

DATED 9th October 2013

BROADLAND DISTRICT COUNCIL

- and -

MICHAEL FRANCIS TRAFFORD

-and-

WHERRY HOUSING ASSOCIATION LIMITED

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

relating to the development of land
at Hall Lane, Frettenham

THIS AGREEMENT is made the day of 2013
BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road,
 Thorpe St Andrew, Norwich, Norfolk NR7 0DU (the "Council")
2. MICHAEL FRANCIS TRAFFORD care of Trafford Estates, Estate Office,
 Salhouse Road, Wroxham, Norfolk NR12 8TS ("the Owner")
3. WHERRY HOUSING ASSOCIATION LIMITED (Industrial & Provident
 Society Act 1965 Reg No 27604R) of Circle Anglia House, 1-3 Highbury
 Station Road, London, N1 1SE ("the Developer")

WHEREAS:-

- A. The Council is the Local Planning Authority for the purposes of the Act for the
 area within which the Site is situated
- B. The Owner is the freehold owner of the Site registered with the Land Registry
 under title numbers NK323347
- C. With the full knowledge and consent of the Owner, 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.
- D. The Developer has a beneficial interest in the Site pursuant to an agreement
 between the Owner and the Developer.

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 (provided in accordance with the requirements of Schedule 1 to this Agreement and of the Affordable Housing Scheme) which is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market to be owned and/or managed by an AHP
"Affordable Housing 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 Scheme"	The scheme for the provision of the Affordable Housing Units set out at Schedule 3
"Affordable Housing Units"	Eight (8) Dwellings to be provided for use as Affordable Housing in accordance with the Planning Permission, Schedule 1 and the Affordable Housing Scheme for use as Affordable Rental Units and "Affordable Housing Unit" shall be construed accordingly;
"Affordable Rental Units "	The Affordable Housing Units to be constructed or provided on the Site as part of the Development and to be let by an AHP to households who are eligible for Affordable Housing and let on a weekly or monthly tenancy such rent not to exceed 80% of the open market rental value (including

	service charges, where applicable) and "Affordable Rent" shall be construed accordingly.
"Application"	the application for full planning permission dated 15 July 2013 and bearing reference number 20130951 for the development of 8 Affordable Housing Units
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government dated December 2006
"Commencement of Development"	the date on which any Material Operation forming part of the Development begins to be carried out and "Commence Development" shall be construed accordingly
"Development"	the development of the Site permitted by the Planning Permission
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"Dwelling"	any unit of residential occupation being a self-contained house maisonette bungalow or flat constructed as part of the Development and "Dwelling" shall be construed accordingly
"HCA Standards"	The "Housing Quality Indicators" and "Design & Quality Standards" specified by the Homes and Communities Agency
"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 for land at Hall Lane, Frettenham" at Schedule 2 to this Agreement as amended from time to time
"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:- <ul style="list-style-type: none"> (a) site clearance (b) demolition of existing buildings (c) archaeological investigation (d) assessment of contamination

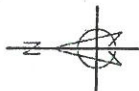
	<p>(e) remedial action in respect of contamination</p> <p>(f) the erection of fences or other means of enclosure for site security</p> <p>(g) the diversion and laying of services</p> <p>(h) the erection of a site compound or site office or temporary buildings or structures</p>
"Occupation"	occupation 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
"Plan"	the plan annexed to this Agreement with drawing reference number EO74-00
"Planning Permission"	the full 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 Common Housing Register that the Registered Provider owning or managing the Affordable Housing Units on the Site is entitled to house within its rules]
"Site"	the land at Hall Lane, Frettenham, Norfolk which is shown for the purposes of identification only edged red on the Plan

