

DATED 25<sup>th</sup> July 2011

NORFOLK COUNTY COUNCIL

-AND-

BROADLAND DISTRICT COUNCIL

-AND-

THE HAMPER PEOPLE LIMITED

-AND-

NATIONAL WESTMINSTER BANK PLC

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

Relating to the development of land at  
31 Norwich Road, Strumpshaw, Norfolk

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THIS AGREEMENT is made the 25<sup>th</sup> day of July 2011

BETWEEN:

NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich NR1 2DH ("the County Council") of the first part and BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the second part and THE HAMPER PEOPLE of 31 Norwich Road Strumpshaw Norwich NR13 4AG ("the Owner") of the third part and NATIONAL WESTMINSTER BANK PLC (Co. Regn No 929027) whose registered office is at 135 Bishopgate, London EC2M 3UR and whose address for service is Credit Documentation P O Box 339, Manchester M60 2AH ("the Mortgagee") of the fourth 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
"Affordable Housing Overall Provision"	the provision of thirty three per cent (33%) of the total number of Residential Units on the Site as Affordable Housing Units
"Affordable Housing Scheme"	a detailed scheme submitted to and approved by the District Council for the provision of Affordable Housing for the Development which complies with the requirements of Schedule 1

hereof

"Affordable Housing Units"	individual units of accommodation constructed or provided as part of the Development as Affordable Housing
"Affordable Rental Units"	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 Housing and Community Agency (or their successors) target rents (of if such targets cease to be set such other measure of affordable rents as the District Council shall reasonably determine) and to be let by or on behalf of a Registered Provider
"Application"	the application for outline planning permission for the Site for residential housing received 11 March 2010 under reference no. 20100386
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government dated December 2006
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission 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 or clearance of the Site) and "commence" shall be interpreted in accordance with this definition

"Council's Monitoring Fee"	the sum of £620
"County Council's Monitoring Fee"	the sum of £300
"Development"	the development permitted by the Planning Permission
"Director"	the Council's Strategic Director and Chief Planner (Community Services) or other officers of the Council acting under his hand
"HCA Standards"	the "Housing Quality Indicators" and "Design and Quality Standards" specified by the Homes and Communities Agency or their successors
"Inflation Provision"	the increase (if any) in the Department for Business Innovation and Skills (BIS) Output Price Index for Public Works: All Public Works between September 2006 and the date upon which a payment of the Off-Site Open Space Contribution is made pursuant to this Agreement
"Intermediate Rental Units"	Affordable Housing Units to be constructed or provided as part of the Affordable Housing Scheme and to be available for rent at rents 20% (twenty per cent) below Market Rent
"Market Rent"	the estimated price or premium which a property should lease on the date of valuation between willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction after proper marketing wherein the parties had acted knowledgeably prudently and without

compulsion

"Off-Site Open Space Contribution"	the sum calculated in accordance with the formula set out in Schedule 2 to this Agreement as increased by the Inflation Provision
"Open Market Dwellings"	those Residential Units to be constructed on the Site pursuant to the Development which are to be provided and occupied as general market housing
"Plan 1"	the plan annexed to this Agreement and marked Plan 1
"Plan 2"	the plan annexed to this Agreement and marked Plan 2
"Planning Permission"	the 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) or where such

persons have been exhausted any person as nominated by the Council on the Broadland Housing Register that the Registered Provider owning or managing the Affordable Housing Units on the Site is entitled to house within its rules

"Registered Provider" 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)

"Residential Unit" a self-contained house maisonette bungalow or flat approved pursuant to the Planning Permission

"Shared Ownership Dwellings" those Affordable Housing Units to be let on a Shared Ownership Lease

"Shared Ownership Lease" a lease or sub-lease of a Shared Ownership Dwelling granted at a premium whereby up to a maximum of 50% (fifty per cent) on first purchase of the equitable interest in the Shared Ownership Dwelling 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 tenant to acquire up to 80% (eighty per cent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and shall allow a rent to be charged on the remainder of the equitable interest such rent not to exceed housing corporation target rents (or if such targets cease

to be set such other measures of affordable rents as the Council shall reasonably determine) and in any event to be not higher than an annual sum calculated at 2.75% of the value of the equity retained by the Owner at the date of the grant of the Shared Ownership Lease and any increase of the said annual rent shall be no more than the percentage increase in the Retail Price Index (or if such index ceases to be published such other index as the Council shall reasonably determine) plus 0.5% of the current annual rent from time to time

"Site"

the land at 31 Norwich Road Strumpshaw Norwich Norfolk which is shown for the purposes of identification only edged red on Plan 1 annexed hereto

