

DATED 28th June 2013

BROADLAND DISTRICT COUNCIL

- and -

NORFOLK COUNTY COUNCIL

-and -

BERLIET LIMITED

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

relating to the development of land
at Pinebanks, Yarmouth Road, Thorpe St Andrew, Norwich
and land at Griffin Lane, Thorpe St Andrew, Norwich

THIS AGREEMENT is made the 28th day of June 2013
BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU (the "Council")
2. NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich NR1 2DH (the "County Council")
3. BERLIET LIMITED of Ogier House, The Esplanade, St Helier, Jersey JE4 9WG ("the Owner")

WHEREAS:-

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which Site 1 and Site 2 are situated and the County Council is the relevant Highway Authority, Education Authority and Library Service Provider and is also a Local Planning Authority for the purposes of the Act
- B. The Owner is the freehold owner of Site 1 and Site 2 being the land edged red and blue respectively on the Plan
- C. The Owner has submitted Application 1 and Application 2 to the Council and the parties have agreed to enter into this Agreement in relation to Site 1 and Site 2 in order to secure the planning obligations contained in this Agreement
- D. The Council proposes to grant planning permission after the completion of the Agreement referred to in C above.

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 on Site 1 and Site 2 in the form of Rented Housing Units which is to be available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market
"Affordable Housing Contribution"	Means a financial contribution in lieu of part or all of the Affordable Housing Provision to be agreed with the Council

"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"

Means the provision of 43 (forty three) Rented Housing
Units on Site 1 and Site 2.

"Affordable
Housing
Scheme"

a scheme for the provision and long term management of the Rented Housing Units on Site 1 and Site 2 specifying and confirming:

- The number of Rented Housing Units to be constructed as part of the Development (and for the avoidance of any doubt, there shall be 6 Rented Housing Units constructed and provided on Site 1 and 37 Rented Housing Units constructed and provided on Site 2 unless varied by agreement between the Council and the Owner);
- the location of each of the Rented Housing Units within the Development
- The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Rented Housing Units (including a timetable for the construction and provision of the Rented Housing Units in phases during the Development of Sites 1 and 2);
- The identity of the AHP;
- The type and size of the Rented Housing Units;
- the draft transfer or lease to an approved AHP;
- terms, including timing, for the acquisition and management of the Rented Housing Units by a AHP;
- evidence that all Rented Housing Units meet the minimum standards contained in the Design and Quality Standards
- any Affordable Housing Contribution proposed where it has been demonstrated to the satisfaction of the Council that a Provider cannot be secured for the whole or any part of the Affordable Housing Provision, such contribution to reflect the agreed reduction in the Affordable Housing Provision and agreed by the Council (PROVIDED THAT this provision shall not oblige the Council to agree or accept an Affordable Housing Contribution in lieu of Affordable Housing)]

and / or such other information and requirements as the Council may require in connection with the provision of Affordable Housing for Site 1 and Site 2 and to enable approval of the Affordable Housing Scheme

and save for any variations agreed in writing between the Owner and the Council , upon approval the Affordable Housing Scheme shall be deemed to be incorporated into the provisions of this Agreement.

"Ancient
Woodland "

In relation to Site 1, woodland that has been in existence for more than 350 years, the extent thereof being shown for identification only coloured light green on the Plan numbered 1

"Ancient
Woodland
Management
Plan"

A plan approved by the Council for the future maintenance and management in perpetuity of Ancient Woodland such Plan being reviewed and updated every fifth year by agreement with the Council

"Ancient
Woodland
Works"

The Works to and ongoing management and maintenance of the Ancient Woodland required by and to be carried out in accordance with the Ancient Woodland Management Plan

"Application 1"

In relation to Site 1, the application for outline planning permission dated 10th May 2013 and bearing reference number 20130649 for the erection of 231 Dwellings, the construction of two new vehicular accesses together with associated infrastructure, roads, Open Space and landscaping, part demolition of Pinebanks building and conversion of the retained Pinebanks building for residential use (Outline)

Application 2	In relation to Site 2, the application for outline planning permission dated 10 th May 2013 and bearing reference number 20130650 for the erection of up to 71 dwellings and a community building and construction of new access together with associated infrastructure, open space, roads and landscaping. (Outline)
"the Approved Travel Plan"	means the Travel Plan submitted to the County Council by the Owner under the terms of this Deed for approval and approved by the County Council in writing
"the Bond Sum"	means the sum of £500 per Dwelling being the cost of implementation and compliance with the Approved Travel Plan
"Commencement of Development"	In relation to both Site 1 and Site 2 the date on which any Material Operation forming part of the Development begins to be carried out and "Commence Development" shall be construed accordingly (and for the avoidance of any doubt where in this Agreement there is a requirement or restriction as to the Commencement of Development, that requirement or restriction shall be taken to refer to both Site 1 and Site 2 together)
"Community Facilities"	Facilities for the community (namely upgrading football pitches, provision of cricket facilities, provision of a skatepark and the provision of community buildings and/or other facilities for the community) situated in and for the use of the inhabitants of the town of Thorpe St Andrew
"Community Facilities Contribution"	The sum of £540,000 payable by the Owner to the Council in accordance with Schedule 5 such sum to be Index Linked

"County Councils Monitoring Fee"	The sum of £900 (nine hundred pounds) payable by the Owner to the County Council in accordance with Schedule 2 such sum to be Index Linked
"Design and Quality Standards"	the standards set out by the Housing Corporation in the Housing Corporation Design and Quality Standards documents dated April 2007 or any subsequent document issued by the Housing Corporation's statutory successor from 1 December 2008 the Homes and Communities Agency or those of equivalent standard of an individual housing association as agreed by the local authority
"Development"	the development of Site 1 and of Site 2 permitted by the Planning Permissions
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"Discounted Market Sale Dwellings"	14 individual units of residential accommodation constructed or provided on Site 1 and 34 individual units of residential accommodation constructed or provided on Site 2 (both pursuant to the Discounted Market Sale Dwellings Scheme) for sale at a price which is 25% (twenty five percent) less than the Open Market Value of such unit, unless the Council agrees that a lower percentage deduction may be applied to such price taking into consideration inter alia housing prices in the vicinity and the viability of the Development

