

DATED 13th August 2014

BROADLAND DISTRICT COUNCIL (1)

and

NORFOLK COUNTY COUNCIL (2)

and

DRAYTON FARMS LIMITED (3)

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

relating to the development of land
at Hall Lane Drayton Norfolk

MILLS & REEVE

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THIS AGREEMENT is made on

2014 **BETWEEN:**

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge 1 Yarmouth Road Norwich NR7 0DU ("**the Council**")
- (2) **NORFOLK COUNTY COUNCIL** of County Hall Martineau Lane Norwich NR1 2DH ("**the County Council**")
- (3) **DRAYTON FARMS LIMITED** (company registration number 00523937) of Manor Farm Holly Lane Horsford Norwich NR10 3TQ ("**the Owner**")

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 for the area in which the Site is located
- (B) The Owner is the freehold owner of the Site registered at the Land Registry under title number NK383746
- (C) The Developer has submitted the Application to the Council and the parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement

1 Interpretation and Definitions

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

"**Act**" the Town and Country Planning Act 1990 (as amended);

"**Affordable Housing**" housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market;

"**Affordable Housing Provider**" ("AHP") either:

- (a) a registered provider as defined by S.80 of the Housing and Regeneration Act 2008; or
- (b) 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 as Affordable Housing Units of thirty three per cent (33%) of the total number of Dwellings of the mix type and tenure pursuant to the agreed Affordable Housing Scheme;

"**Affordable Housing Scheme**" a detailed scheme submitted to and approved by the Council securing the Affordable Housing Provision on the Site to include:

- (a) The number and type of Affordable Housing Units in accordance with the Affordable Housing Provision;

- (b) The location of such Affordable Housing Units;
- (c) a timetable and programme for its implementation which shall include for a mix and type of Affordable Housing Units to the intent that approximately 70% of the Affordable Housing Units shall be Rental Units and the remaining 30% shall be Discounted Market Dwellings Shared Ownership Dwellings and Shared Equity Dwellings and which complies with the requirements of Schedule 1 to this Agreement 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;

"Allotment Land" that part of the Site being approximately 5,500 square metres as identified on a plan submitted to and approved by the Council for the purpose of being set out and provided as allotments with easy and adequate pedestrian and vehicular access thereto;

"Allotment Lease Provisions" a lease of the Allotment Land containing the following heads of terms:

- (a) term of 99 years;
- (b) for a peppercorn rent;
- (c) the security of tenure provisions within Part II of the Landlord and Tenant Act 1954 will apply;
- (d) no break clause;
- (e) providing adequate rights of way for pedestrian and vehicular access and services to the Allotment Land;
- (f) the Allotment Land can only be used as allotments/gardens within the meaning of the Allotments Acts 1908-1950. No trade or business is to be carried on from the Allotment Land; and
- (g) any other terms agreed between the parties.

"Allotments Specification" a detailed allotments specification submitted to and approved by the Council for the laying out of the allotments and the car park for the allotments on the Allotment Land;

"Amenity Open Space" those parts of the Site identified in a plan submitted to and approved by the Council for that purpose as being set out or provided as amenity open space with easy and adequate pedestrian and vehicular access thereto and laid out in accordance with the Amenity Open Space Works Specification;

"Amenity Open Space Maintenance Contribution" a financial contribution to be used for repairing and maintaining the Amenity Open Space to be calculated at the rate of 57p per square metre of Amenity Open Space or such other sum as the Council may agree with the Owner as appropriate per square metre of Amenity Open Space the precise areas of which shall be calculated by agreement or in default of such agreement by a qualified surveyor in accordance with the terms of clause 11 of this Agreement such sum to be increased in accordance with the Inflation Provision;

"Amenity Open Space Works Specification" a scheme including plans drawings and specifications showing but not limited to the layout and design of the Amenity Open Space including landscaping paths and access arrangements, street furniture and fencing;

"Application" the application for outline planning permission dated 3 July 2013 and bearing reference number 20130885 for the development of up to 200 homes, allotments, access, public open space and associated infrastructure in accordance with the plans and details deposited with the Council;

"Approved Travel Plan" the Travel Plan prepared and submitted by the Owner to the County Council under the terms of the Planning Permission and pursuant to paragraph 1.2 of Schedule 7 of this Agreement and approved by the County Council in writing (including such amendments as the County Council may approve in writing from time to time);

"Bond Sum" the sum of £450 per Dwelling (Index Linked) being the cost of the implementation of (and compliance with) the Approved Travel Plan;

