

DATED 17th March 2010

BROADLAND DISTRICT COUNCIL

- AND -

GEOFFREY WATLING (NORWICH) LIMITED

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

relating to the development of land
on the North side of The Street, Felthorpe, Norfolk

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

THIS AGREEMENT is made the 17th day of March 2010

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU (hereinafter called "the Council") of the first part and GEOFFREY WATLING (NORWICH) LIMITED (Company Registration No. 00957457) of 102 Prince of Wales Road, Norwich NR1 1NY (hereinafter called "The Owner") of the second part

1. INTERPRETATION AND DEFINITIONS

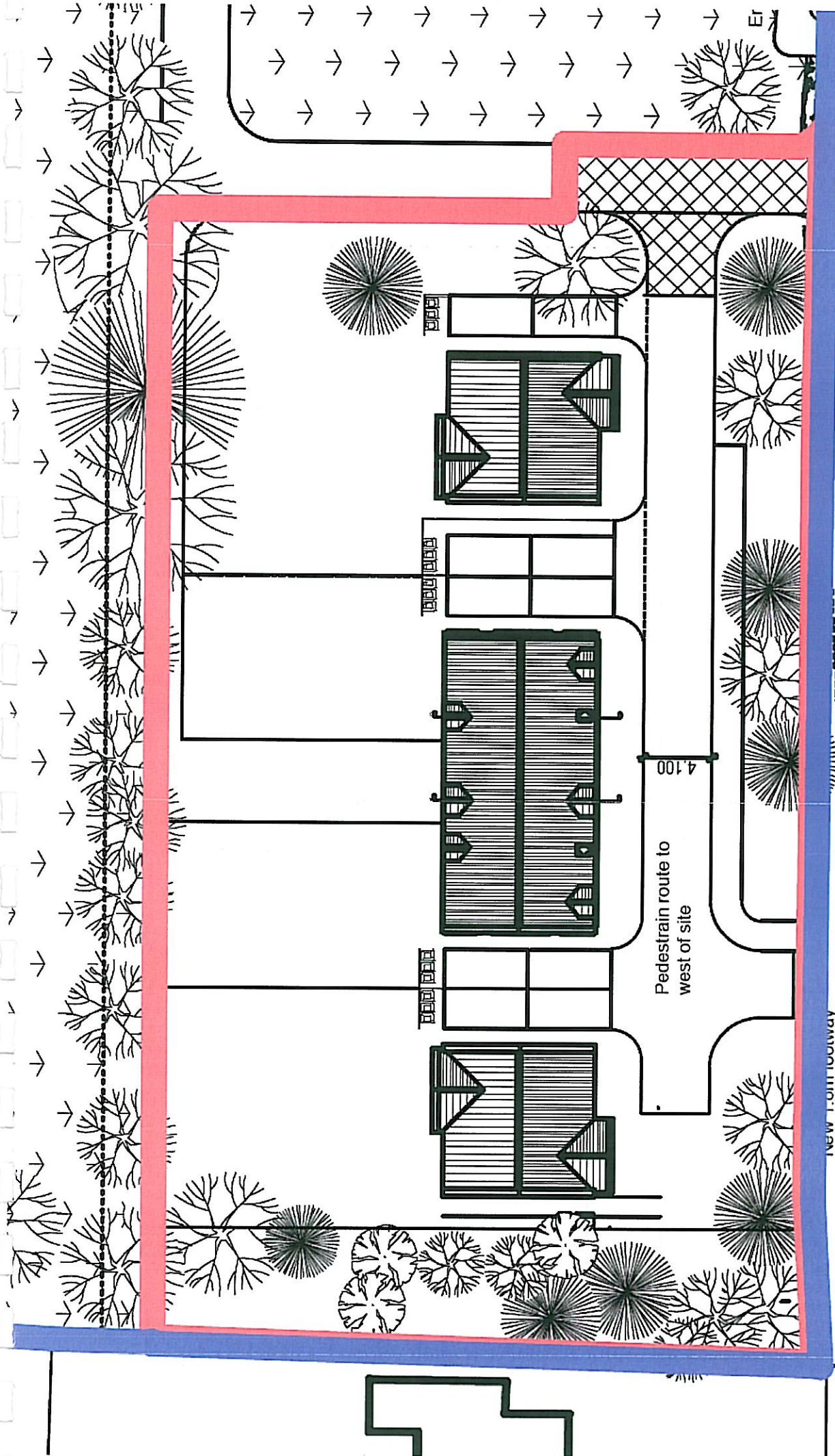
In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"Act"	the Town and Country Planning Act 1990 (as amended)
"Affordable Housing"	housing which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market to be owned and/or managed by a Registered Social Landlord
"Affordable Housing Units"	five (5) Dwellings to be constructed or provided on the Site as part of the Development