"Discounted
Market Sale
Restriction"

the restriction to be entered in the Proprietorship Register at the Land Registry in relation to each Discounted Market Sale Dwelling in the following terms (subject to any amendments thereto required by the Land Registry between the parties hereto):

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by the solicitor of the disponor or the disponee that the provision of paragraph 7 of Schedule 1 of an Agreement dated 28th June 2013 containing planning obligations relating to land at Pinebanks, Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk and at Griffin Lane, Thorpe St Andrew, Norwich, Norfolk between Broadland District Council of the first part, Norfolk County Council of the second part and Berliet Limited of the third part have been complied with"

"Discounted
Market Sale
Dwellings
Scheme"

A scheme for the provision and management of Discounted Market Sale Dwellings on both Site 1 and Site 2

"Dwelling Unit"	any unit of residential occupation being a self-contained house maisonette bungalow or flat constructed as part of the Development and "Dwelling" shall be construed accordingly and for the avoidance of any doubt (and unless expressly indicated to the contrary) in the Schedules to this Agreement the expression "Dwelling Units" shall be taken to mean the aggregation of all of the Dwelling Units then constructed on both Site 1 and Site 2
"Environment Contribution"	the sum of £1075 (one thousand and seventy five pounds) in relation to Site 1 and the sum of £260 (two hundred and sixty pounds) in relation to Site 2 payable to the County Council in accordance with Schedule 13 to this Agreement such sums to be Index Linked
"Environment Works"	in relation to Site 1 works to upgrade parts of the two Public Rights of Way (marked as FP6 AND FP7 on the Definitive Map of Rights of Way for Thorpe St Andrew) and in relation to Site 2 works to upgrade parts of the Public Right of Way (marked as FP3 on the Definitive Map of Rights of Way for Thorpe St Andrew)
"Environment Works Plan"	a plan approved by the County Council for the carrying out and completion of the Environment Works
"Green Infrastructure Assets"	in relation to Site 2 as defined on the Plan numbered 2 and for the purposes of identification only coloured green
"Green Infrastructure Management Plan"	a plan approved by the Council for the future management and maintenance in perpetuity of the Green Infrastructure Assets

"Green Infrastructure Assets Works"	the Works to and ongoing management and maintenance of the Green Infrastructure Assets required by and to be carried out in accordance with the Green Infrastructure Management Plan
"Heritage Assets"	the World War 2 Zero Station located on Site 1 (and for the purposes of identification only coloured orange on Plan 1) and the World War 2 Tank Traps located on Site 2 (and for the purposes of identification only coloured orange on Plan 2)
"Heritage Assets Management Plan"	A plan approved by the Council for the future maintenance and management in perpetuity of the Heritage Assets
"Heritage Assets Works"	Works required by and to be carried out in accordance with the Heritage Assets Management Plan
"High School"	Thorpe St Andrews School, Laundry Lane, Norwich NR7 0XS
"High School Contribution"	the sum of £843,208 (eight hundred and forty three thousand two hundred and eight pounds) payable to the County Council in accordance with Schedule 6 to this Agreement such sum to be Index Linked
"Index"	Building Cost Information Service All-In Tender Price Index
"Index Linked"	the indexation adjustment to the contributions payable under the various provisions of this Agreement in accordance with the requirements of Clause 15 and 'Indexation' shall be construed accordingly

"Library Contribution"	the sum of £60 per Dwelling Unit and payable to the County Council in accordance with the provisions of Schedule 3 to this Agreement such sum to be Index Linked
"Management Company"	a company or companies (or such other body or bodies as shall be agreed between the parties to this Agreement) established or identified by the Owner for the purposes of managing and maintaining the Open Spaces and Play Areas, the Ancient Woodland, the Heritage Assets and Green Infrastructure Assets on both Site 1 and Site 2 (and/or such other areas as shall be agreed between the Owner 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
- (i) mineral extraction incidental to the Development
- (j) access roads into the Development for the purposes of construction

"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"	Dwelling Units other than Discounted Market Sale Dwellings and Rented Housing Units and to be constructed on Site 1
"Open Market Value"	the best price reasonably obtainable at which the sale of an interest in a Dwelling Unit (other than a Discounted Market Sale Dwelling or a Rented Housing Unit) would have been completed unconditionally for cash consideration on the date of valuation assuming (i) a willing buyer and a willing seller, (ii) any restrictions imposed on a Dwelling Unit by this Agreement are disregarded (iii) there has been a reasonable period to completion within which to negotiate the sale (iv) the Dwelling Unit has been freely exposed to the market (v) both the buyer and the seller acted knowledgeably prudently and without compulsion
"Open Space"	those parts of Site 1 and of Site 2 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, with easy and adequate pedestrian and vehicular access thereto (including where the context so admits one or more areas of Open Space within both Site 1 and Site 2)
"Open Space Maintenance"	the maintenance of the Open Space or parts thereof by the Owner or by the Management Company
"Plan"	the plan annexed to this Agreement

"the Planning Permissions"	the outline planning permissions to be granted pursuant to the approval by the Council of Application 1 and of Application 2
"Play Areas"	a minimum of 1600 square metres of formal and informal play space in the aggregate on Site 1 and Site 2 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 Town of Thorpe St Andrew including occupiers of the Development, such areas to be transferred to the Management Company (including where the context so admits, one or more areas of Play area within both Site 1 and Site 2)
"Primary School"	the Dussindale, Hillside Avenue and St Williams Way Primary Schools
"Primary School Contribution"	The sum of £838,368 (eight hundred and thirty eight thousand three hundred and sixty eight pounds) payable to the County Council in accordance with the provisions of Schedule 4 to this Agreement such sum to be Index Linked
"Qualifying Occupiers"	in relation to any person housed in the Rented Housing Units, 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)