"Commencement of Development" the first date on which any material operation as defined in Section 56(4) of the Act forming part of the Development begins to be carried out other than operations consisting of site clearance demolition work archaeological investigations or investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commence" and "Commencement" shall be construed accordingly;

"Development" the development of the Site in accordance with the Planning Permission;

"Director" the Council's Chief Executive or other officer of the Council acting under his hand;

"Discounted Market Dwellings" Affordable Housing Units to be constructed or provided as part of the Development pursuant to the Affordable Housing Provision and the Affordable Housing Scheme as Dwellings for sale at a price which in each case is not more than 80% (eighty per cent) of the local 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 Dwelling in the following terms (subject to any amendments thereto required by the Land Registry between the parties thereto):

"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 a conveyancer that the provision of paragraph [] of Schedule 1 to an Agreement dated [] and made between [] containing planning obligations relating to land at [] have been complied with"

"Dwelling" any unit of residential occupation being a self-contained house maisonette bungalow or flat constructed as part of the Development and "Dwellings" shall be construed accordingly;

"HCA Standards" the "Housing Quality Indicators" and "Design & Quality Standards" (as replaced or revised) specified by the Homes and Communities Agency or its successors or such other standards as the Council may agree with the Affordable Housing Provider;

"Highway Contribution" the sum of £106,500 (Index Linked) to be allocated to the following works:

- (a) £31,500 towards bus stop improvements on School Road;
- (b) £30,000 towards a traffic calming scheme on Carter Road;
- (c) £45,000 towards the maintenance/upgrade of the A1066 signalised junction;

"Index Linked" means index linked from 6 November 2013 until such time that any sum specified in this Agreement becomes payable such index linking to be equivalent to any increase or decrease in such sums in proportion to the increase or decrease in the Retail Price Index (All Items) published by the Office for National Statistics (or if such index ceases to be published such other index as the Council shall reasonably determine);

"Inflation Provision" the increase or decrease (if any) in the Department for Business Innovation and Skills (BIS) Output Price Index for Public Works: All Public Works between 1 September 2006 and the date upon which a payment of the Amenity Open Space Maintenance Contribution, the Play Area Maintenance Contribution and the Offsite Play Area Contribution is made pursuant to this Agreement

"Lagoon" the lagoon(s) to be provided as part of the Development for the purposes of the drainage of surface water at the Site;

"Lagoon Works Specification" a scheme including plans drawings and specifications showing but not limited to the layout and design of the lagoon including details of any landscaping and access arrangements and fencing;

"Lagoon Arrangements" a scheme detailing the proposed permanent management and maintenance regime of the Lagoon;

"Local Letting Policy Eligibility Cascade" the order in which the Rental Units are to be allocated and which is set out under the title "Local Letting Policy Eligibility Cascade" at Schedule 2 to this Agreement as amended from time to time;

"Occupation" occupation of a building as a Dwelling (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;

"Off Site Play Area Contribution" a financial contribution to be used towards improvements to and maintenance of recreational facilities at the Florence Carter Memorial Park being £16,000 (or such other sum as the Council may agree with the Owner as appropriate) to be subject to the Inflation Provision;

"Open Market Dwellings" Dwellings other than Affordable Housing Units;

"Open Market Value" the best price at which the sale of an interest in a Dwelling (other than an Affordable 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 by this Agreement are disregarded (iii) there has been a reasonable period within which to negotiate the sale (iv) the Dwelling has been freely exposed to the market (v) and both the buyer and seller acted knowledgeably prudently and without compulsion

"Plan" the plan annexed to this Agreement;

"Planning Permission" the outline planning permission to be granted pursuant to the Application;

"Play Area" a combined local area of play and local equipped area of play for recreational use for toddlers and children of the Parish of Drayton (including occupiers of the Development) as more particularly described in Schedule 3 annexed hereto and to be provided within the Amenity Open Space in a location to be agreed in writing with the Director;

"Play Works Specification" the laying out and equipping of the Play Area with play and recreational equipment for toddlers and children in accordance with the requirements of Schedule 3;

"Play Area Maintenance Contribution" a financial contribution to be used for repairing and maintaining the Play Area being £25,000 or such other sum as the Council may agree with the Owner as appropriate in respect of the Play Area the precise areas of which shall be calculated by agreement or in default of such agreement by a qualified surveyor in accordance with the terms of clause 11 of this Agreement and to be subject to the Inflation Provision;