1.2 In this Agreement unless the context otherwise requires:

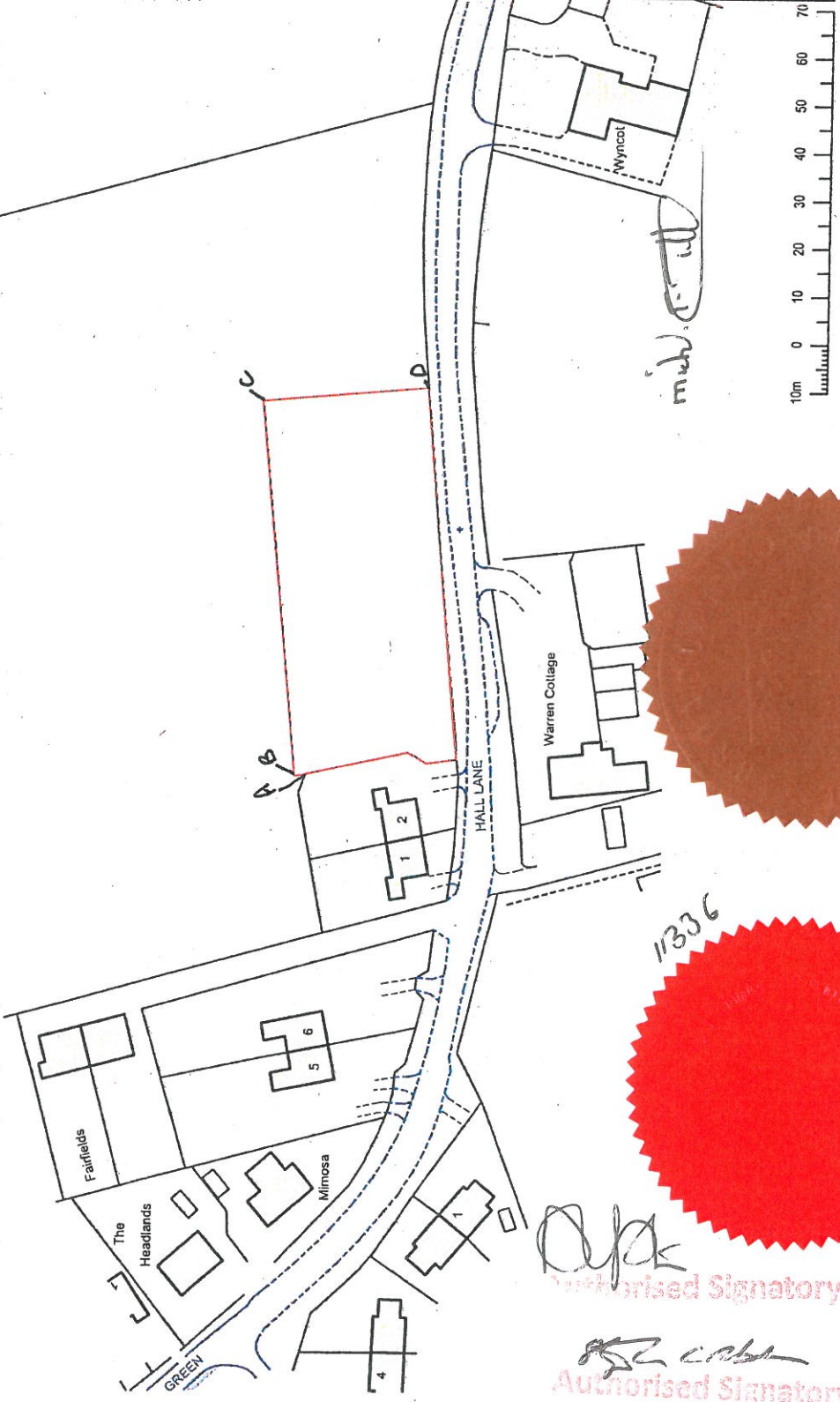
- a) references to any party shall include the successors in title and assigns of that party
- b) covenants given or made by any party which includes more than one person (whether natural or artificial) shall be deemed to be given or made jointly and severally
- c) references to clauses and schedules are references to clauses in and schedules to this Agreement
- d) any mention herein of any Act or of any Section Regulation or Statutory Instrument shall be deemed to refer to the same source as at any time amended and where such Act Section Regulation or Statutory Instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting Act or Section or Regulation or Statutory Instrument
- e) headings in this Agreement shall not form part of or affect its construction

2. GENERAL PROVISIONS APPLICABLE TO THIS AGREEMENT

- 2.1 This Agreement is made under Section 106 of the Act, Section 111 of the Local Government Act 1972 and any other enabling powers
- 2.2 The covenants, restrictions, requirements and obligations arising hereunder are planning obligations pursuant to Section 106 of the Act and are enforceable by the Council against the Owner (subject to clause 13) and their respective successors in title and assigns
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after it has parted with its interest in the Site or the part of the Site in respect of which the such breach occurs but without prejudice to liability for any subsisting breach which occurs prior to parting with such interest in the Site or any part thereof in respect of which any such breach has taken place