"Rented Housing"	Rented housing let by an AHP to households who are eligible for social rented housing and let on a weekly or monthly tenancy at a rent of no more than 80% of the Market Rent including service charges not exceeding Local Housing Allowance and "Affordable Rent" and "Affordable Rented" shall be construed accordingly
"Rented Housing Units"	43 (forty-three) individual units of residential accommodation constructed or provided on Site 1 and Site 2 (pursuant to the Affordable Housing Scheme) as part of the Development and to be let by an AHP at an Affordable Rent and in accordance with the requirements of Schedule 1
"Site 1"	The land at Pinebanks, 9 Yarmouth Road, Thorpe St Andrew, Norwich which is shown for the purposes of identification only edged red on the Plan
"Site 2"	The land at Griffin Lane, Thorpe St Andrew, Norwich which is shown for the purposes of identification only edged blue on the Plan
"Sixth Form College"	Thorpe St Andrew Sixth Form College, Laundry Lane, Norwich NR7 0XS
"Sixth Form College Contribution"	The sum of £95,145 (ninety five thousand one hundred and forty five pounds) payable to the County Council in accordance with the provisions of Schedule 6 to this Agreement such sum to be Index Linked
"Sports Facilities"	Design and construction of at least a four court sports hall, studios, changing rooms, fitness studio together with ancillary and administration space at the High School

"Sports Facilities Contribution"	The sum of £1,071,646 (one million, and seventy one thousand six hundred and forty six pounds) payable to the Council in accordance with the provisions of Schedule 6 to this Agreement such sum to be Index Linked
"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 Travel Plan Guidance
"Travel Plan Bond"	means a bond in the form annexed to Schedule 9
"Travel Plan Guidance"	means the County Council document "Guidance Notes for the Submission of Travel Plans"
"Travel Plan Monitoring Fee"	means the sum of £ 500 per annum towards the monitoring of the Approved Travel Plan such sum to be Index Linked
"Travel Plan Obligations"	means the various Obligations of the Owner and the County Council set out in Schedule 8
"Travel Plan Update"	means a staff and visitor 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

"Upfront the sum of £2500 (two thousand five hundred pounds)
Monitoring Fee" payable to the County Council in relation to the Approved
Travel Plan such sum to be Index Linked

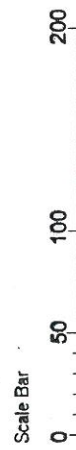
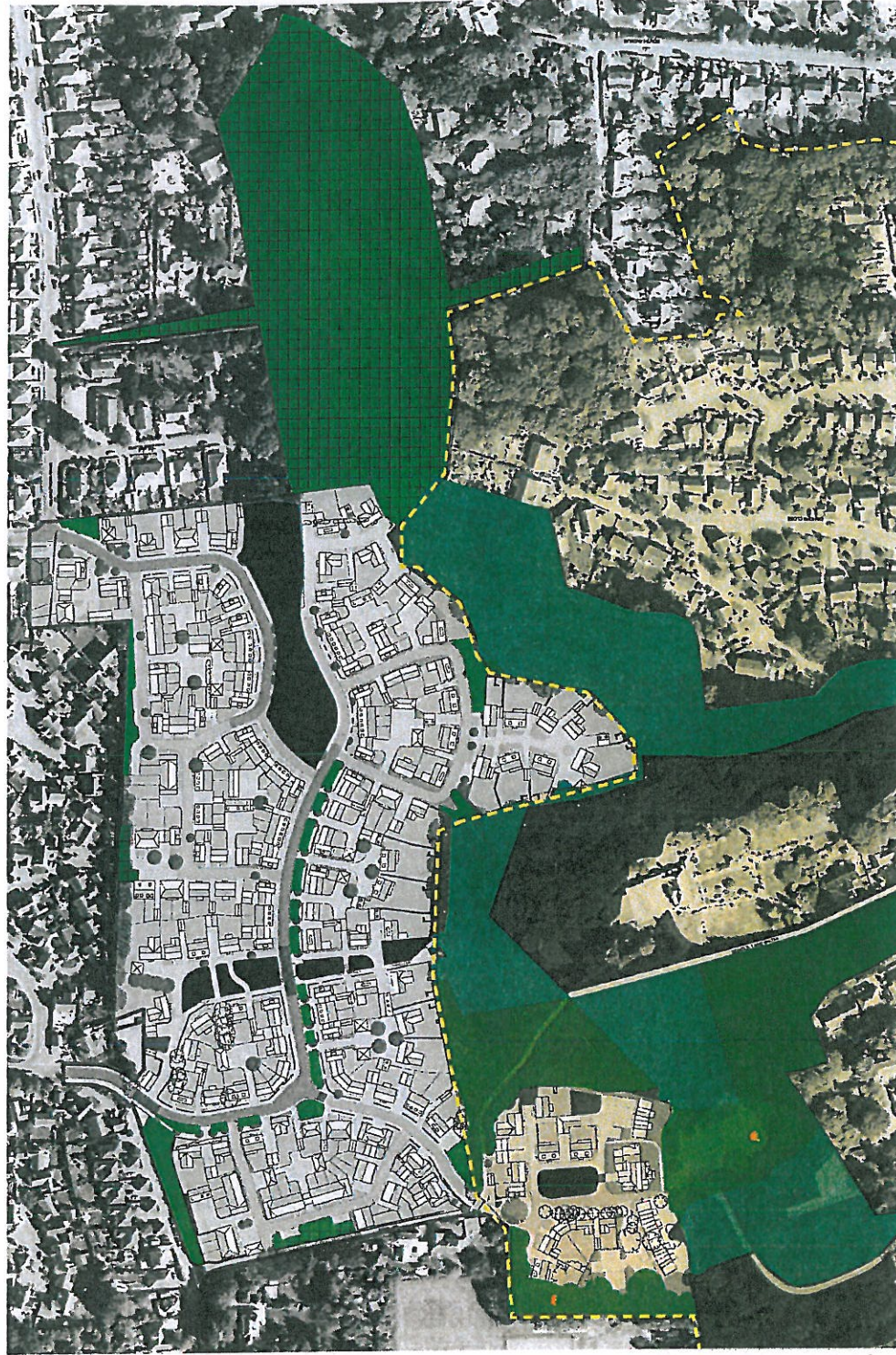
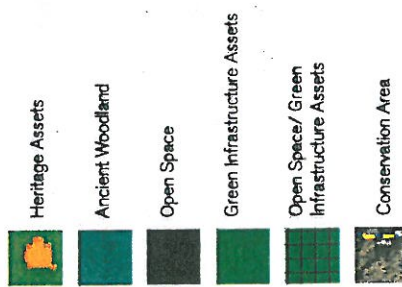
1.2 In this Agreement unless the context otherwise requires:

- 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

Pinebanks



Griffin Lane



- 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 Owner 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 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