"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) and ranked in accordance with the Local Letting Policy Eligibility Cascade or where such persons have been exhausted any person as nominated by the Council on the Broadland Housing Register which the AHP owning or managing the Affordable Housing Units on the Site is entitled to house within its rules;

"Rental Units" 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 by an AHP on a weekly or monthly tenancy basis at affordable rents (being not more than 80% of local open market rental prices inclusive of service charge) to be let by or on behalf of an AHP in accordance with the requirements of Schedule 1;

"Reserved Matters Application" an application for the approval of reserved matters pursuant to the Planning Permission;

"Shared Equity Dwellings" Affordable Housing Units to be constructed or provided as part of and in accordance with the Affordable Housing Scheme and to be let or sold in accordance with the Shared Equity Arrangements;

"Shared Equity Arrangements" The arrangements to be put in place to ensure the Shared Equity Dwellings are provided by freehold disposal or lease at up to 75% (seventy five per cent) of Open Market Value which shall include arrangements enabling the lessee to staircase up to 100% of Open Market Value after five years and acquire the remaining legal and equitable interest providing any staircasing monies are paid to the Council and with such details to be approved in writing by the Council;

"Shared Ownership Dwellings" Affordable Housing Units to be constructed or provided as part of and in accordance with 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 housing corporation target rents (being 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 Retail Price Index (or such other index as the Council may determine) plus 0.5% of the current annual rent from time to time;

"Site" the land adjacent to Hall Lane Drayton which is shown for the purposes of identification only edged red on the 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 such Travel Plan being specific to those people living on or travelling to and from the Site 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 Travel Plan Guidance;

"Travel Plan Commuted Sum" the sum of £450 per Dwelling (Index Linked) to be used by the County Council to produce, approve and monitor the Travel Plan or such other sum as is agreed between the Owner and the County Council in writing;

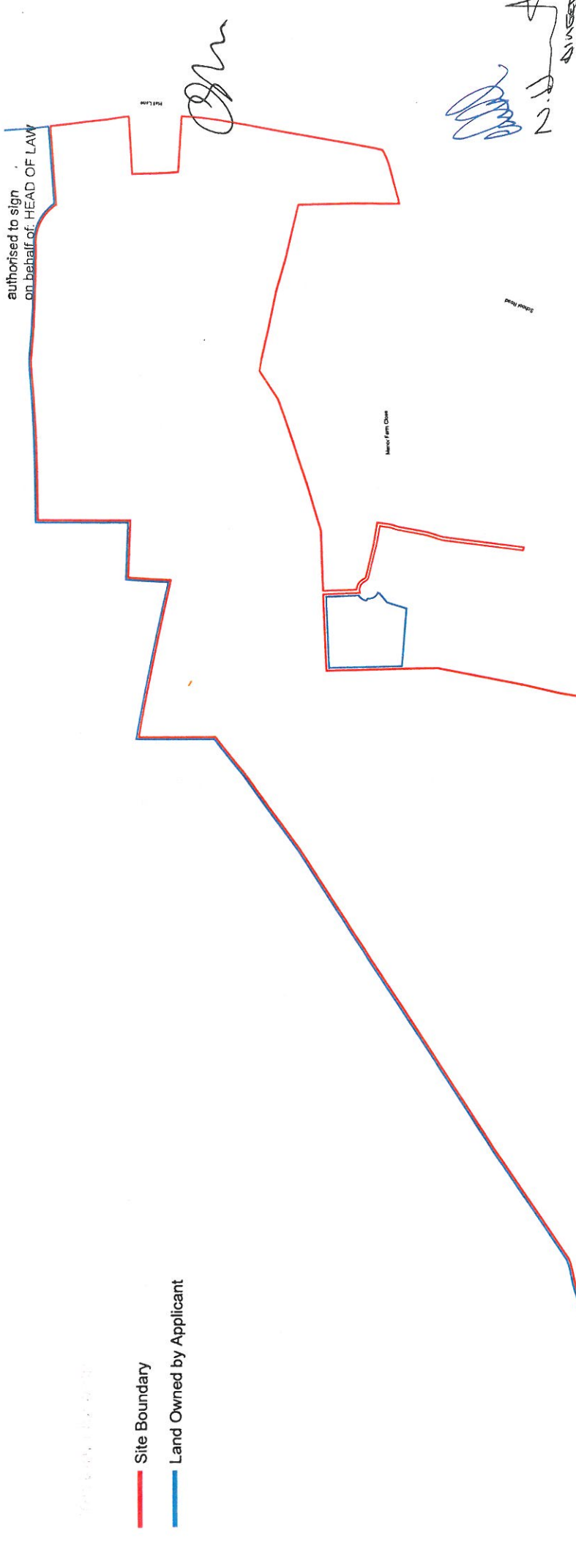
"Travel Plan Bond" a bond substantially in the form set out in Schedule 9 annexed hereto;

