

DATED

24 SEPTEMBER

2001

BROADLAND COUNCIL

- AND -

WHERRY HOUSING ASSOCIATION LIMITED

- AND -

NATIONWIDE SYNDICATIONS LIMITED

AGREEMENT

Made pursuant to Section 106 of the Town
and Country Planning Act (as amended) 1990
and any other enabling power relating to the
development of land at Burlingham Road
South Walsham

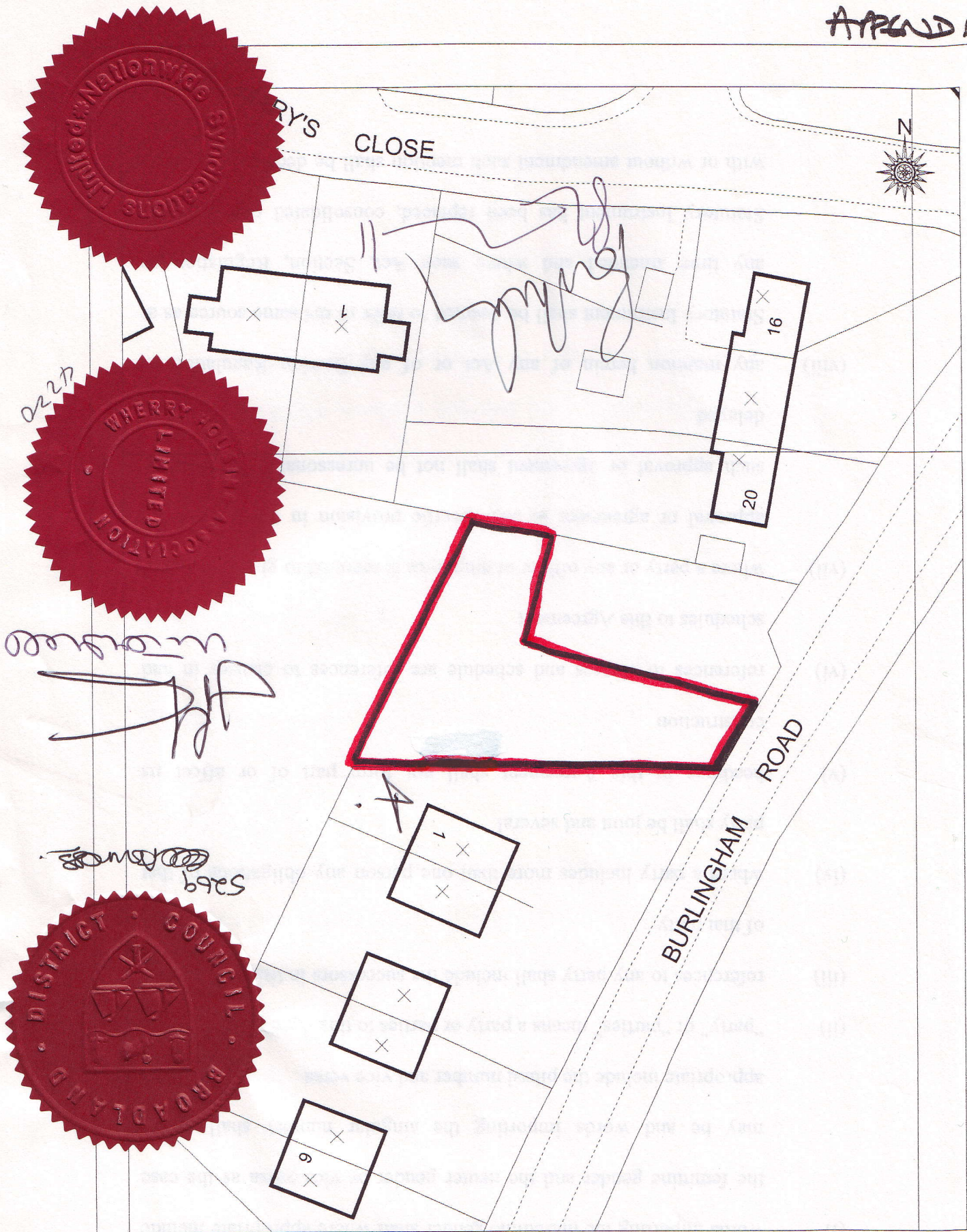
Steele & Co
2 The Norwich Business Park
Whiting Road
Norwich NR4 6DJ

THIS AGREEMENT is made the 24 day of September Two thousand and One
BETWEEN BROADLAND COUNCIL of Thorpe Lodge Yarmouth Road Thorpe St
Andrew Norwich in the County of Norfolk (hereinafter called "The Council") of the
first part and WHERRY HOUSING ASSOCIATION LIMITED of Anglia House 6
Central Avenue St. Andrews Business Park Thorpe St. Andrew Norfolk NR7 0HR
(hereinafter called "The Owner") of the second part and NATIONWIDE
SYNDICATIONS LIMITED of Moulton Park Kings Park Road Northampton
(hereinafter called "The Mortgagees") of the third part


RECITALS

(A) (1) In this Agreement unless the context otherwise requires the following
words shall have the following meanings:-

"Application"	means the application for planning permission to develop the Land and dated 6 th March 2001 submitted to the Council in accordance with the Application plans and other materials deposited with the Council and bearing reference no 01.0263
"Commencement Date"	means the date of this Agreement
"Development"	means the development permitted by the Permission
"Director"	means the Council's Strategic Director Community Services or other officers of the Council acting under his hand
"Permission"	means the detailed planning permission granted pursuant to the Application