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 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 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 Site 1 or Site 2 or part of either Site 1 or Site 2 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 Site 1 or Site 2 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 Director Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich, NR7 0DU
The County Council	The Head of Library and Information Service or the Director of Environment, Transport and Development or the Director of Children's Services as the case may be County Hall Martineau Lane Norwich NR1 2DH]
The Owner	The Directors, Berliet Limited, Ogier House, The Esplanade, St Helier, Jersey JE4 9WG

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 Owner 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 Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies or Contributions or part thereof due under the provisions of this Agreement (including the Schedules) and not paid within 28 days of the date upon which all or any become due (whether formally demanded or not) such interest to be calculated on a daily basis from the date the monies or Contributions (or part thereof) should have been paid until the date the money is received by the Council or the County Council (as the case may be)

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 Owner hereby warrants to the Council and to the County Council that it is the freehold owner of both Site 1 and of Site 2 and has full power to enter in to this Agreement and that both Site 1 and Site 2 are free from all mortgages charges or other encumbrances and that there is no person having any

interest in either Site 1 or Site 2 other than as notified in writing to the Council's Director and the County Council's Head of Law prior to the date hereof

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 Owner hereby covenants 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, 5, 6, 7, 10, 11 and 12 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 2,3,4,8,9 and 13 hereto which are expressed to be given to or to be for the benefit of the County Council

12.2 The Council and the County Council hereby covenant with the Owner to observe and perform their respective obligations set out in Schedules 1, 5 and 6 (as to the Council) and Schedules 2, 3, 4, and 8 (as to the County Council) to this Agreement

12.3 The Council and the County Council hereby covenant with the Owner that they shall (if requested by the Owner in writing) produce to the Owner within 28 days of such request a written statement of account as to how the sums payable for any part or parts thereof under this Agreement shall have been applied

12.4 The Council and the County Council will (upon the written request of the Owner) at any time after any of the Planning Obligations have been performed or otherwise discharged forthwith issue written confirmation thereof such confirmation not to be unreasonably withheld and thereafter the covenants containing such obligations shall not be enforceable against the Owner

13. Owners Indemnity

13.1 The Owner agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of either Site 1 or Site 2 under the terms of this Agreement are hereby waived

14. Index Linking

14.1 Where any sum specified to be payable by the Owner under the terms of this Agreement is expressed to be Index Linked, that sum shall be Index Linked From 12 months after 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 and by way of the worked example below.

- 14.2 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than 12 months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the Building Cost Information Service All-In Tender Price Index ("BCIS") figure as published by the Central Statistical Office at the date hereof is the denominator ("X") and the last BCIS figure published before the date such payment or application is made ("Y") less the last published BCIS at the date hereof ("X") is the numerator so that:

$$A = B \times \frac{(Y \times X)}{X}$$

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

- 16.1 the obligations and restrictions in this Agreement shall not be enforceable against any statutory undertaker which acquires any part of Site 1 or of Site 2 for the purposes of its statutory undertaking or function

17. Notification

- 17.1 The Owner agrees to notify the Council and the County Council of the reaching of any of the Commencement, Occupation or completion thresholds relating to obligations contained in this Agreement such notification to be given within 14 days of reaching such threshold

IN WITNESS whereof the parties hereto have executed this instrument as their deed the date and year first before written

SCHEDULE 1

Rented Housing Units and Discounted Market Sale Dwellings

The Owner covenants with the Council

A. In relation to the Rented Housing Units

1. Not to Commence Development until the Affordable Housing Scheme has been submitted to and approved by the Council in writing.
2. To enter into any supplementary agreements reasonably required by the Council in giving approval to the Affordable Housing Scheme and to be responsible for the Council's reasonable costs in negotiating and approving any such agreements
3. Upon approval of the Affordable Housing Scheme by the Council to implement the Affordable Housing Scheme as approved and entirely in accordance with its provisions
4. Not to Occupy or permit the Occupation of more than 47 % of the Open Market Dwellings until such time as 41 % of the Rented Housing Units have been constructed and are ready for Occupation and have been transferred or leased to an AHP, subject to paragraph 11 of this Schedule
5. Not to Occupy or permit the Occupation of more than 95% of the Open Market Dwellings until such time as the remainder of the Rented Housing Units have been constructed and are ready for Occupation and have been transferred to an AHP, subject to paragraph 11 of this Schedule
6. Not to use or permit the use of the Rented Housing Units for any purpose other than for Rented Housing.
7. Not to allow the Rented Housing Units to be occupied other than by Qualifying Occupiers
8. To ensure that in any transfer to an AHP it is provided that the AHP shall not dispose of its interest in the freehold of the Rented Housing Units or any part thereof (except by way of mortgage) other than to any other AHP or to a purchaser of an Rented Housing Unit pursuant to any right to buy or right to acquire as referred to in the paragraph 9 below.

9. Paragraphs 6, 7 and 8 above shall not be binding upon any mortgagee in possession of the Rented Housing Units or part thereof who exercise its power of sale nor any receiver or manager (including an administrative receiver) appointed by a mortgagee of the Rented Housing Units and shall cease to apply to any of the Rented Housing Units where the AHP shall be required to dispose of such units pursuant to a right to buy or right to acquire under Part 5 of the Housing Act 1985 or Section 16 of the Housing Act 1996 or Section 172 of the Housing and Regeneration Act 2008.

10 Under the transfer of an Rented Housing Unit to the AHP such transfer shall be free from encumbrances (other than encumbrances similar to the Planning Obligations) and shall contain the following provisions:- a grant in favour of the AHP of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Rented Housing Units and reservations of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the remainder of the Development

* 11. In the event that the Council has agreed to the payment of an Affordable Housing Contribution in accordance with the provisions of the Affordable Housing Scheme the following shall apply:

11.1 not to Occupy or permit the Occupation of more than 50% of the Open Market Dwellings (or such variation of this percentage figure as the Council and the Owner may agree) unless and until the Affordable Housing Contribution has been paid to the Council.

