

Dated

10 JUNE

2016

BROADLAND DISTRICT COUNCIL

-and-

WHERRY HOUSING ASSOCIATION LIMITED

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**DEED OF PLANNING OBLIGATION  
UNDER SECTION 106  
OF THE TOWN AND COUNTRY PLANNING  
ACT 1990**  
relating to land at 1 - 4 Station Road,  
Swannington, NR9 5SY

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THIS DEED is date

10 JUNE.

2016

**PARTIES:**

- (1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, 1 Yarmouth Road, Norwich, NR7 0DU (referred to as "the Council")
- (2) **WHERRY HOUSING ASSOCIATION LIMITED** (Mutual Society Number: IP26622R) whose registered office is Two Pancras Square, King's Cross, London N1C 4AG (referred to as "the Owner")

together referred to as 'the Parties'

**INTRODUCTION**

- (A) The Council is a local planning authority for the area within which the Site is located
- (B) The Owner has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed
- (C) The Owner owns the freehold of the Site

**1. DEFINITIONS**

In this Deed the following expressions have the following meanings:

Act	The Town and Country Planning Act 1990
Commencement	The date on which a material operation as defined in Section 56(4) of the Act is first carried out, except operations consisting of: site clearance demolition archaeological investigations ground surveys

removal of contamination  
erection of temporary fences  
and 'Commence' and 'Commenced' will be  
construed accordingly

Development                      The Development of the Site in accordance with the  
Permission

Dwelling                              A dwelling to be built on the Site as part of the  
Development

Nominated Officer              The senior officer of the Council responsible for  
development management or other officer of the  
Council notified to the Owner

Inflation Provision              The increase (if any) in the Royal Institution of  
Chartered Surveyors Build Cost Information Service;  
All Construction TPI: All New Construction between  
January 2015 and the date on which the payment of  
the Green Infrastructure Commuted Sum is paid

Occupation                        Occupation of the Site, or any part of it, for any  
purpose authorised by the Permission, but excluding  
occupation for the purposes of:  
construction  
internal and external refurbishment  
decoration  
fitting-out  
marketing  
and 'Occupy' and 'Occupied' will be construed  
accordingly

Permission                        The outline planning permission to be granted by the

Council for the demolition of 4 existing units and the development of 10 residential units together with associated access and allocated reference number 20151644 or if the Council agrees (in its absolute discretion) in writing another planning permission for the Development granted pursuant to section 73 of the Act or a replacement permission for the Development

Plan	The plan attached to this Deed
Site	The land known as 1 – 4 Station Road, Swannington, NR9 5SY and registered at H M Land Registry under title number NK88824 shown edged red on the Plan
Trigger	means the Commencement date and any trigger or threshold in this Deed linked to the taking of specified steps, payment of money, or linked to the prohibition of a specified action

## **2. LEGAL BASIS**

2.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council

2.2 It is agreed by the Parties:

2.2.1 That there are 2 planning obligations pursuant to Section 106 of the Act and each planning obligation is set out in a separate Schedule to this Deed



- 2.2.2 That each Schedule to this Deed which sets out how the planning obligation will be performed and sets out the infrastructure or infrastructure project which will be effected will not amount to more than one planning obligation per Schedule for the purposes of Regulation 123 of the Community Infrastructure Levy Regulations 2010, as amended.
- 2.3 Covenants given by more than one party can be enforced against them individually or jointly
- 2.4 A reference to an act of Parliament includes any later modification or re-enactment, including any statutory instruments made under that act, and reference to a gender or person includes all genders or classes of person
- 2.5 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done
- 2.6 This Deed is governed by and interpreted in accordance with the law of England

### **3. COVENANTS**

- 3.1 The Owner covenants with the Council for himself and his successors in title to observe and perform the obligations and stipulations contained in this Deed
- 3.2 The Council covenants with the Owner to comply with its respective requirements contained in this Deed

### **4. OTHER PROVISIONS**

- 4.1 No person will be liable for any breach of this Deed if he no longer has an interest in the Site (unless the breach occurred before he disposed of his interest)