"Travel Plan Guidance" means the County Council document "Guidance Notes for the Submission of Travel Plans" and such other guidance as the County Council may direct;

"Travel Plan Update" a mode of travel survey prepared by the Owner (in consultation with the County Council) detailing how the Approved Travel Plan has operated during the relevant period and its effectiveness.

authorised to sign
on behalf of: HEAD OF LAW

Site Boundary
Land Owned by Applicant



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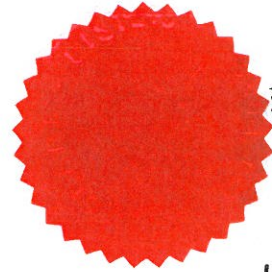
AMENDED
PLAN

REV	DATE	DESCRIPTION	BY	CHECKED BY
1	03/01/13	red line boundary moved		
2	15/05/13	red line boundary moved		

PLANNING

Drayton Farms Ltd
Manor Farm
Drayton
Sites DRA1 & DRA2
Outline Site Plan
Site Location Plan
4542
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270613
1:1250@A1
ch

**BROADLAND
DISTRICT COUNCIL**
04 OCT 2013
20130805 AP
PLANNING CONTROL



CHIEF EXECUTIVE

SITE LAYOUT 1:1250

1.2 In this Agreement unless the context otherwise requires:

- 1.2.1 references to any party shall include the successors in title and assigns of that party;
- 1.2.2 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;
- 1.2.3 references to clauses and schedules are references to clauses in and schedules to this Agreement;
- 1.2.4 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;
- 1.2.5 headings in this Agreement shall not form part of or affect its construction.

2 General Provisions Applicable to this Agreement

- 2.1 The covenants given by the Owner in this Agreement are given under Section 106 of the Act and where they do not fall within Section 106 of the Act they are given pursuant to Section 1 of the Localism Act 2011 and the covenants given by the Council and the County Council in this Agreement are given pursuant to Section 1 of the Localism Act 2011 and all 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 Owner and its 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 as otherwise indicated in this Agreement in which case those provisions 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 before Commencement.
- 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 or any provision of it comes to an end the Council if so requested by the Owner will 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 Liability for Breach

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.

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, Broadland District 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 Owner: Drayton Farms Limited Manor Farm, Holly Lane, Horsford, Norwich NR10 3TQ

- 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

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

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

The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement 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

This Agreement is to be governed by and interpreted in accordance with the law of England and Wales.

10 Title Warranty

The Owner hereby warrants to the Council and to the County Council that they are the freehold owner of the Site 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 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 Schedules 1, 2, 3, 4 and 5 of this Agreement 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 Schedule 7 of this Agreement.
- 12.2 The County Council covenants with the Owner to comply with the provisions of Schedule 8 of this Agreement.

13 Transfer of Land

- 13.1 Where any provision of the Agreement requires the transfer of land to the Council or its nominee the provisions of Schedule 6 shall apply to such transfer.
- 13.2 Any provision of this Agreement which requires the transfer of land to the Council shall be deemed to include a provision whereby the land concerned may at the election of the Council be transferred to an alternative body or organisation properly able to hold and administer such land for the purposes for which it is transferred.

14 Compensation

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

15 Issue of Approvals

Where any approval, consent, agreement, expression of satisfaction 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 Limitation of Liability

Save for the obligations contained in Schedule 1 which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Housing Units subject to the provisions contained therein the covenants, restrictions and requirements contained in this Agreement shall not be

enforceable against any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site.