B. In relation to the Discounted Market Sale Dwellings

1. Not to Commence Development until the Discounted Market Sale Dwellings Scheme has been submitted to and approved by the Council. (The Discounted Market Sale Dwellings Scheme shall, inter alia, deal with and include: the number and location of the proposed Discounted Market Sale Dwellings on Site 1 and on Site 2 (and for the further avoidance of any doubt there shall be 14 Discounted Market Sale Dwellings provided on Site 1 and 34 Discounted Market Sale Dwellings provided on Site 2); a timetable and programme for the implementation of the Discounted Market Sale Dwellings

Scheme (including a timetable for the construction and provision of the Discounted Market Sale Dwellings in phases during the Development of both Site 1 and Site 2); and save for any variations agreed in writing between the Owner and the Council, upon approval the Discounted Market Sale Dwellings Scheme shall be deemed to be incorporated into the provisions of this Agreement.

2. To enter into any supplementary agreements reasonably required by the Council in giving approval to the Discounted Market Sale Dwellings Scheme and to be responsible for the Council's reasonable costs in negotiating and approving any such agreements
3. Upon approval of the Discounted Market Sale Dwellings Scheme by the Council to implement the Discounted Market Sale Dwellings Scheme as approved and entirely in accordance with its provisions
4. Not to Occupy or permit the Occupation of more than 47% of the Open Market Dwellings until such time as 52% of the Discounted Market Sale Dwellings on Site 2 have been constructed and are ready for Occupation
5. Not to Occupy or permit the Occupation of more than 83% of the Open Market Dwellings until such time as 100% of the Discounted Market Sale Dwellings on Site 1 have been constructed and are ready for Occupation
6. Not to Occupy or permit the Occupation of more than 94% of the Open Market Dwellings until such time as the remainder of the Discounted Market Sale Dwellings on Site 2 have been constructed and are ready for Occupation
7. To ensure that on any transfer or lease of a Discounted Market Sale Dwelling the Discounted Market Sale Restriction is entered in the Land Register applicable to that Discounted Market Sale Dwelling and to require further in any transfer or lease that the purchaser or lessee shall covenant not dispose of its interest in the freehold or leasehold of the Discounted Market Sale Dwelling or any part thereof (except by way of mortgage) other than in accordance with the terms of the Discounted Market Sale Restriction
8. Before disposing of a Discounted Market Sale Dwelling the Owner will give at least eight weeks notice in writing to the Council stating the price at which it is intended to dispose of that Discounted Market Sale Dwelling.
9. If within ten working days of receipt of such notice the Council gives notice in writing to the Owner that in the opinion of the Council the price at which that

Discounted Market Sale Dwelling is proposed to be offered by the Owner exceeds 75% (seventy five per cent) of the Open Market Value then the parties shall seek to agree the amount which is equal to 75% (seventy five per cent) of the Open Market Value and in default of agreement at the election of either party the matter may be referred to an Independent Surveyor for determination in accordance with the provisions of paragraph 3 below.

- 10 At the election of either party in accordance with paragraph 2 the Open Market Value of the Discounted Market Sale Dwelling shall be determined by an independent Chartered Surveyor of no less than ten years standing having experience of residential property in Thorpe St Andrew ("the Independent Chartered Surveyor") and upon his/her appointment he/she shall notify both parties of his/her agreement to act and allow to them ten working days to make representations as to their opinion on the Open market Value of the Discounted Market Dwelling.
- 11 Within ten working days of the expiry of the period for the parties to make representations the Independent Chartered Surveyor shall give notice to both parties to his/her decision as to the Open market Value of the Discounted Market Sale Dwelling which shall be binding upon the parties save in the case of manifest error.
- 12 The costs of the Independent Chartered Surveyor shall be borne as follows:
 - 12.1 if the Independent Chartered Surveyor finds for the Owner then his costs shall be met by the Council.
 - 12.2 if the Independent Chartered Surveyor finds for the Council then his costs shall be met by the Owner
 - 12.3 in any other circumstances the Independent Chartered Surveyor shall order that his costs be borne by either party or between the parties whether in equal proportions or otherwise as he shall think reasonable in the circumstances of the particular case and that party or the parties (as the case may be) must bear such ordered costs.
- 13 If either party shall object to the Independent Chartered Surveyor appointed or the Independent Chartered Surveyor shall be unwilling or unable to complete the determination of the Open market Value of the Discounted Market Sale Dwelling within twenty working days of appointment then either party shall be

entitled to apply to the President for the time being of the Royal Institute of Chartered Surveyors for the appointment of a replacement and on his/her appointment the provisions of this paragraph 12 shall apply to the Independent Chartered Surveyor so appointed.

14 A copy of the Discounted Market Sale Restriction and a copy of the Certificate referred to therein must be supplied to the Council on each disposition of a Discounted Market Sale Dwelling.

15 Every Discounted Market Sale Dwelling shall on first disposal be advertised through a HomeBuy Agent.

15.1 The Owner shall notify the HomeBuy Agent and the Council of the commencement of construction of a Discounted Market Sale Dwelling.

16 In the event that the HomeBuy Agent no longer exists, the following requirements shall apply on first disposal:

16.1 The Owner shall notify the Council of commencement of construction of a Discounted Market Sale Dwelling.

16.2 The Council shall nominate Qualifying Occupiers within 1 (one) month of the notification given in paragraph 16.1.

17 If the sale of a Discounted Market Sale Dwelling in accordance with either paragraph 15 or 16 shall not be completed within 3 (three) months from completion of construction of the Discounted Market Sale Dwelling the Owner may sell the dwelling on the open market at a price which is not more than 75% (seventy five per cent) of the Open market Value of similar properties as valued at the time of sale.

18 The sale and transfer of a Discounted Market Sale Dwelling in the circumstances set out in paragraphs 15, 16 and 17 shall include a restrictive covenant to secure the discount to Open Market Value in perpetuity.

19 Every Discounted Market Sale Dwelling shall be constructed to the regulatory level of the Code prescribed for the purposes of Building Regulations approval.