"Affordable Rental Units "	five (5) Affordable Housing Units to be constructed or provided on the Site as part of the Development and to be let for a rent upon either a weekly basis or monthly tenancy basis not exceeding the Home and Communities Agency target rents (or if such targets cease to be set such other measure of affordable rents as the relevant District Council shall reasonably determine) and to be let by or on behalf of a Registered Social Landlord
"Application"	the application for detailed planning permission received on 11 th June 2008 for five Affordable Housing Units in accordance with the plans deposited with the Council bearing reference no 20080907
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not including any operations relating to the demolition of any existing buildings, clearance or temporary fencing of the Site) and "commence" shall be interpreted in accordance with this definition
"Development"	the development permitted by the Planning Permission
"Dwelling"	any residential dwelling (comprising a bungalow, flat, maisonette or house) approved pursuant to the Planning Permission

"Director"	the Council's Strategic Director and Chief Planner or other officers of the Council acting under his hand
"Inflation Provision"	the increase (if any) in the Department for Business Enterprise and Regulatory Reform (BERR) Output Price Index for Public Works between 1 st September 2006 and the date upon which payment of the Open Space Contribution is made pursuant to this Agreement
"Landscape Management Plan"	a plan for the management and maintenance of existing and proposed landscaping on the land shown shaded green on Plan No. 2
"Local Lettings Policy"	the order in which the Affordable Housing Units are to be allocated and which is set out under the title "Local Lettings Policy" at Appendix 1 to this Agreement as amended from time to time
"Monitoring Fee"	the total sum of nine hundred and twenty two pounds and fifty pence (£922.50) to be paid by way of a monitoring fee for the main contributions specified in this Agreement which fee is required for checking the implementation and compliance with the terms of this Agreement.
"Open Space Contribution"	the sum of eighteen thousand eight hundred and seventy six pounds (£18,876)
"Plan No. 1"	the plan marked plan no. 1 annexed to this Agreement

"Plan No. 2"	the plan marked plan no. 2 annexed to this Agreement
"Planning Permission"	the detailed planning permission to be granted pursuant to the Application
"Qualifying Occupiers"	in relation to any person housed in an Affordable Housing Unit, any person who meets the qualifying criteria as having a total household income at a level which prevents them from obtaining on the open market housing accommodation locally which is reasonably adequate for their needs contained in the Council's policies relating to housing allocation (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 Lettings Policy or where such persons have been exhausted any person as nominated by the Council on the Broadland Housing Register that the Registered Social Landlord owning or managing the Affordable Housing Units on the Site is entitled to house within its rules
"Registered Social Landlord"	a registered social landlord in the register kept by the Homes and Communities Agency under Part 1 of the Housing Act 1996 (or any statutory re-enactment or modification thereof) as approved by the Council



