To grant to the Council nomination rights to 100% of the Affordable Housing Units.
 - 1.3 The administrative procedure for nominations shall be in accordance with the Council's Housing (Options) Allocations Policy, as amended from time to time, or in accordance with alternative procedures as the Council and the Owners shall agree between them.

SCHEDULE 3

Affordable Housing Mix/Tenure :		
Property Type	Tenure	Total Number of Dwellings
1 Bedroom 2-Person Flat	Affordable Rent	6
1 Bedroom 2-Person House	Affordable Rent	8
2 Bedroom 4-Person House	Affordable Rent	6
2 Bedroom 4-Person Bungalow	Affordable Rent	4
3 Bedroom 6-Person House	Affordable Rent	6
4 bedroom 8-Person House	Affordable Rent	2
2 Bedroom 4-Person Bungalow Fully Wheelchair Adaptable	Affordable Rent	2
2 Bedroom 4 Person House	Shared Ownership/ Shared Equity	3
3 bedroom 6-Person House	Shared Ownership/ Shared Equity	2

SCHEDULE 4

TRAVEL PLAN

In this Schedule (and elsewhere in this Agreement where the context permits) the following words and phrases shall have the following meaning:

"Approved Travel Plan"	Means the Travel Plan submitted to the County Council by the Owners in accordance with this Agreement and approved by the County Council in writing
"Bond Sum"	Means the sum of £416 per Dwelling being the cost of implementation of and compliance with the Approved Travel Plan
"Travel Plan"	Means a framework of options/measures to enable and encourage people to travel more sustainably and reduce the need to travel altogether being site and people specific and comprising a range of "hard" (built) and "soft" (behavioural change) measures to mitigate the traffic effects of the Development on the road network in accordance with the County Council's Travel Plan Guidance
"Travel Plan Bond"	Means a bond in the form annexed at Schedule 5
"Travel Plan Contribution"	Means the sum of £52,000 towards the implementation of the Travel Plan for the Development such sum to be Index Linked
"Travel Plan Review Fee"	Means the annual sum of £416 towards the performance review of the Approved Travel Plan

such sum to be Index Linked

"Travel Plan Update" Means a Mode of Travel Survey prepared in consultation with the County Council detailing how the Approved Travel Plan has operated during the relevant period and its effectiveness

The Owners hereby covenant with the County Council as follows:

1. Prior to Commencement of the Development the Owners shall give notice to the County Council electing either:-
 - 1.1 to pay the Travel Plan Contribution to the County Council prior to the first Occupation of any Dwelling in order for the County Council to produce, approve and monitor a Travel Plan for the Development; or
 - 1.2 to implement a Travel Plan themselves.
2. If the Owners opt to implement a Travel Plan themselves (option 1.2 above), the Owners shall:-
 - 2.1 Not to Commence or allow Commencement of the Development unless and until a Travel Plan has been submitted to the County Council for approval as an Approved Travel Plan in accordance with this Agreement and thereafter to monitor and review the Approved Travel Plan and submit a Travel Plan Update to the County Council on the 12 (twelve) month anniversary after the date of first Occupation of the Development and on subsequent anniversaries or such other date as may be agreed with the County Council such monitoring to continue each year until the second anniversary of final Occupation of the Development; and
 - 2.2 The Owners will not allow first Occupation of any Dwelling unless and until it has complied with paragraphs 2.2(a) or 2.2(b) below as follows:-

- (a) obtained and provided to the County Council the Travel Plan Bond with a Surety approved by the County Council for the Bond Sum ("the Approved Travel Plan Bond");

OR

- (b) deposited the Bond Sum with the County Council ("the Travel Plan Deposit")

2.3 In the event that the Owners fail in the reasonable opinion of the County Council to perform the obligations and deliver the requirements of the Approved Travel Plan the County Council shall serve notice on the Owners confirming the actions required by the Owners to comply with the obligations contained in this Deed ("the Performance Notice"); and

2.4 If after a period of 28 days the Owners have failed in the reasonable opinion of the County Council to comply with the Performance Notice the County Council may call in the Approved Travel Plan Bond and carry out the requirements of the Approved Travel Plan without further recourse to the Owners.

2.5 Prior to first Occupation and on every anniversary thereafter it will pay to the County Council the Travel Plan Review Fee such payment to continue to be made until the second anniversary of final Occupation of the Development (and for the avoidance of any doubt therefore the Travel Plan Review Fee is payable only if the Owners opt to implement a Travel Plan themselves (option 1.2 above).