In relation to the Rented Housing Units, the Council covenants with the Owner that:

In the event that the Owner has demonstrated to the reasonable satisfaction of the Council that the Affordable Housing Provision cannot be secured in whole or in part with an appropriate AHP the Council will review the Affordable Housing Provision and

the requirements of the Affordable Housing Scheme in consultation with the Owner and it may thereafter agree to appropriate revisions both to the Affordable Housing Scheme and to the Affordable Housing Provision if it reasonably considers firstly that the existing requirements are no longer justified or achievable (in whole or in part as the case may be including as to numbers and tenure mix) and secondly that such revisions would result in the adequate provision of Affordable Housing AND for the avoidance of doubt if any amendment or revision is made and agreed in writing by the Council to the Affordable Housing Provision or the Affordable Housing Scheme that amendment or revision shall thereafter form part of the Affordable Housing Provision and the Affordable Housing Scheme for the purposes of this Agreement and shall be fully enforceable by the Council as such for the purposes of this Agreement

SCHEDULE 2
County Council's Monitoring Fee

The Owner covenants with the County Council

- 1 Not to Commence Development until it has paid to the County Council the County Council's Monitoring Fee

The County Council covenants with the Owner

- 2 To use the Monitoring Fee solely for the purposes of checking Commencement and monitoring compliance with the terms of this Agreement

SCHEDULE 3
Library Contribution

The Owner covenants with the County Council

1. To pay the Library Contribution to the County Council in a single lump sum payment prior to the Occupation of 55% (fifty five per cent) of the Dwelling Units
2. Not to Occupy or permit the Occupation of more than 54% (fifty four per cent) of the Dwelling Units until it has paid the Library Contribution to the County Council as required by paragraph 1.

The County Council covenants with the Owner

3. to hold the Library Contribution when paid in an interest bearing account and apply it and any interest received only towards the provision and extension of additional library facilities for the library service which serves the Development
4. that in the event that the Library Contribution or any part of it has not been committed (by way of a contract to provide additional library facilities or by the expenditure of the monies) to the provision of the additional library facilities referred to in paragraph 4 above within 5 years of the date of receipt of the balance of the Library Contribution then the County Council will repay to the Owner so much of the Library Contribution as shall remain uncommitted together with any accrued interest thereon

SCHEDULE 4

Education Contribution

The Owner covenants with the County Council

1. To pay each of the High School Contribution, the Primary School Contribution and the Sixth Form College Contribution to the County Council as follows:
 - 1.1 50% (fifty per cent) prior to the Occupation of 25% (twenty five percent) of the Dwelling Units
 - 1.2 the remaining 50% (fifty per cent) prior to the Occupation of 75% (seventy five per cent) of the Dwelling Units
2. Not to Occupy or permit the Occupation of more than
 - (a) 24% of the Dwelling Units until it has paid 50% of each of the High School Contribution, the Primary School Contribution and the Sixth Form College Contribution to the County Council as required by paragraph 1.1 above
 - (b) 74% of the Dwelling Units until it has paid 100% of each of the High School Contribution, the Primary School Contribution and the Sixth Form College Contribution to the County Council as required by paragraph 1.2 above

The County Council covenants with the Owner

3. To hold the Primary School Contribution (or part thereof) when paid in an interest bearing account and apply it and any interest accrued upon it only towards the improvement of education facilities serving the Development

4. To hold each of the High School Contribution (or part thereof) and the Sixth Form College Contribution (or part thereof) when paid in an interest bearing account and use every reasonable endeavour to apply it and any interest accrued upon it towards the provision of the Sports Facilities or in default thereof towards the improvement of education facilities at respectively the High School and the Sixth Form College PROVIDED THAT for the avoidance of doubt the decision as to whether to apply all or any of the High School Contribution or the Sixth Form College Contribution towards the provision of the Sports Facilities (and the timing of any such decision) shall be for the County Council alone.
5. In the event that any of the Primary School Contribution has not been committed (by way of a contract to provide increased educational capacity or by the expenditure of the monies or otherwise) to the improvement of the educational facilities within 5 years from the payment by the Owner of the final instalment of the Primary School Contribution then the County Council shall repay to the Owner on the expiration of such 5 year period so much of any of the Primary School Contribution as shall remain uncommitted together with any accrued interest thereon
6. In the event that any of the High School Contribution or the Sixth Form College Contribution has not been committed (by way of a contract to provide the Sports Facilities or in default thereof increased educational capacity at the High School and the Sixth Form College respectively or by the expenditure of the monies or otherwise) towards the provision of the Sports Facilities or in default thereof the improvement of educational facilities at the High School and the Sixth Form College respectively within 7 years from the payment by the Owner of the High School Contribution or the Sixth Form College Contribution then the County Council shall repay to the Owner on the expiration of such 7 year period so much of any of the High School Contribution and/or the Sixth Form College Contribution (as the case may be) as shall remain uncommitted together with any accrued interest thereon

SCHEDULE 5
Community Facilities Contribution

The Owner covenants with the Council

1. To pay the Community Facilities Contribution to the Council by two lump sum payments as follows:
 - (a) the sum of £140,000 (Index Linked) prior to the Commencement of Development
 - (b) the sum of £400,000 (Index Linked) prior to the Occupation of 100% of the Dwelling Units
2. Not to Commence Development until it has paid to the Council the sum of £140,000 as required by paragraph 1(a).
3. Not to Occupy or permit the Occupation of more than 99% of the Dwelling Units until it has paid the sum of £400,000 (Index Linked) as required by paragraph 1(b)

The Council covenants with the Owner

4. That it will hold the Community Facilities Contribution (or part thereof) when paid in an interest bearing account and either pay it all or in part to the Thorpe Town Council (in accordance with paragraph 5 below) on trust for the provision of Community Facilities in the town of Thorpe St Andrew for the following purposes and in the following proportions
 - (a) £60,000 (Index Linked) towards the upgrade of football pitches and the provision of cricket facilities
 - (b) £80,000 (Index Linked) towards the provision of a skatepark
 - (c) £400,000 (plus any interest accrued and Index Linked) towards the provision or improvement of community buildings PROVIDED THAT and for the avoidance of doubt the Council may of its own volition, or on application from the Thorpe Town Council, vary the aforesaid purposes

5. That any payment or part payment of the Community Facilities Contribution made to the Thorpe Town Council in accordance with paragraph 4 above will be made on the following terms and conditions:
 - 5.1. no payments can be made until an agreement with a contractor for providing the Community Facilities (or part thereof) has been entered into ("the Contract") (and for the avoidance of doubt there can be more than one Contract)
 - 5.2. the Council may pay the Community Facilities Contribution in instalments
 - 5.3. no instalment will be paid until the Council is reasonably satisfied that the money is required or will shortly be required to pay the contractor under the terms of the Contract
 - 5.4. any interest earned on the Community Facilities Contribution will be rolled up and paid together with the final instalment
6. To use the Community Facilities Contribution solely for the provision of Community Facilities in accordance with the trust set out in paragraph 4 above
7. That in the event that the Community Facilities Contribution or any part of it has not been spent or committed (by way of a contract to provide Community Facilities or by the expenditure of the monies) within 3 years of the date of receipt of the balance of the Community Facilities Contribution in relation to the upgrade of football pitches or the provision of cricket facilities or within 5 years in relation to the provision or improvement of community buildings then the Council will forthwith pay so much of the Communities Facilities Contribution as shall remain uncommitted together with any accrued interest thereon into an account to be opened in the joint name of the of Council and the Owner ("**the Community Facilities Contribution Account**") whereon the Council and the Owner shall hold the said monies in trust pending agreement by the parties as to how the Community Facilities Contribution which remains unspent can be best be spent to provide for facilities to be used by the local community and in the absence of such agreement within three months to refer

such matter to the ADR procedure as set out in paragraph 11 of this Agreement.