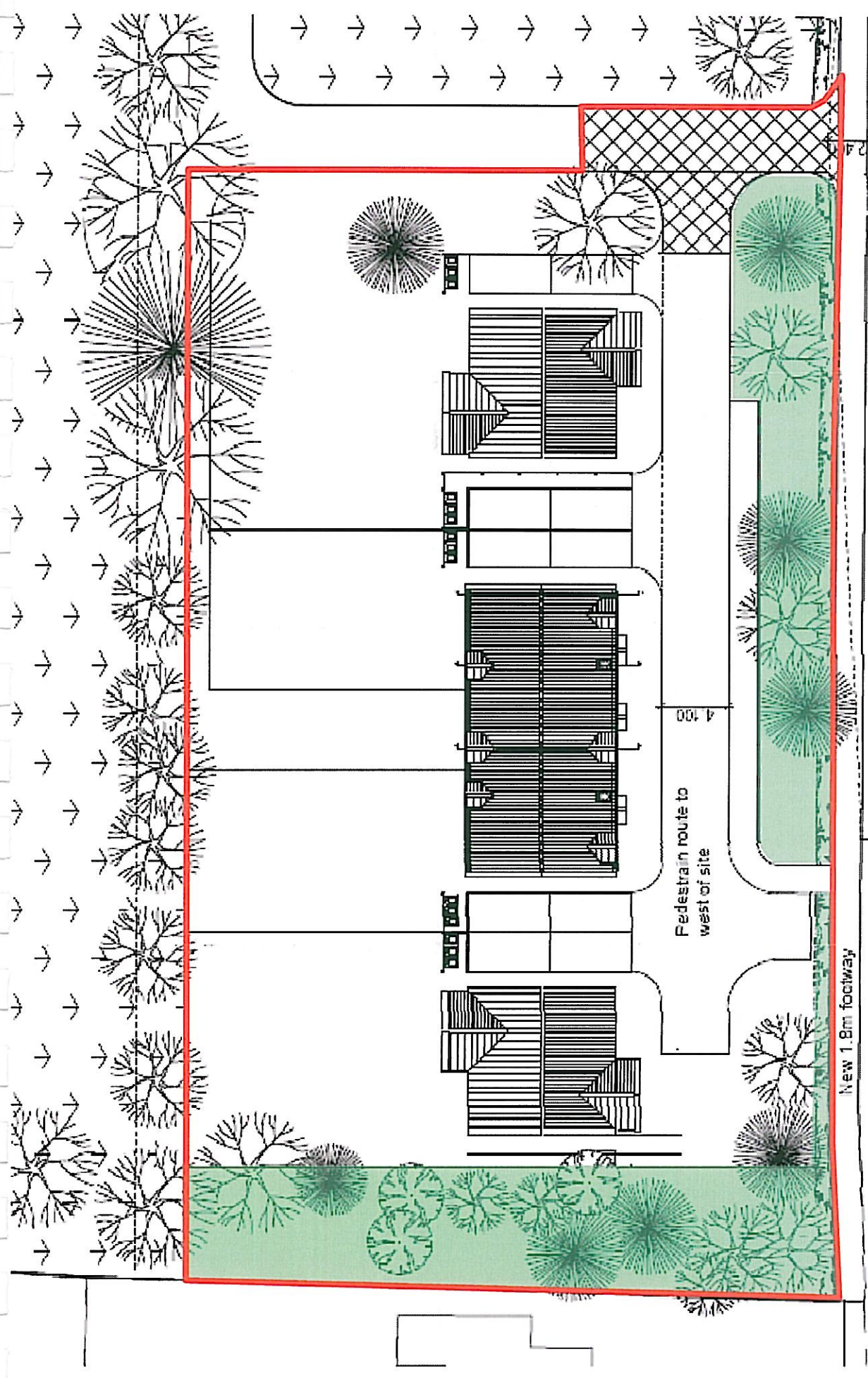
PLAN No. 1

43.000

Pedestrian route to
west of site
4.100

Main sewer

New 1.0m roadway



PLAN NO. 2

"Site" the land on the North side of The Street,
Felthorpe, Norfolk shown for the purposes of
identification only edged red on Plan No. 1

In this Agreement unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns of that party
- (ii) references to clauses and schedules are references to clauses in and schedules to this Agreement except where otherwise specified
- (iii) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument
- (iv) headings in this Agreement shall not form part of or affect its construction

W H E R E A S:

- A. The Council is the Local Planning Authority for the purposes of the Act for the area within which the Site is situated
- B. The Owner is the freehold owner of the Site pursuant to Title number NK327732
- C. The Owner submitted the Application and the Council is minded to grant the Planning Permission subject to the completion of this Agreement

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers

2.2 The obligations of the Owner hereunder are planning obligations enforceable by the Council against the Owner and its successors in title and assigns

2.3 The provisions of this Agreement shall have immediate effect upon completion of this Agreement

2.4 This Agreement shall cease to have effect if:

2.4.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

2.4.2 the Planning Permission shall expire prior to the Commencement Date

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 in the exercise of its functions as Local Planning Authority and the rights powers duties and obligations under all public and private bylaws and regulations may be as fully and effectively exercised as if the Council were not a party to this Agreement

3.2 Invalidity or Unenforceability of any of the Terms of this Agreement

If any provision in this Agreement shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be deemed thereby to be affected or impaired

3.3 No Waiver

No waiver (whether express or implied) by the Council of any breach or default by the Owner in performing or observing any of the covenants in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the covenants or from acting upon any subsequent breach or default in respect thereof

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

4. NOTICES

4.1 Any notice document or other correspondence required to be served or given under the provisions of this Agreement shall be in writing and delivered personally or sent by pre-paid letter or facsimile

4.2 The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The Council	The Strategic Director and Chief Planner Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU
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The Owner	102 Prince of Wales Road Norwich NR1 1NY
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or such other address for service as may be notified by one party to the other in accordance with the provisions of this clause 4

4.3 Any notice or other written communication to be given by the Council shall be deemed to be valid and effective if on its face it is signed on behalf of the Council by a duly authorised officer