<p>DRAWING FOR COMMENT ONLY THIS DRAWING SHOULD BE CONSIDERED PROVISIONAL - UNTIL RECEIPT OF WRITTEN CLIENT APPROVAL</p>	
<p>Richard Pike Associates 4 Northchurch Road, 30-32 King Street, Newcastle, NSW 1511 Tel: 0810 611 123 www.richardpike.com.au</p>	<p>exor EXOR GROUP 100% OWNED BY THE EXOR GROUP</p>
<p>Project Details Affordable Housing Proposals, Hall Lane, Freetownham</p>	
<p>Client Circle Anglia</p>	
<p>Drawing Land Registry Title Plan</p>	
<p>Date July 2013</p>	
<p>Scale 1/1250 @A4</p>	<p>Drawn RC Checked</p>
<p>Drawing No. E074 - 00</p>	<p>Issue FOR COMMENT ONLY</p>
<p>All dimensions must be checked and not scaled from this drawing</p>	
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M. Muen

Head of Democratic Services and
Administrative Officer

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[Signature]

Authorised Signatory

[Signature]

Authorised Signatory

- 2.4 The provisions of this Agreement are conditional upon the grant of the Planning Permission and the Commencement of Development
- 2.5 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.6 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges
- 2.7 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 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 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

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 Chief Executive, Broadland District Council, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk, NR7 0DU
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The Owner	Wroxham Home Farms, The Estate Office, Home Farm, Wroxham, Norfolk NR12 8SW
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The Developer	The Managing Director, Wherry Housing association, Anglia House, 6 Central Avenue, Norwich, Norfolk NR7 0HR
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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 Developer shall on completion of this Agreement pay the 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 due under the provisions of this Agreement in the event of late payment for the period from the date the monies should have been paid to the date the money is received.

8. VAT

8.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any VAT properly payable

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

9. Jurisdiction

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

10. Title Warranty

- 10.1 The Owner hereby warrants to the Council that it is the freehold owner of the Site and has full power to enter in to this Agreement and that the Site is free from all mortgages charges or other encumbrances other than that revealed in title no. NK323347 as at 3 April 2013 and that there is no person having any interest in the Site other than as notified in writing to the Council's Director 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 Schedule 1 hereto which are expressed to be given to or to be for the benefit of the Council.

12.2 The Council covenants to issue the Planning Permission as soon as reasonably practicable following completion of this agreement.

13. Developers Consent

13.1 The Developer acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the Developers interest in the Site shall take effect subject to this Agreement PROVIDED THAT the Developer shall (save in regard to Clause 6) otherwise have no liability under this Agreement unless it acquires the Site or any part of the Site or exercises any right of sale in which case it too will be bound by the obligations as if it were a person deriving title from the Owner.

14. Issue of Approvals

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

15. Statutory Undertakers Consent

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

16. Notification

16.1 The Owner agrees to notify the Council in writing 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

The Owner covenants with the Council

- 1 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission, the Affordable Housing Scheme, to a minimum of level 3 of the Code and to current HCA standards
- 2 Not to use or allow or permit the Affordable Housing Units to be Occupied for any purpose other than as Affordable Rental Units.
- 3 The Affordable Housing Units shall not be Occupied other than by Qualifying Occupiers
- 4 That all of the Affordable Housing Units will be let in accordance with the Local Lettings Policy
- 5 The Owner shall not dispose of its freehold interest in the Affordable Housing Units other than to an AHP
- 6 This Schedule and Schedule 2 below shall not be binding upon:
 - (a) any mortgagee or chargee in possession of the Affordable Housing Units or part thereof or successors in title to the mortgagee in possession nor
 - (b) any receiver or manager (including an administrative receiver) for such mortgagee or any successors in title to such receiver, manager or administrative receiver
 - (c) any individual owner or occupier or its mortgagee or chargee of the Affordable Housing Units who has purchased the Affordable Housing Unit pursuant to a right to buy claim under Part V of the Housing Act

1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable

- 7 That it will use reasonable endeavours to recycle any recyclable grant or proceeds from the disposal of the Affordable Housing Units in line with the requirements of the Homes and Communities Agency's Capital Funding Guide and that these sums will be reinvested within the administrative area of the Council.