- 4.2 The Owner confirms that he is the owner of the Site with full power to enter into this Deed and that there is no person or body with an interest in the Site whose consent is necessary to make this Deed binding on all interests in the Site
- 4.3 This Deed will not bind anyone who acquires an interest in part of the Site for the purpose of the supply of utility services
- 4.4 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed
- 4.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999
- 4.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions
- 4.7 No waiver, express or implied, by the Council constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed

## **5. DISPUTES**

- 5.1 If any dispute is not resolved between the Parties, any of the Parties may refer it for determination by an expert. The expert will be appointed by agreement between the parties or, in default of agreement, by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's decision shall be final and binding in the absence of fraud and manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties in equal shares.
- 5.2 Any expert howsoever appointed shall be subject to the express requirement that a decision is reached and communicated to the relevant parties within the

minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight working days after the conclusion of any hearing that takes place or twenty-eight working days after he has received the last file or written representation.

5.3 The expert shall be required to give notice to each of the said parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter submission within a further ten working days.

5.4 Nothing in this clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## **6. CONDITIONALITY**

6.1 This Deed is conditional on the grant and issue of the Planning Permission and Commencement of the Permission

6.2 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Permission shall be quashed revoked or otherwise withdrawn or expires prior to Commencement of Development

6.3 Nothing in the Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Permission) after the date of this Deed.

## **7. INTEREST AND VAT**

7.1 If any payment due to the Council is paid late interest will be added from the date payment is due to the date of payment at the rate of 4% above the base lending rate of the Bank of England from time to time.



- 7.2 All payments under this Deed are exclusive of value added tax (VAT) properly payable.

## **8. NOTIFICATIONS**

- 8.1 Any notice or written communication given under this Deed is validly given if hand delivered or sent by recorded delivery post to the address set out at the beginning of this Deed, unless written notification of another address has been received
- 8.2 The Owner will notify the Nominated Officer in writing of the relevant
- 7.2.1 anticipated Triggers seven days in advance of each anticipated date
  - 7.2.2 actual Triggers within seven days of each actual date
- 8.3 If the Owner disposes of his interest in all or part of the Site he will notify the Nominated Officer within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site



Schedule 1

The Plan(s)