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 and the County Council is the relevant Highway Authority and is also a Local Planning Authority for the purposes of the Act
- B. The Owner is the registered freehold owner of the Site (save for the area shaded green on the Site Plan) and the Mortgagee has a mortgage over the Site (save for the area shaded green on the Site Plan)
- C. The Council has resolved to approve the Application 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 for the purposes of the Act and enforceable by the Council and the County Council against the Owner and its successors in title and assigns
- 2.3 Save for the covenants in Schedule 1 of this Agreement which shall continue to bind the Affordable Housing Units no person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after he has parted with the interest in the Site or the part of the Site in respect of which 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

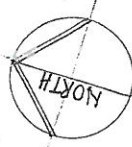


# illustrative scheme

## site plan

SCALE 1:500

PLAN 2



SITE BOUNDARY

MARKET HOUSING:  
6 DWELLINGS SET AROUND  
COURTYARD TO RESEMBLE  
GROUP OF CONVENTED BARNES

OUTLINE OF EXISTING WAREHOUSE  
AND OFFICE PRESENTED TO BE  
DEMOLISHED

EXISTING OFFICES RETAINED FOR  
USE BY THE HAMPER PEOPLE

EXISTING CAR PARK

AERIAL VIEW OF  
NORTH WEST SIDE  
OF COURTYARD

ALL TREES RETAINED:  
EXISTING TREES ARE SHOWN  
ON SURVEY DRAWING  
REF. 1428/001

EXISTING BUILDING (STABLE)  
TO BE DEMOLISHED

ON SITE  
SOCIAL HOUSING

SOCIAL HOUSING:  
TWO FLOORS OF 12 STOREY  
DISCOURAGED, HAVING CONTROLLED  
ACCESS TO PREVENT THEM  
OVERLOOKING OAKLANDS MANOR