SCHEDULE 2

Local Lettings Policy for Land at Hall Lane, Frettenham

1. Allocations will be made to applicants on the Common Housing Register managed and maintained by Broadland District Council on the following priority basis:
 - 1.2 Residents of Frettenham who have lived in the Parish for a total of at least 3 of the last 10 years.
 - 1.3 Former residents of Frettenham who have had their main home in the Parish for 3 of the last 10 years.
 - 1.4 Households who need to move to the parish of Frettenham to give/receive support from family/relatives.
 - 1.5 Residents of the adjacent parishes of Buxton with Lamas, Crostwick, Hainford, Horstead with Stanninghall, and Spixworth who have lived in these parishes for the last three years.
 - 1.6 People working in the parish of Frettenham who have done so for a year or more.
 - 1.7 Residents of Frettenham who have lived in the parish for less than three years.
 - 1.8 Residents of the adjacent parishes of Buxton with Lamas, Crostwick, Hainford, Horstead with Stanninghall, and Spixworth who have lived in these parishes for less than 3 years.
 - 1.9 Residents of the adjacent parishes of Beeston St Andrew, Belaugh, Brampton, Coltishall, Horsford, Horsham St Faiths, Newton St Faiths, Old Catton, Rackheath, Stratton Strawless and Wroxham who have lived in these parishes for the last three years.
 - 1.10 Residents of the adjacent parishes of Beeston St Andrew, Belaugh, Brampton, Coltishall, Horsford, Horsham St Faith, Newton St Faiths, Old Catton, Rackheath, Stratton Strawless and Wroxham who have lived in these parishes for less than 3 years.

1.11 Residents of Broadland District

1.12 Any other person

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.

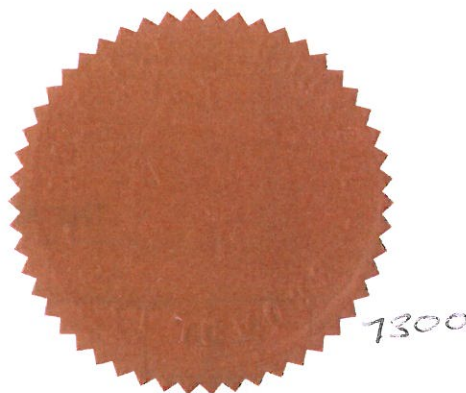
SCHEDULE 3

THE AFFORDABLE HOUSING SCHEME

PLOT NUMBER	DWELLING TYPE	TENURE
1	3-Bedroom 6-Person House	Affordable Rent
2	3-bedroom 6-Person House	Affordable Rent
3	2-Bedroom 4-Person House	Affordable Rent
4	2-Bedroom 4-Person House	Affordable Rent
5	1-Bedroom 2-Person House	Affordable Rent
6	1-Bedroom 2-Person House	Affordable Rent
7	1-Bedroom 2-Person House	Affordable Rent
8	1-Bedroom 2-Person House	Affordable Rent

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:)



M. Murre

Head of Democratic Services and
Monitoring Officer

~~Head of Corporate Services
and Monitoring Officer~~

SIGNES as a DEED by
MICHAEL FRANCIS TRAFFORD

Michael Francis Trafford

in the presence of:

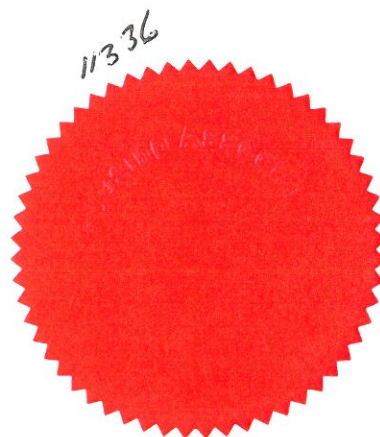
Signature

Daph Fletcher
DAPHNE FLETCHER

Address

The Beeches
54 Holman Rd
Aylsham, Norfolk

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



Authorised Signatory

Authorised Signatory