~~Schedule 2~~ 13

**BROADLAND  
DISTRICT COUNCIL**

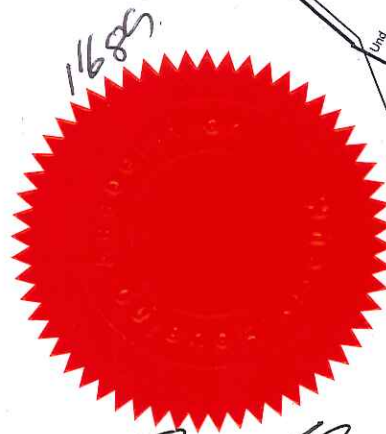
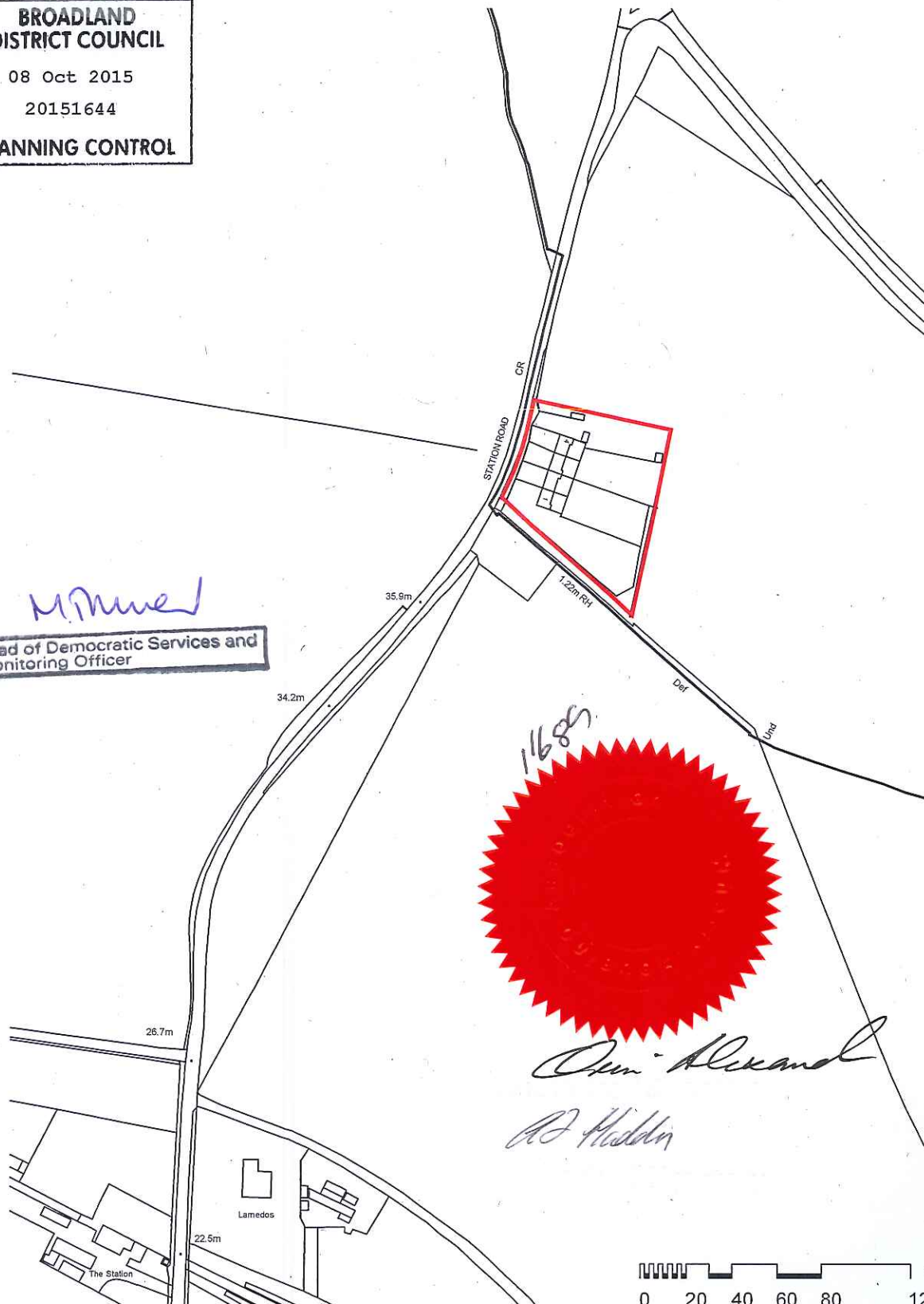
08 Oct 2015

20151644

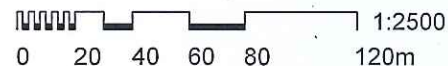
**PLANNING CONTROL**

*M. Murrell*

**Head of Democratic Services and  
Monitoring Officer**



*Don Alexander*  
*AD Hadden*



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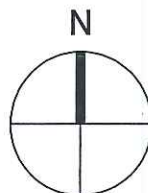
All dimensions to be verified on site by Main Contractor before the start of any  
top drawings or work whatsoever either on their own behalf or that of  
sub-contractors.

Report any discrepancies to the Contract Administrator at once.

This drawing is to be read with all relevant Architect's and Engineer's drawings  
and other relevant information.

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**DO NOT SCALE  
LEGEND:**



**Project:**  
Station Road  
Swannington  
Norfolk

**Drawing Title:**  
Location Plan

**Client:**  
Wherry Housing Association

Drawn:	Checked:	Date:	Scale:	Paper Size:
LMS	JE	01.04.14	1:2500	A4
Job No.:	Dwg No.:	Stage:	Revision:	
31316	100	Outline Planning	A	

Revision:	Date:	Description:	Dwn:	Chk:
A	02.10.13	Issue for Outline Planning	LMS	JE
-	03.04.14	Issue for Building Regulations	LMS	JE

~~Schedule 1~~ *MS*  
The Plan(s)

~~Schedule 2~~ *MS*  
~~9~~

## Schedule 2

### Affordable Housing

#### Part 1

In this Schedule (and elsewhere in this Deed where the context permits) the following words and expressions shall have the following meanings:

"Affordable Dwellings"	the Dwellings to be constructed to the standards set out by the HCA for the 2015 – 2018 Affordable Homes Programme and the words Affordable Housing and "Affordable Dwelling" shall be construed accordingly
"Affordable Housing"	the Shared Ownership Dwellings and Affordable Rented Dwellings to be provided to Eligible Households whose needs are not met by the market
"Affordable Housing Mix"	60% Affordable Rented Dwellings and 40% Shared Ownership Dwellings (or as otherwise agreed by the Council in the Council's absolute discretion) as detailed at Part 2 to Schedule 2
"Affordable Housing Provision"	the construction and provision of Affordable Dwellings on the Site equating to 100% of the total number of Dwellings (or such other percentage as the Council may agree in its absolute discretion) in accordance with the Affordable Housing Mix
"Affordable Housing Scheme"	<p>A scheme securing the Affordable Housing Provision and specifying:</p> <ul style="list-style-type: none"><li>- The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings;</li><li>- The identity of the Provider or such details as the Council requires to satisfy itself that the Affordable Dwellings will be secured as Affordable Housing in perpetuity;</li><li>- The number, location, type and size of Affordable Dwellings to be constructed on the Site; as shown in Table in Part 2- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme.</li></ul>
"Affordable Rented Dwellings"	Dwellings to be let by a Registered Provider with an appropriate agreement with the HCA for the



		provision of affordable rents being controls that limit the rent to no more than 80 per cent of local market rents including any service charges to be let according to Schedule 2 and to remain as affordable rental dwellings in perpetuity.
"Eligible Household"		A person or persons in need of accommodation who are unable to rent or buy on the local open market nominated by the Council in accordance with Part 3 of this Schedule and determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council
"HCA"		the Homes & Communities Agency or the successor body or other appropriate body as the Council may nominate
"Provider"		either:  (i) a Registered Provider; or  (ii) another organisation that owns the Affordable Dwellings and has been approved in writing by the Council
"Registered Provider"		Is as defined in the Housing and Regeneration Act 2008
"Shared Ownership Dwellings"		Dwellings purchased on a Shared Ownership Lease
"Shared Ownership Lease"		a lease in a form approved by the HCA or where there is no such form in a form approved by the Council such lease to provide for the following: - not more than 75% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Provider - power to the purchaser to increase their ownership up to 100% if they so wish - an initial rent not exceeding 2.75% of the value of the equity retained by the Provider subject to annual increases not exceeding 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) plus 0.5% or such other rent as complies with the requirements from time to time of the HCA

The Owner hereby covenants with the Council as follows:

- 1.1 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the standards set by the HCA for the 2015 – 2018 Affordable Homes Programme
- 1.2 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rented Dwellings and Shared Ownership Dwellings.
- 1.3 Not to allow or permit the Affordable Housing Units to be occupied other than by Eligible Households and in accordance with the Local Lettings Policy.
- 1.4 The owner shall not dispose of its freehold interest in the Affordable Housing Units other than to another Provider.
- 1.5 Paragraphs 1.2 and 1.3 and 1.4 above shall not be binding upon:
  - 1.5.1 A mortgagee or chargee (or any receiver (including an administrative receiver or administrator) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a "Receiver") of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver
  - 1.5.2 Any individual owner or occupier of Affordable Housing Units who has purchased the Affordable Housing Units 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 or their successors in title.
  - 1.5.3 A person who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold or freehold interest or by a person who has acquired 100% of a Shared Ownership Dwelling or their successors in title

## PART 2

PLOT NUMBER	DWELLING TYPE	TENURE
1	2 bedroom 4 person house	Shared ownership
2	2 bedroom 4 person house	Shared ownership
3	3 bedroom 5 person house	Shared ownership
4	3 bedroom 5 person house	Shared ownership
5	1 bedroom 2 person bungalow	Affordable rent
6	1 bedroom 2 person bungalow	Affordable rent
7	3 bedroom 6 person house	Affordable rent
8	2 bedroom 4 person house	Affordable rent
9	1 bedroom 2 person house	Affordable rent
10	1 bedroom 2 person house	Affordable rent



## **Part 3**

### **Local Lettings Policy - Swannington**

#### **1. Nomination Rights Policy**

- 1.1 The Policy will apply to both Affordable Rented Dwellings and Shared Ownership Dwellings on the basis of 100% of all lettings in perpetuity.