17 Notification

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

Schedule 1

Affordable Housing

- 1 The Owner covenants with the Council:
 - 1.1 Not to Commence or allow Commencement of Development unless and until the Affordable Housing Scheme has been submitted to and approved by the Director.
 - 1.2 If the Affordable Housing Scheme is to include Shared Equity Dwellings, not to Commence or allow Commencement of Development unless and until the Shared Equity Arrangements have been submitted to and approved by the Director and thereafter they shall be complied with.
 - 1.3 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission and the Affordable Housing Scheme and the timescales therein and to current HCA Standards as at the time of construction.
 - 1.4 Save as otherwise provided in this Agreement not to use or allow or permit the Affordable Housing Units to be occupied for any purpose other than as a Rental Unit, Shared Ownership Dwelling, Discounted Market Dwelling or Shared Equity Dwelling (as the case may be) or such other form of tenure as may be agreed between the Owner and the Council.
 - 1.5 Save as otherwise provided in this Agreement not to use or allow or permit the Affordable Housing Units (other than the Discounted Market Dwellings) to be Occupied other than by Qualifying Occupiers in accordance with the Affordable Housing Scheme. The Discounted Market Dwellings shall not be Occupied by persons who when they take up first Occupation could reasonably afford to buy the Dwelling at full Open Market Value.
 - 1.6 Save as otherwise provided in this Agreement the Owner shall not dispose of its freehold interest in the Affordable Housing Units (with the exception of the Discounted Market Dwellings, Shared Ownership Dwellings and Shared Equity Dwellings) other than to an AHP
 - 1.7 Paragraphs 1.4 and 1.5 and 1.6 above shall not be binding upon:
 - 1.7.1 subject to paragraph 1.8 any mortgagee in possession of the Affordable Housing Units or part thereof or successors in title to the mortgagee in possession; nor
 - 1.7.2 subject to paragraph 1.8 any receiver or manager (including an administrative receiver) for such mortgagee; nor
 - 1.7.3 any individual owner occupier of the Affordable Housing Units (or their mortgagee or chargee) who has purchased the Affordable Housing Unit pursuant to a statutory right to buy or acquire; nor
 - 1.7.4 successors in title to all of the above;

- 1.7.5 by a person who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold of the Shared Ownership Dwelling or Shared Equity Dwelling.
- 1.8 Any mortgagee (or any administrator or receiver) in possession of the Affordable Housing Units shall benefit from paragraph 1.7 above **PROVIDED THAT** it has first complied with the following:
 - 1.8.1 the restrictions and obligations contained in Sections 144 to 159 of the Housing and Regeneration Act 2008 and provided copies of all notices served and any proposals received together with updates as to progress;
 - 1.8.2 given the Council the option to purchase the relevant Affordable Housing Units or nominate another AHP to purchase the relevant Affordable Housing Units for a period commencing on the date that the Affordable Housing Mortgagee gives the Council notice ("the Mortgagee Notice") and ending on the later of two calendar months after the date of the Mortgagee Notice or the end of the Moratorium Period (as defined and arising under either Section 145 or 147 of the Housing and Regeneration Act 2008) and the Council (or its nominated AHP) shall be entitled to complete the purchase of the Affordable Housing Units at any time up to one calendar month after expiry of the Moratorium Period;
 - 1.8.3 or, in the event of any statutory amendment resulting in the removal or lapse of the relevant provisions of the Housing and Regeneration Act 2008 referred to at paragraph 1.8.2 of this Schedule and without alternative provision to instead comply with the reasonable directions of the Council in relation to the disposal by giving not less than three months prior notice to the Council of any intention to dispose of any of the Affordable Housing Units and if the Council responds by written notice within three months from receipt of the Affordable Housing Mortgagee's notice setting out arrangements for the transfer of the Affordable Housing Units so as to maintain them as Affordable Housing then the Affordable Housing Mortgagee shall co-operate with such arrangements and use its best endeavours to secure such transfer but if the Council does not serve its response notice within the said three months or if having used its best endeavours the Affordable Housing Mortgagee shall not have effected the transfer envisaged in the Council's response notice within 12 months of that notice then the Affordable Housing Mortgagee shall be entitled to dispose of the Affordable Housing Units free of the restrictions set out in this Agreement;
- 1.9 Not to Occupy or allow Occupation of more than 50 of the Open Market Dwellings unless and until 15 of the Affordable Housing Units to be provided under the approved Affordable Housing Scheme (with the exception of the Discounted Market Dwellings) are practically complete and have been transferred to the approved AHP in accordance with and subject to the provisions in clauses 1.10.1 to 1.10.3 below.
- 1.10 Not to Occupy or allow Occupation of more than 115 of the Open Market Dwellings unless and until the remaining Affordable Housing Units to be provided under the approved Affordable Housing Scheme are practically complete and have been transferred to the approved AHP (with the exception of the Discounted Market Dwellings) in accordance with and subject to the following:

- 1.10.1 any transfer 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 the Affordable Housing Units to be let or sold as the case may be at a cost low enough for eligible persons to afford;
 - 1.10.2 the transfer shall contain terms to secure any conditions and requirements of the approved Affordable Housing Scheme;
 - 1.10.3 a requirement that any proceeds from the disposal of subsequent equity in Shared Ownership Dwellings must be used for the provision or improvement of Affordable Housing within the administrative area of the Council where reasonably practicable.
- 1.11 The following further provisions shall apply in respect of the Discounted Market Dwellings:
- 1.11.1 Before disposing of a Discounted Market Dwelling the Owner will give at least ten working days' notice in writing to the District Council stating the price at which it is intended to dispose of that Discounted Market Dwelling;
 - 1.11.2 If within ten working days of receipt of such notice the District Council gives notice in writing to the Owner that in the opinion of the District Council the price at which that Discounted Market Dwelling is proposed to be offered by the Owner exceeds 80% (eighty percent) of the Open Market Value then the Owner and the District Council shall seek to agree the amount which is equal to 80% (eighty percent) 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 paragraphs 1.11.3 – 1.11.8.
 - 1.11.3 At the election of either party in accordance with paragraph 1.11.2 the Open Market Value of the Discounted Market Dwelling shall be determined by an independent Chartered Surveyor of no less than ten years standing having experience of residential property in Drayton ("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;
 - 1.11.4 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 of his/her decision as to the Open Market Value of the Discounted Market Dwelling which shall be binding upon the parties save in the case of manifest error;
 - 1.11.5 The costs of the Independent Chartered Surveyor shall be borne as follows:
 - (i) if the Independent Chartered Surveyor finds for the Owner then his costs shall be met by the District Council;
 - (ii) if the Independent Chartered Surveyor finds for the District Council then his costs shall be met by the Owner;

- (iii) 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.
- 1.11.6 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 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 Institution of Chartered Surveyors for the appointment of a replacement and on his/her appointment the provisions of this paragraph 1.11.6 shall apply to the Independent Chartered Surveyor so appointed.
- 1.11.7 The Discounted Market Sale Restriction shall be registered at the Land Registry on the register of title to a Discounted Market Dwelling.
- 1.11.8 A copy of the Discounted Market Sale Restriction and a copy of the Certificate referred to therein must be supplied to the District Council on the first disposition of a Discounted Market Dwelling.

Schedule 2

Affordable Housing

Local Letting Policy: Local Connection Eligibility Criteria

- 1 Up to one third (or such other amount as the Council shall reasonably require) of the Rental Units (as chosen by the Council) shall be let on first occupation in accordance with the local lettings policy set out below:
 - 1.1 first allocations shall be made to people living in the Parish of Drayton;
 - 1.2 if there is no suitable person in paragraph 1.1 allocations will be made to people who work in the Parish of Drayton;
 - 1.3 if there are no suitable persons in paragraphs 1.1 and 1.2 allocations will be made to people who need to move to the Parish of Drayton to give/receive support to/from close family.
- 2 Administrative Procedure for Nominations
 - 2.1 To grant to the Council nomination rights to 100% of the Affordable Housing Units.
 - 2.2 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 Owner shall agree between them.

Note: If there are no suitable persons in paragraph 1.1 and/or 1.2 and/or 1.3 above, allocations will be made to households living in the Broadland district in accordance with the Council's policies relating to housing allocation.

Schedule 3

Open Space and Play Areas

- 1 The Owner covenants with the Council:
 - 1.1 Not to Commence or allow Commencement of Development pursuant to a Reserved Matters Application unless and until:
 - 1.1.1 the extent and location of the Amenity Open Space and the Play Area serving the Dwellings to be built pursuant to that Reserved Matters Application (if any) have been agreed with the Council; and
 - 1.1.2 the Amenity Open Space Works Specification and Play Works Specification for the relevant Amenity Open Space and Play Area have been submitted to and approved by the Council in writing (such approval not to be unreasonably withheld).
 - 1.2 Not to Occupy or allow Occupation of more than 50% of the Dwellings built pursuant to a Reserved Matters Application unless and until the Amenity Open Space and Play Area serving those Dwellings (if any) have first been provided in accordance with the approved Amenity Open Space Works Specification and the Play Works Specification for the relevant Amenity Open Space and Play Area to the written satisfaction of the Council.
 - 1.3 To maintain the Amenity Open Space and Play Area to a standard suitable for use by members of the public and as approved by the Council until such time as the Amenity Open Space and Play Area have been transferred to the Council (or such other body as the Council may nominate) in accordance with the provisions contained herein.
 - 1.4 Subject to paragraph 1.5 of this Schedule, not to Occupy or allow Occupation of more than 75% of the Dwellings comprised in the Development unless and until:
 - 1.4.1 the Amenity Open Space and the Play Area have been transferred to the Council (or such other body as the Council may nominate); and
 - 1.4.2 the Amenity Open Space Maintenance Contribution has been paid to the Council; and
 - 1.4.3 the Play Area Maintenance Contribution has been paid to the Council
 - 1.5 If the Owner delivers to the Council (or such other body as the Council may nominate) a transfer for Amenity Open Space and/or the Play Area fully in accordance with agreed heads of terms for completion by the Council (or such other body) on such date as has been agreed or notified pursuant to paragraph 1 of Schedule 6 and the Council (or such other body) does not