SCHEDULE 6
Sports Facilities Contribution

The Owner covenants with the Council

1. To pay the Sports Facilities Contribution to the Council as follows:
 - (a) 20% (twenty per cent) of the Sports Facilities Contribution prior to the Occupation of 45% (forty five per cent) of the Dwelling Units
 - (b) 35% (thirty five per cent) of the Sports Facilities Contribution prior to the Occupation of 55% (fifty five per cent) of the Dwelling Units
 - (c) 45% (forty five per cent) of the Sports Facilities Contribution prior to the Occupation of 85% (eighty five per cent) of the Dwelling Units
2. Not to Occupy or permit the Occupation of
 - (a) more than 44% (forty four per cent) of the Dwelling Units until it has paid 20% (twenty per cent) of the Sports Facilities Contribution to the Council as required by paragraph 1(a) above
 - (b) more than 54% (fifty four per cent) of the Dwelling Units until it has paid 55% (fifty five per cent) of the Sports Facilities Contribution to the Council as required by paragraph 1(b) above
 - (c) more than 84% (eighty four per cent) of the Dwelling Units until it has paid 100% (one hundred per cent) of the Sports Facilities Contribution to the Council as required by paragraph 1(c) above

The Council covenants with the Owner

- 3 That it will hold the Sports Facilities Contribution (or part thereof) when paid in an interest bearing account and either pay it all or in part to the High School (in accordance with paragraph 4 below) on trust for the provision of the Sports Facilities

4. That any payment or part payment of the Sports Facilities Contribution made to the High School in accordance with paragraph 3 above will be made on the following terms and conditions:
 - 4.1. no payments can be made until an agreement with a contractor for providing the Sports Facilities has been entered into ("the Contract") (and for the avoidance of doubt there can be more than one Contract)
 - 4.2. the Council may pay the Sports Facilities Contribution in instalments
 - 4.3. no instalment will be paid until the Council is reasonably satisfied that the money is required or will shortly be required to pay the contractor under the terms of the Contract
 - 4.4. any interest earned on the Sports Facilities Contribution will be rolled up and paid together with the final instalment
5. To use the Sports Facilities Contribution solely for the provision of Sports Facilities in accordance with the terms of paragraph 4 above
6. That in the event that the Sports Facilities Contribution or any part of it has not been spent or committed (by way of a contract to provide Sports Facilities or by the expenditure of the monies) within 2 years of the date of receipt of the balance of the Sports Facilities Contribution then the Council will forthwith pay so much of the Sports Facilities Contribution as shall remain uncommitted together with any accrued interest into an account to be opened in the joint names of the Council and the Owner ("**the Sports Facilities Contribution Account**") whereupon the Council and the Owner shall hold the said monies in trust pending agreement by the parties as to how the remaining Sports Facilities Contribution can best be utilised to provide for new facilities to be used for sports by the local community and situated at the High School and in the event that not all of the monies in the Sports Facilities Contribution Account can be spent on providing such new facilities then the balance of the monies shall be used for the ongoing maintenance of the new facilities, and in

the absence of such agreement within 3 months to refer such matter to the ADR procedure as set out in paragraph 11 of this Agreement

SCHEDULE 7

Play Areas and Open Space

The Owner covenants with the Council

1. Prior to the Commencement of Development to submit to the Council for approval
 - (a) a scheme ("the Play Areas Scheme") for the provision, laying out, equipping and future maintenance of the Play Areas within Site 1 and Site 2 (the Play Areas Scheme to also include timings for the completion and availability of the Play Areas having regard to the fact that the Development will be completed in phases)
 - (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 having regard to the fact that the Development will be completed in phases)
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 Areas and the Open Space by the Management Company (the scheme to also include provision for the timing of the transfer of the freehold interest in any Play Area or Open Space to the Management Company having regard to the fact that the Development will be completed in phases)
3. Not to Commence Development until the Council has approved in writing both the Play Areas Scheme and the Open Space Scheme in accordance with the requirements of paragraph 1(a) and 1(b) above.
4. Not to Commence Development 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 Areas Scheme and the Open Spaces Scheme to carry out and complete to the reasonable satisfaction of the Council any works required respectively by the Play Areas Scheme and the Open Space Scheme and in entire accordance with the requirements of the Play Areas Scheme and the Open Space Scheme
6. On the completion to the reasonable satisfaction of the Council of any works required by the Play Areas Scheme and the Open Space Scheme, the Owner 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 Owner will maintain the Play Areas and the Open Space in accordance with the requirements of the Play Areas Scheme and the Open Space Scheme once any works required by the Play Areas Scheme or the Open Spaces Scheme are complete until such time as the Play Areas or Open Spaces (or parts thereof) have been transferred to the Management Company whereupon the Owner 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 Owner; 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;
 - (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 Owner 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 Owner and/or all statutory and other undertakers to lay erect and maintain in under upon and over the said 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 or Open Space 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

SCHEDULE 8

TRAVEL PLAN OBLIGATIONS

The Owner covenants with the County Council that:

- 1 it will submit to the County Council a Travel Plan for the County Council to approve as an Approved Travel Plan in accordance with the Planning Permissions and thereafter 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 it will not allow first Occupation of any Dwelling Unit unless and until it has complied with paragraph 2(a) or 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")

And

- 3 not to allow any Dwelling Unit to be Occupied unless and until it has paid to the County Council the Upfront Monitoring Fee; and

- 4 on the 5th anniversary of 1st Occupation of the Development and every anniversary thereafter it will pay to the County Council the Travel Plan Monitoring Fee such payment to continue to be made until the second anniversary of final Occupation of the Development;

AND it is further agreed between the Owner and the County Council that

5. in the event that the Owner fails 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 Owner confirming the actions required by the Owner to comply with the obligations contained in this Agreement ("the Performance Notice"); and
6. If after a period of 28 days the Owner has 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 Owner;

The County Council covenants with the Owner that:

- 7 subject to the Owner 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 Dwelling Units Occupied at that time and thereafter by a further proportionate amount on a yearly basis (for example if 20% of the Dwelling Units have been occupied, the Bond sum shall be reduced by 20%)
- 8 on reduction of the Bond Sum in accordance with 7 above, the County Council shall within 28 days return such reduced amount of the Travel Plan Deposit to the Owner, or confirm in writing to the Surety that such proportion of the Approved Travel Plan Bond is released.