EXISTING HOUSES  
TO BE RETAINED

OAKLANDS MANOR

NORWICH ROAD

NEW FOOTWAY TO BE CONSTRUCTED  
ON SOUTH SIDE OF HIGHWAY, TO CONNECT  
TO POST OFFICE

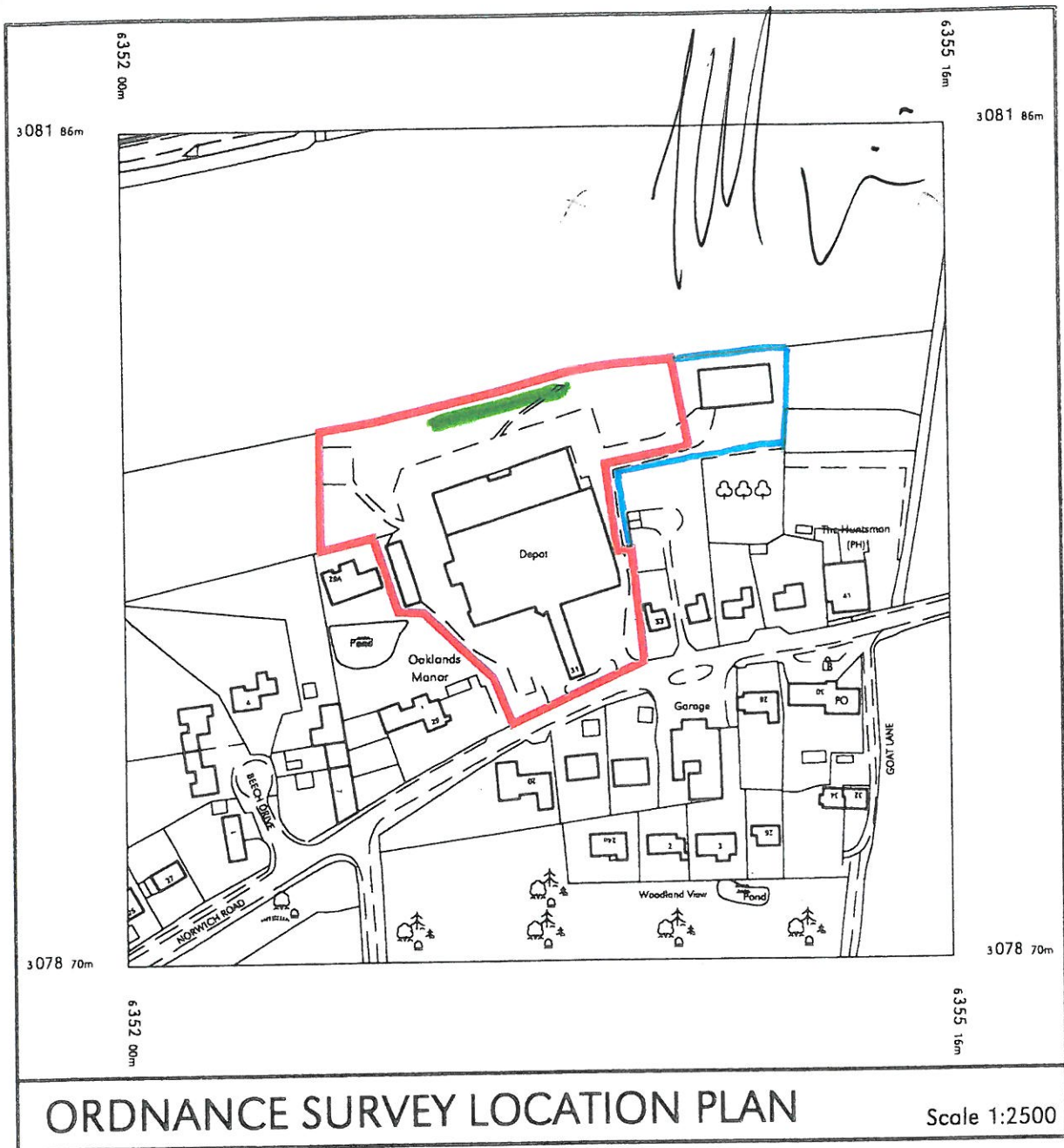
PROPOSED REDEVELOPMENT OF  
THE HAMPER PEOPLE SITE  
(STRUMPESHAM) FOR HOUSING

FOR THE HAMPER PEOPLE LTD

ILLUSTRATIVE SCHEME:  
SITE PLAN

SCALE DATE REFERENCE

TERENCE POVEY  
Chartered Town Planner & Architect  
50 CHAPEL LANE WYMONDHAM  
NORFOLK NR18 0DL  
TELEPHONE 01933 64081



20100386

Proposed erection of ten dwellings  
at The Hamper People site, Strumpshaw

*Handwritten signatures and initials:*  
 CH  
 [Signature]  
 V



PLAN 1

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

2.5 This Agreement shall cease to have effect if:

2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn

2.5.2 the Planning Permission shall expire prior to the Commencement Date

2.6 This Agreement shall be registered as a charge in 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 discretions powers duties and obligations of the Council or the County 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 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

## 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  
(Community Services) Thorpe Lodge  
Yarmouth Road Thorpe St Andrew  
Norwich Norfolk

The Owner

*31 Norwich rd*  
The Hamper People ~~9 Princes Street~~  
~~Norwich NR3 1AZ~~ *57 Wymondham*  
*NW13 4AG.*

The County Council

Head of Law Norwich County Council  
County Hall Martineau Lane Norwich  
NR1 2DH

*AA*  
*BT*  
*M*

The Mortgagee

National Westminster Bank PLC  
Credit Documentation  
P O Box 339  
Manchester  
M60 2AH

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

5. THIRD PARTIES

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

6. COSTS

- 6.1 The Owner shall on completion of this Agreement pay to the Council and the County Council its 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. 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. DISPUTE RESOLUTION

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 negotiations 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 of 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 Clause 11.1 and 11.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

## 12. TITLE WARRANTY

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

## 13. NOTIFICATION

- 13.1 The Owner shall notify the Council and the County Council of the Commencement Date and upon occupation of the first Residential Unit

## 14. PLANNING OBLIGATIONS

The Owner hereby covenants with the Council as follows:

- 14.1 prior to the completion of the first of the Open Market Dwellings on the Site to pay to the Council the Off-Site Open Space Contribution as increased by the Inflation Provision
- 14.2 to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement

14.3 the Council's 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 the Commencement Date

15. The Owner hereby covenants with the County Council as follows:

15.1 with effect from the Commencement Date:-

15.1.1 the Owner shall construct and maintain on the land shown edged blue on Plan No. 2 annexed hereto a highway ("the Highway") suitable for all traffic to provide access to and egress from the Development to the reasonable satisfaction of the County Council

15.1.2 the land shown edged blue on Plan No. 2 annexed hereto shall not be used as an access or egress for the Development unless the Owner shall incorporate and keep in existence a limited company having among its objects the obligation to maintain the Highway in accordance with clause 15.1.1

15.1.3 the Owner shall not require or procure by any means that the land shown edged blue on Plan No. 2 shall become a highway maintainable at public expense

15.1.4 no part of the Development shall be brought into use until the completion of the Highway to binder course level suitable for pedestrian and vehicular traffic

15.1.5 occupation of any Residential Unit shall not take place until completion of the Highway to surface course level suitable for all traffic

15.2 within twenty eight days of the Commencement Date to pay to the County Council the County Council's Monitoring Fee