#### **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 Swannington (including Alderford and Little Witchingham) who have lived in the Parish for a total of at least 3 of the last 10 years.
- 2.2 Former residents of Swannington (including Alderford and Little Witchingham) 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 Swannington (including Alderford and Little Witchingham) to give/receive support from family/relatives.
- 2.4 Residents of the adjacent parishes of Gt Witchingham, Booton, Brandiston, Haveringland, Felthorpe, Attlebridge, Morton on the Hill and Weston Longville who have lived in these parishes for the last three years.
- 2.5 People working in the parish of Swannington (including Alderford and Little Witchingham) who have done so for a year or more.
- 2.6 Residents of Swannington (including Alderford and Little Witchingham) who have lived in the parish for less than three years.
- 2.7 Residents of the adjacent parishes of Gt Witchingham, Booton, Brandiston, Haveringland, Felthorpe, Attlebridge, Morton on the Hill and Weston Longville who have lived in these parishes for less than 3 years.
- 2.8 Residents of the adjacent parishes of Reepham, Cawston, Hevingham, Stratton Strawless, Horsford, Drayton, Taverham, Ringland and Honingham who have lived in these parishes for the last three years.
- 2.9 Residents of the parishes of Reepham, Cawston, Hevingham, Stratton Strawless, Horsford, Drayton, Taverham, Ringland and Honingham 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 To grant to the Council nomination rights to 100% of the Affordable Housing Rental Units.

3.2 The administrative procedure for nominations shall be in accordance with the Council's housing 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**

#### **Green Infrastructure**

In this Schedule the following expressions have the following meanings:

Green Infrastructure Commuted Sum	Commuted sum to be increased in accordance with the Inflation Provision and paid towards the provision of green infrastructure throughout the Broadland district. The amount to be paid shall be calculated subject to the Inflation Provision in accordance with the Council's standards as detailed in the annex to Schedule 3 and in respect only to the net increase in Dwellings on the Development from the existing four 3 bedroom Dwellings.
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**1. The Owner covenants with the Council as follows:**

- 1.1 Not to Occupy or allow Occupation of any Dwelling unless or until the Green Infrastructure Commuted Sum has been paid to the Council.

**2. The Council's Covenants**

- 2.1 The Council hereby covenants with the Owner that it will deposit the Green Infrastructure Commuted Sum into an interest bearing account and will apply the capital and any interest accrued wholly and exclusively towards the provision and maintenance of green infrastructure within the administrative area of the Council which will mitigate the potential impact of the Development on sites in Norfolk designated by the European Union as sites of importance for landscape habitats flora or fauna.
- 2.2 In the event that the Green Infrastructure Commuted Sum has not been committed (by way of contract or expenditure of monies) within 10 years of receipt of payment to refund any unspent balance of the contribution to the payer together with any interest accrued.

## **Annex to Schedule 3**

### **Green Infrastructure Contributions**

**Table 1 – Cost per dwelling for land purchase**

<b>Property</b>	<b>Cost per dwelling</b>
1 bed	£927
2 bed	£1,236
3 bed	£1,545
4 bed	£1,854
5+ bed	£2,163

**Table 2 – Cost per dwelling for equipping**

<b>Property</b>	<b>Cost per dwelling</b>
1 bed	£429
2 bed	£572
3 bed	£715
4 bed	£858
5+ bed	£1001

**Table 3 – Cost per dwelling for maintenance**

<b>Property</b>	<b>Cost per dwelling</b>
1 bed	£253
2 bed	£338
3 bed	£422
4 bed	£506
5+ bed	£591

IN WITNESS WHEREOF the parties hereto have executed this Deed the day and

year first before written



THE COMMON SEAL of  
BROADLAND DISTRICT  
COUNCIL  
was hereunto affixed

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)  
)  
)



1607

*M. Mue*

Head of Democratic Services and  
Monitoring Officer

Authorised Signatory:

EXECUTED AS A DEED by  
WHERRY HOUSING  
ASSOCIATION LIMITED  
acting by a director  
and secretary

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)  
)  
)  
)

*A. Hadden*

Director:

)

*David Alexander*

Secretary:

)

*[Signature]*



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