SCHEDULE 9

TRAVEL PLAN BOND

DATED _____ 2013

- and -

BOND

in respect of

Norfolk County Council

County Hall

Martineau Lane
NORWICH
NR1 2DH

The Developer is
whose registered office is situate at

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

SEALED WITH OUR SEALS this day of 200

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

- 49 -

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

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 10
ANCIENT WOODLAND

The Owner covenants with the Council:

1. Prior to commencement of Development to submit to the Council for approval the Ancient Woodland Management Plan which inter alia, shall indentify the Ancient Woodland Works and provide a timescale for the carrying out and on going implementation of the Ancient Woodland Works
2. To maintain the Ancient Woodland in accordance with the requirements of the Ancient Woodland Management Plan
3. Not to Occupy or permit the Occupation of more than 75% Dwellings on Site 1 until the Owner's freehold interest in the Ancient Woodland has been transferred to the Management Company
4. Any transfer referred to in paragraph 3 above shall be upon the following terms
 - (a) the sum of £1.00 to be paid by the Management Company to the Owner; a covenant by the Management Company not to use or permit to be used the land transferred otherwise than as Ancient Woodland;
 - (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 Owner to be contained or referred to in the transfer of the Ancient Woodland;
 - (h) there shall be excepted and reserved out of the transfer of the said land the right of the Owner and/or all statutory and other undertakers to lay erect and maintain in under upon and over the said Ancient Woodland 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 Ancient Woodland 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
5. On every fifth anniversary of the date hereof to carry out a review and updating of the Ancient Woodland Management Plan to the satisfaction of the Council

SCHEDULE 11

HERITAGE ASSETS

The Owner covenants with the Council

1. Prior to commencement of Development to submit to the Council for approval the Heritage Assets Management Plan which, inter alia, shall indentify the Heritage Assets Works and provide a timescale for the carrying out and on going implementation of the Heritage Assets Works
2. To maintain the Heritage Assets in accordance with the requirements of the Heritage Assets Management Plan
3. Not to Occupy or permit the Occupation of more than 75% of the Dwelling Units until the Owner's freehold interest in the Heritage Assets has been transferred to the Management Company or to a suitably experienced heritage organisation that is experienced in managing such an asset.
4. Any transfer referred to in paragraph 3 above shall be upon the following terms
 - (a) the sum of £1.00 to be paid by the Management Company to the Owner; a covenant by the Management Company not to use or permit to be used the land transferred otherwise than as a Heritage Asset;
 - (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 Owner to be contained or referred to in the transfer of the Heritage Asset;
- (h) there shall be excepted and reserved out of the transfer of the said land the right of the Owner and/or all statutory and other undertakers to lay erect and maintain in under upon and over the said Heritage Asset 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 Heritage Asset 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

SCHEDULE 12
GREEN INFRASTRUCTURE ASSETS

The Owner covenants with the Council:

1. Prior to commencement of Development to submit to the Council for approval the Green Infrastructure Management Plan which inter alia, shall identify the Green Infrastructure Works and provide a timescale for the carrying out and on going implementation of the Green Infrastructure Works
2. To maintain the Green Infrastructure Assets in accordance with the requirements of the Green Infrastructure Management Plan
3. Not to Occupy or permit the Occupation of more than 100% of the Dwelling Units on Site 2 until the Owner's freehold interest in the Green Infrastructure Assets has been transferred to the Management Company or an appropriately experienced organisation who will be able to manage the Green Infrastructure Asset.
4. Any transfer referred to in paragraph 3 above shall be upon the following terms
 - (a) the sum of £1.00 to be paid by the Management Company to the Owner; a covenant by the Management Company not to use or permit to be used the land transferred otherwise than as Green Infrastructure Assets
 - (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 Owner to be contained or referred to in the transfer of the Green Infrastructure Assets;
- (h) there shall be excepted and reserved out of the transfer of the said land the right of the Owner and/or all statutory and other undertakers to lay erect and maintain in under upon and over the Green Infrastructure Assets 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 Green Infrastructure Assets 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

SCHEDULE 13
ENVIRONMENT WORKS

The Owner covenants with the County Council

1. Prior to the Commencement of Development to submit to the County Council for approval the Environment Works Plan which inter alia, shall indentify the Environment Works, propose measures for carrying out the Environment Works and provide a timescale for the carrying out of the Environment Works
2. Prior to the Commencement of Development to pay the Environment Contribution to the County Council
3. To carry out the Environment Works entirely in accordance with the requirements of the Environment Works Plan
4. Not to Commence Development until the Environment Contribution has been paid to the County Council
5. Not to Occupy or permit the Occupation of more than 75% of the Dwelling Units until the Environment Works have been carried out and completed to the reasonable satisfaction of the County Council and in accordance with the requirements of the Environment Plan

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)



7251

M. Mue

Head of Democratic Services and
Monitoring Officer

~~Head of Corporate Services
and Monitoring Officer~~

35641

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




[Handwritten signature]

authorised to sign
on behalf of:

Head of Law

Executed as a deed, but not delivered until the)
first date specified on page 1, by **BERLIET**)
LIMITED acting by a director in the presence)
of a witness:)

Signature 

Name (block capitals) JANE CLAYTON
Director

Witness signature  -----

Witness name TOM STEVENSON
(block capitals) -----

Witness address -----

----- Ogier House
The Esplanade
----- St Helier
Jersey
JE4 9WG