The County Council hereby covenants with the Owners

1. In the event that the Owners opt to produce a Travel Plan

1.1 Subject to the Owners complying with the Approved Travel Plan the County Council on the first anniversary of first Occupation will reduce the Bond Sum

by an amount proportionate to the number of Dwellings Occupied at that time and thereafter by a further proportionate amount on a yearly basis

- 1.2 On reduction of the Bond Sum in accordance with 1 above, the County Council shall within 28 days return such reduced amount of the Travel Plan Deposit (if applicable) to the Owners, or confirm in writing to the Surety that such proportion of the Approved Travel Plan Bond is released.
2. In the event the Owners have opted to make a payment to the County Council of the Travel Plan Contribution the County Council covenants with the Owners to hold the Travel Plan Contribution in an interest bearing account and to apply it and any interest accrued upon it only to the provision, implementation and monitoring of a Travel Plan for the Development

SCHEDULE 5

TRAVEL PLAN BOND

In this BOND OF SURETY the following persons are named:-

The Developer is

Whose registered office is situate at

The Surety is

whose registered office is

The County Council is THE NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich Norfolk

BY THIS BOND the Developer and the Surety are held and firmly bound to the County Council in the sum of (£) to be paid to the County Council for which payment we jointly and severally bind ourselves and our successors and assigns by these presents

SEALED WITH OUR SEALS this day of 20

WHEREAS by an Agreement dated and made between the County Council and the Developer the Developer undertook in accordance with Clause of the said Agreement to enter into a bond with an Assurance Company guarantee society bank or like body in favour of the County Council of the sum of £

AND WHEREAS the Surety at the request of the Developer and with the approval of the County Council has agreed to become the surety for the Developer and will pay to the County Council the Bond Sum upon demand

NOW THE CONDITIONS of the above written Bond are such that if the Developer shall duly perform and observe all the terms provisions conditions and stipulations of the said Agreement on the Developers part to be performed and observed or if on default by the Developer the Surety shall satisfy and discharge the damages sustained by the County Council (including without prejudice to the generality thereof any costs actually incurred by the County Council pursuant to the said Agreement) thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect but no alteration in the terms of the said Agreement made by agreement between the County Council and the Developer or in the extent or nature of the works to be performed thereunder and no allowance of time by or on behalf of the County Council under the said Agreement nor any forbearance or forgiveness in or in respect of any matter or thing concerning the said Agreement on the part of the County Council shall in any way release the Surety from any liability under this Bond

AND IT IS AGREED THAT subject to the Developer performing the obligations and delivering the requirements of the Approved Travel Plan (as defined in the Agreement) upon receipt of written confirmation from the County Council (such confirmation not to be unreasonably withheld or delayed) this Bond may be reduced by an amount proportionate to the number of Dwellings then Occupied and thereafter upon receipt of the County Council's written confirmation on each subsequent anniversary of the first occupation by a further proportionate amount taking into account the number of Dwellings then Occupied

NO PARTY who is not a party to this Bond shall be entitled to enforce any of its terms for his own benefit and the application of the Contracts (Rights of Third Parties) Act 1999 to the terms of this Bond are hereby expressly excluded

THE COMMON SEAL of
the Developer was hereunto
affixed in the presence of:-

DIRECTOR

SECRETARY

SIGNED as a Deed by
the Surety acting by:-

AUTHORISED SEALING OFFICER]

SCHEDULE 6

Horsford Junior School Improvement Scheme

The Owners hereby covenant with the County Council that prior to the Occupation of the first Dwelling it will pay the County Council the sum of £35,000 to be used for external improvements within the curtilage of the Horsford Junior School

SCHEDULE 7

Open Space and Play Area

The Owners hereby covenant with the Council:

1. Prior to the Commencement of Development to submit to the Council for approval
 - (a) a scheme ("the Play Area Scheme") for the provision, laying out, equipping and future maintenance of the Play Area within the Site (the Play Area Scheme to also include timings for the completion and availability of the Play Area).
 - (b) a scheme ("the Open Space Scheme") for the provision, laying out and future maintenance of Open Space within the Site (the Open Space Scheme to also include timings for the completion and availability of the Open Space) and for the provision, laying out and future maintenance of the Informal Landscaped Area
2. Prior to the Commencement of Development to submit to the Council for approval a scheme ("the Transfer Scheme") for the transfer to and future management of the Play Area,, the Open Space and the Informal Landscaped Area by the Management Company (the scheme to also include provision for the timing of the transfer of the freehold interest in the Play Area, Open Space and Informal Landscaped Area to the Management Company)
3. Not to Occupy or allow Occupation of any Dwelling until the Council has approved in writing both the Play Area Scheme and the Open Space Scheme in accordance with the requirements of paragraph 1(a) and 1(b) above

4. Not to Occupy or allow Occupation of any Dwelling until the Council has approved the Transfer Scheme in accordance with the requirements of paragraph 2 above
5. Not later than the date specified in respectively the Play Area Scheme and the Open Space Scheme to carry out and complete to the reasonable satisfaction of the Council any works required respectively by the Play Area Scheme and the Open Space Scheme and in entire accordance with the requirements of the Play Area Scheme and the Open Space Scheme
6. On the completion to the reasonable satisfaction of the Council of any works required by the Play Area Scheme and the Open Space Scheme, the Owners shall transfer its freehold interest in the Play Area or Open Space (as the case may be) to the Management Company in accordance with the Transfer Scheme and the Open Spaces Act 1906 (or any statutory modification or re-enactment thereof) who shall thereafter maintain the same
7. For the avoidance of doubt, the Owners will maintain the Play Area, the Open Space and the Informal Landscaped Area in accordance with the requirements of the Play Area Scheme and the Open Space Scheme once any works required by the Play Area Scheme or the Open Spaces Scheme are complete until such time as the Play Areas, Open Spaces or Informal Landscaped Area (or parts thereof) have been transferred to the Management Company whereupon the Owners shall have no further liability for the maintenance of those parts transferred

Generally

8. Any transfer referred to in paragraph 6 above shall be upon the following terms
 - (a) the sum of £1.00 (for each area to be transferred) to be paid by the Management Company to the Owners; a covenant by the Management Company not to use or permit to be used the land transferred otherwise

than in accordance with the Open Spaces Act 1906; save that the Management Company should not permit access to the Informal Landscaped Area by the general public

- (b) vacant possession shall be given upon completion;
- (c) for an estate in fee simple in possession;
- (d) with full title guarantee;
- (e) subject to the matters specified in the Property and Charges Registers of the registered title of the land to be transferred (other than entries securing monies) and the terms of this Agreement so far as the same relate to and affect the said land but otherwise (save as mentioned herein) free of encumbrances;
- (f) with all necessary rights of access and necessary services;
- (g) subject to any wayleaves covenants and rights over on or under or in respect of the said land as may exist at the date of the transfer or as may reasonably be required by the Owners to be contained or referred to in the transfer of the said Play Area or Open Space;
- (h) there shall be excepted and reserved out of the transfer of the said land the right of the Owners and/or all statutory and other undertakers to lay erect and maintain in under upon and over the Play Area or Open Space such services as shall be reasonably necessary or proper to service the Development or any part or parts thereof, any person or persons exercising such rights shall make good any damage caused thereby; and

- (i) the transfer of the Play Area, Open Space or Informal Landscaped Area shall contain such covenants on the part of the Management Company as may be reasonably and properly required by any statutory authority or service company in respect of the services

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)



7356

M. M. M. M.

Head of Democratic Services and
Monitoring Officer

~~Head of Corporate Services
and Monitoring Officer~~

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

[Signature]

authorised to sign
on behalf of: HEAD OF LAW



36428

Head of Law

SIGNED as a DEED by
MICHAEL JOHN KEELER

M J Keeler

in the presence of:

Signature

Sonathan Ewing

Address

19 Meadow way, Horsford
Norwich NR10 3SD

SIGNED as a DEED by
JOANNE ROSE KEELER

JR

in the presence of:

Signature

Sonathan Ewing

Address

19 Meadow way, Horsford
Norwich NR10 3SD

SIGNED as a DEED by
BDW TRADING LIMITED
acting by its attorneys

and




in the presence of:-

Witness Signature:


Peter Biggs

Name:

Barnett Homes Eastern Counties

Address:

7 Springfield Lyons Approach

Occupation

Springfield

Essex CM2 5EY

Head of Planning