complete the transfer within 30 (thirty) working days of receipt of such transfer from the Owner then paragraph 1.4.1 of this Schedule shall cease to apply.

Off Site Play Area Contribution

- 1.6 Not to Occupy or allow Occupation of any Dwelling on the Site unless and until the Off Site Play Area Contribution has been paid to the Council.

Schedule 4

Allotments

- 1 The Owner covenants with the Council:
 - 1.1 Not to Commence or allow Commencement of Development unless and until the Allotments Specification has been submitted to the Council.
 - 1.2 Not to Occupy or allow Occupation of more than 100 Dwellings unless and until the Allotments Specification has been approved by the Council.
 - 1.3 Not to Occupy or allow Occupation of more than 120 Dwellings unless and until the works set out in the Allotments Specification have been completed to the satisfaction of the Council.
 - 1.4 Once the allotments are laid out in accordance with the approved Allotments Specification to maintain the allotments and the works set out in the Allotments Specification to a good standard until such time as the Allotment Land has been leased to the Council (or such other body as the Council may nominate).
 - 1.5 Subject to paragraph 1.5 of this Schedule where the allotments have been laid out pursuant to paragraph 1.3 of this Schedule not to Occupy or allow Occupation of more than 120 Dwellings unless and until the Allotment Land has been leased to the Council (or such other body as the Council may nominate) in accordance with the Allotment Lease Provisions contained herein.
 - 1.6 If the Owner delivers to the Council (or such other body as the Council may nominate) a lease for the Allotment Land fully in accordance with the Allotment Lease Provisions and any other agreed heads of terms for completion by the Council (or such other body) on such date as has been agreed or notified pursuant to paragraph 1 of Schedule 6 and the Council (or such other body) does not complete the lease within 30(thirty) Working Days of receipt of such lease from the Owner then the applicable restriction on Occupation in paragraph 1.5 of this Schedule shall cease to apply.

Schedule 5

Attenuation Lagoon

- 1 The Owner covenants with the Council:
 - 1.1 Not to Commence or allow Commencement of Development unless and until the location and extent of the Lagoon and the Lagoon Works Specification have been submitted and approved in writing by the Council (such approval not to be unreasonably withheld).
 - 1.2 Not to Occupy or allow Occupation of any Dwelling on the Site unless and until the Lagoon Arrangements have been submitted and approved in writing by the Council (such approval not to be unreasonably withheld).
 - 1.3 To comply with the Lagoon Arrangements once the Council has provided its approval pursuant to clause 1.2 of this Schedule.

Schedule 6

Terms and Conditions of Land Transfers

- 1 Completion of the transfer or lease of any land required by this Agreement to be transferred or leased to the Council or its nominee shall take place on such date as shall be agreed in writing between the Council and the Owner or in default of such agreement being reached within a period of 28 days from the date of the offer to transfer or lease the relevant land upon such date as shall be specified in a notice in writing given by the Council to the Owner or by the Owner to the Council PROVIDED THAT the date specified for completion shall be at least 28 days from the date on which the notice is served on the other party.
- 2 Any land required to be transferred to the Council pursuant to this Agreement shall be transferred at nil consideration with full title guarantee and with vacant possession. The transfer shall contain all such rights and easements whatsoever (including without prejudice to the generality of the foregoing the provision of all rights of access of services and service installations thereto) as are required to facilitate the use of the land transferred and the use of the land retained for the purpose for which the relevant land is being transferred or retained as the case may be. The transfer shall be subject to the entries on the registered Title Number NK383746 (as applicable) as at 28 October 2013 at 08:44:49.
- 3 The standard conditions of sale (4th edition) shall apply to any transfer required by this Agreement so far as they are applicable to a sale by private treaty and are not varied by or inconsistent with the express terms of this Agreement.
- 4 All costs incurred in connection with the transfer of land including but not limited to legal fees and Land Registry disbursements shall be paid by the Owner.