## 16. THE COUNCIL'S OBLIGATIONS

- 16.1 The Council agrees with the Owner that the Off-Site Open Space Contribution shall be applied towards the provision of new open space and or outdoor recreational facilities in the Parish of Strumpshaw or adjoining Parish of Lingwood or towards the improvement and maintenance of existing open space and or outdoor recreational facilities in the Parish of Strumpshaw or adjoining Parish of Lingwood

## 17. MORTGAGEE CONSENT

- 17.1 The Mortgagee hereby consents to the giving of the obligations on the part of the Owner herein contained and the Mortgagee hereby agrees to be bound by the said obligations provided that the Mortgagee shall only be directly liable for the breach of any of the obligations contained in this Agreement during any such periods as it is a mortgagee in possession of the Site

## SCHEDULE 1

### 1. AFFORDABLE HOUSING

- 1.1 Not to Commence Development on the Site pursuant to the Planning Permission unless and until the Affordable Housing Scheme has been submitted to and approved by the Strategic Director and Chief Planner (Community Services) of the Council which Scheme for the avoidance of doubt shall deal with and include a timetable and programme for its implementation and the location of the Affordable Housing Units within the Site and the mix of tenure and dwelling types and the Affordable Housing Overall Provision and upon approval such Scheme shall be deemed to be incorporated into the provisions of this Agreement

- 1.2 Upon approval of the Affordable Housing Scheme by the Council to implement the Affordable Housing Scheme as approved and in accordance with the provisions contained in the Affordable Housing Scheme
- 1.3 The Affordable Housing Units provided shall be constructed to HCA standards and to the regulatory level of the Code
- 1.4 Not to occupy or allow to be occupied more than 75% of the Open Market Dwellings on the Site until such time as the Affordable Housing Scheme has been fully implemented and all of the Affordable Housing Units comprised within the Development have been constructed and are ready for occupation and, where appropriate, have been transferred to a Registered Provider
- 1.5 Not to use the Affordable Housing Units for any purpose other than for Affordable Housing
- 1.6 The Affordable Housing Units shall not be occupied otherwise than by Qualifying Occupiers
- 1.7 The Registered Provider shall not thereafter dispose of its interest in the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Provider
- 1.8 Paragraphs 1.5 1.6 and 1.7 above shall not be binding upon any mortgagee in possession of the Affordable Housing Units or part thereof nor any receiver or manager (including an administrative receiver) for such mortgagee and shall cease to apply to any of the Affordable Housing Units where the Registered Provider 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 or shall be required to sell a further and/or final tranche of equity to a tenant pursuant to the terms of any Shared Ownership Lease granted in respect of such Unit

- 1.9 Under the transfer of an Affordable Housing Unit to the Registered Provider such transfer shall be free from encumbrances and shall contain (inter alia) the following provisions:-


A grant in favour of the Registered Provider of all rights of access and passage of services and other rights reasonably necessary for the beneficial enjoyment of the Affordable Housing Units and reservations of all rights of access and passage of services and rights of entry reasonably necessary for the purposes of the Development

## SCHEDULE 2

For each 1 bedroom dwelling comprised in the Development	£2,574
For each 2 bedroom dwelling comprised in the Development	£3,432
For each 3 bedroom dwelling comprised in the Development	£4,290
For each 4 bedroom dwelling comprised in the Development	£5,148
For each 5 or more bedroom dwelling comprised in the Development	£6,006

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

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

)  
)  
)  
)  
)  


Head of Law



30751

THE COMMON SEAL of  
BROADLAND DISTRICT COUNCIL  
was hereunto affixed  
in the presence of

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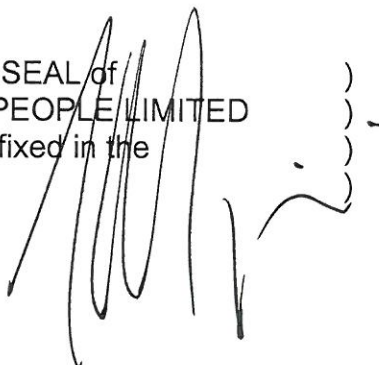


Head of Corporate Services  
and Monitoring Officer




6634

THE COMMON SEAL of  
THE HAMPER PEOPLE LIMITED  
was hereunto affixed in the  
presence of

)  
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)  
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Director

Director/Secretary



SIGNED and DELIVERED as a Deed  
for and on behalf of NATIONAL  
WESTMINSTER BANK PLC by a duly  
authorised Attorney in the presence  
of GARY DARTON

)  
)  
)



) GILLIAN WOODS  
) DOCUMENTAL CREDIT SUPERVISOR  
Ref. 114173/006



Witness' Signature – Bank Employee