5. THIRD PARTIES

5.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement (other than a successor in title to one of the original parties) shall be entitled in that person's own right to enforce any provisions of this Agreement pursuant to the provisions of the said Act

6. COSTS

- 6.1 The Owner shall on completion of this Agreement pay the Council's reasonable legal and administrative costs properly incurred in the preparation negotiation and completion of this Agreement

7. PAYMENT OF INTEREST

- 7.1 The Owner shall pay interest at the rate of 4% above HSBC Bank base rate for the time being in force on any monies due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received

8. VAT

- 8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable
- 8.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Agreement, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

9. JURISDICTION

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

10. COMPENSATION

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

11. TITLE WARRANTY

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

12. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

- 12.1 To carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement
- 12.2 Within 28 days of the Commencement Date the Open Space Contribution as increased by the Inflation Provision shall be paid by the Owner (or its successors in title) to the Council
- 12.3 Not to commence the Development until it has prepared and secured the written approval of the Council to the Landscape Management Plan and upon approval the said Landscape Management Plan shall be deemed to be incorporated into the provisions of this Agreement
- 12.4 Following the Commencement Date to implement and continue to implement the provisions and requirements of the said Landscape Management Plan
- 12.5 The Monitoring Fee which is required for checking the implementation and compliance with the terms of this Agreement shall be paid to the Council prior to commencement of the Development on the Site

SCHEDULE 1

1. AFFORDABLE HOUSING

- 1.1 To construct or procure the construction of the Affordable Housing Units in accordance with current NHBC standards and building regulations in force at the time of building and to the Homes and Communities Agency's Scheme Development Standards and to meet the Code for Sustainable Homes Level 3 to the reasonable satisfaction of the Council and to complete the construction of the Affordable Housing Units within a time approved by the Council acting reasonably
- 1.2 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units
- 1.3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.4 The Owner shall not dispose of its interest in the freehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to a Registered Social Landlord
- 1.5 Paragraphs 1.2 1.3 and 1.4 above
 - (i) shall not be binding upon any mortgagee in possession of any of the Affordable Rental Units; and
 - (ii) shall not be binding upon any person (including that person's successor in title) deriving title under such mortgagee manager receiver or administrative receiver; and
 - (iii) shall cease to apply to any of the Affordable Rental Units where the Owner shall be required to dispose of such Units pursuant to a right to buy under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

APPENDIX 1

Local Lettings Policy for The Street, Felthorpe

1. Nomination Rights Policy

1.1 The Policy will apply to all categories of properties on the basis of 100% of all lettings for the first 80 years.

1.2 The Council and the Association are both committed to eradicating double scrutiny of nominated households for general needs accommodation. They are also agreed on the move away from a pool nomination system to a direct nomination system where a maximum of 2 households will be nominated in priority order for any letting other than those designated as hard to let where a maximum of 3 households will be nominated

2. Allocations will be made to applicants on the Common Housing Register managed and maintained by Broadland District Council on the following priority basis:

2.1 Residents of Felthorpe who have lived in the Parish for a total of at least 3 of the last 10 years.

2.2 Former residents of Felthorpe who have had their main home in the Parish for 3 of the last 10 years.

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

2.4 Residents of the adjacent parishes of Horsford, Stratton Strawless, Hevingham, Haveringland, Swannington, Attlebridge who have lived in these parishes for the last three years.

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

2.6 Residents of Felthorpe who have lived in the parish for less than three years.

2.7 Residents of the adjacent parishes of Horsford, Stratton Strawless, Hevingham, Haveringland, Swannington and Attlebridge who have lived in these parishes for less than 3 years.

2.8 Residents of the adjacent parishes of Horsham and Newton St Faiths, Hainford, Marsham, Cawston, Brandiston, Alderford, Morton on the Hill and Ringland who have lived in these parishes for the last three years.

2.9 Residents of the parishes of Horsham and Newton St Faiths, Hainford, Marsham, Cawston, Brandiston, Alderford, Morton on the Hill and Ringland who have lived in these parishes for less than 3 years.

2.10 Residents of Broadland District

2.11 Any other person

3. Administrative Procedure for Nominations

3.1 The administrative procedure for nominations shall be in accordance with the operational procedures of the Home Options Choice Based Lettings as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.

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)



6302

M. Mow
Head of Corporate Services
and Monitoring Officer

THE COMMON SEAL of)
GEOFFREY WATLING (NORWICH))
LIMITED)
was hereunto affixed in the presence of)

Seal
)

Director

Adrian

Director/Secretary

ACD