Schedule 7

Highway Contributions and Travel Plan

The Owner's Covenants with the County Council

- 1 Not to Commence or allow Commencement of Development unless and until either:
 - 1.1 a Travel Plan has been submitted to the County Council for approval as an Approved Travel Plan in accordance with the Planning Permission; or
 - 1.2 it is agreed in writing with the County Council that the County Council will produce, approve and monitor the Travel Plan.
- 2 In the event that the County Council agrees to produce, approve and monitor the Travel Plan pursuant to paragraph 1.2 of this Schedule, the Owner shall pay to the County Council the Travel Plan Commuted Sum in the following instalments:
 - 2.1 50% prior to Commencement of Development and the Owner shall not Commence Development until this first payment has been paid to the County Council; and
 - 2.2 the remaining 50% of the Travel Plan Commuted Sum prior to first Occupation of the 100th Dwelling to be Occupied and the Owner shall not Occupy more than 99 Dwellings until this final payment has been paid to the County Council.
- 3 In the event of an Approved Travel Plan being in existence pursuant to paragraph 1.1 of this Schedule the following obligations shall apply:
 - 3.1 The Owner shall 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 and on the subsequent anniversaries of that date or such other dates as may be agreed between the Owner and the County Council such monitoring to continue each year until the second anniversary of final Occupation of the Development or until such other date as the County Council and Owner shall agree in writing; and
 - 3.2 the Owner shall not allow first Occupation of any Dwelling unless and until it has either complied with paragraph 3.2.1 or 3.2.2 below as follows:
 - 3.2.1 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
 - 3.2.2 deposited the Bond Sum with the County Council;
 - 3.3 In the event that the obligations and the requirements of the Approved Travel Plan are not met by the Owner the County Council may serve notice on the Owner confirming the actions required by it to comply with the obligations contained in this Agreement ("the Performance Notice"); and

- 3.4 If after a period of 28 days the requirements of the Performance Notice have not been complied with to the satisfaction of the County Council the County Council may call in such amount as is reasonably required of the Approved Travel Plan Bond or deposited Bond Sum as the case may be and carry out the requirements of the Performance Notice without further recourse to the Owner.

Highway Contribution

- 4 To pay the Highway Contribution to the County Council as a single lump sum payment prior to the Commencement of Development.

Schedule 8

County Council's Covenants

Highway Contribution

- 1 To hold the Highway Contribution in an interest bearing account and apply the capital and any interest accrued towards the provision of the highway facilities and infrastructure for which the payment has been made.
- 2 In the event that the Highway Contribution or any part of it has not been committed (by way of a contract or by the expenditure of the monies) to the provision of the facilities referred to in paragraph 1 above within five years of final Occupation of the Development then the County Council will repay to the Owner so much of the Highway Contribution as shall remain uncommitted together with any accrued interest thereon.

Travel Plan

In the event that the Owner opts to produce a Travel Plan:

- 3 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 Dwellings Occupied at that time and thereafter by a further proportionate amount on a yearly basis.
- 4 On reduction of the Bond Sum in accordance with 3 above, the County Council shall within 28 days return such reduced amount of the deposited Bond Sum (if applicable) to the Owner, or confirm in writing to the Surety that such proportion of the Approved Travel Plan Bond is released.
- 5 In the event that the Owner has opted to make a payment to the County Council of the Travel Plan Commuted Sum the County Council covenants with the Owner to hold the Travel Plan Commuted Sum 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 9

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 10

Council's Covenants

- 1 To hold the Amenity Open Space Maintenance Contribution Play Area Maintenance Contribution and Off Site Play Area Contribution in an interest bearing account and apply the capital and any interest accrued towards the purposes for which the contribution was made as set out in this Agreement.
- 2 To use the proceeds of any payment made to the Council under the Shared Equity Arrangements for the provision or improvement of Affordable Housing within the administrative area of the Council.

EXECUTED by the parties hereto as a deed on the date written above

The common seal of **BROADLAND**)
DISTRICT COUNCIL was affixed to this deed)
in the presence of:)



.....
~~Head of Corporate Services and Monitoring~~
~~Officer~~

CHIEF EXECUTIVE




The common seal of **NORFOLK COUNTY**)
COUNCIL was affixed to this deed in the)
presence of:)

.....
Head of Law


.....
authorised to sign
on behalf of: HEAD OF LAW



;



Director's signature

Director's signature

Director's/Secretary's signature