Drawn By	Reference Planning Application 01.0263
Date May 2001	Location Burlingham Road, South Walsham
Scale 1:500	OS Reference TG360/128

 **Broadland**
District Council

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“1990 Act”

means the Town and Country Planning Act

1990 (as amended)

(2) In this Agreement unless the context otherwise requires:

- (i) words importing the masculine gender shall where appropriate include the feminine gender and the neuter gender or vice versa as the case may be and words importing the singular number shall where appropriate include the plural number and vice versa
- (ii) “party” or “parties” means a party or parties to this Agreement
- (iii) references to any party shall include the successors in title and assigns of that party
- (iv) where a party includes more than one person any obligations of that party shall be joint and several
- (v) headings in this Agreement shall not form part of or affect its construction
- (vi) references to clauses and schedule are references to clauses in and schedules to this Agreement
- (vii) where a party or any officer or employee is required to give its consent approval or agreement in any specific provision in this Agreement such approval or agreement shall not be unreasonably withheld or delayed
- (viii) 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

- (B) The Council is a Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated
- (C) The Owner is registered as Proprietor with absolute title of the land (hereinafter called "the Land") shown for the purpose of identification only edged red on the plan annexed hereto as the same is registered with Title Number NK 158022 subject to the matters contained in the Charges Register for that Title Number but otherwise free from encumbrances
- (D) The Mortgagee is the registered proprietor of a Registered Charge dated the twenty seventh day of October 1997 and registered on the eighth day of December 1997
- (E) Having regard to the Development Plan and other material considerations the Council consider it expedient in the interests of the proper planning of their area that provision should be made for regulating or facilitating the Development of the Land in the manner hereinafter appearing and the Council is satisfied the Permission can only be granted subject to and upon completion of this Agreement

NOW THIS DEED WITNESSETH as follows:-

- 1.1 This Agreement and the covenants that appear hereinafter are made pursuant to Section 106 of the 1990 Act Section 111 of the Local Government Act 1972 Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and any other enabling power
- 1.2 The covenants that appear hereinafter are planning obligations for the purposes of Section 106 of the 1990 Act and are enforceable by the Council and shall only come into effect on the Commencement Date unless otherwise specifically indicated in this Deed or to construe otherwise would be inconsistent with the requirements of any such covenant
- 1.3 This Agreement is a Deed and may be modified or discharged in part or in total at any time after the date of this Agreement by agreement between the parties in the form of a Deed
- 1.4 This Agreement is a local land charge and upon completion shall be registered by the Council as such
- 1.5 No waiver (whether express or implied) by the Council of any breach or default by the Developers 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
- 1.6 Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement
- 1.7 This Agreement shall be governed by the laws of England

1.8 No party shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement after that party has parted with its interest in the Land or the part of the Land in respect of which such breach occurs provided that liability will still remain for any breach occurring prior to the parting of any party's interest in the Land or any part thereof in respect of which any such breach has taken place PROVIDED THAT the reservation of any rights or the inclusion of any covenants or restrictions over the Land in any transfer shall not constitute an interest for the purpose of this clause

1.9 This Agreement shall cease to have effect if either:-

1.9.1 the Permission is quashed revoked or otherwise withdrawn or

1.9.2 planning permission on the Land is granted subsequently and implemented for proposals incompatible with the Development

1.10 NOTICES

1.10.1 Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if received by facsimile, delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered or sent by facsimile or by recorded delivery post to the address of the party concerned as nominated in sub-clause

1.10.2 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 Community Services Thorpe
Lodge Yarmouth Road Thorpe St Andrew Norwich

The Mortgagees Moulton Park Kings Park Road Northampton

The Owner Anglia House 6 Central Avenue St. Andrews Business Park
Thorpe St. Andrew Norfolk NR7 0HR

1.10.3 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

2. GENERAL

2.1 The Developers and the Mortgagees HEREBY FURTHER AGREE that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Land under the terms of the Agreement are hereby waived

2.2 All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developers and at no cost to the Council

2.3 All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of

any supply made in accordance with the terms of this Agreement then to the extent that VAT had not presently been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly

3. ARBITRATION

3.1 Any dispute or difference arising between the parties as a result of this Agreement shall be referred to the arbitration or a single arbitrator to be agreed upon between the parties, or failing agreement within fourteen days after any of the parties has given to the other parties a written request requiring the appointment of an Arbitrator, to a person to be appointed at the request of any of the parties by the President of The Institution of Civil Engineers for the time being

3.2 Any reference to arbitration shall be undertaken in accordance with and subject to the provisions of the Arbitration Act 1996 save as follows:-

- (a) the seat of the arbitration shall be at the Council's offices in Norwich
- (b) where appropriate the Arbitrator may consolidate arbitral proceedings;
- (c) with the parties agreement the Arbitrator may appoint experts or legal advisers

3.3 Any of the parties mentioned in clause 3.1 concerned in any such dispute or difference arising from this Agreement wishing to refer any such dispute or difference to arbitration shall notify the other parties in writing of such intention without delay

3.4 The Arbitrator shall act as a referee and not as an expert except in any case where the parties to a dispute or difference agree on the Arbitrator when such parties may also agree that such Arbitrator shall act as an expert

3.5 Subject to Sections 67, 68 and 69 of the Arbitration Act 1996, the parties agree to be bound by the decision of the Arbitrator

4. RIGHTS OF THIRD PARTIES

The Contracts (Rights of Third Parties) Act 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.

5. COVENANTS

The Owner

5.1 The Owner hereby covenants and undertakes with the Council so as to bind the Land and each and every part thereof to carry out and comply with the obligations set out in this Agreement

The Mortgagees

5.2 The Mortgagees hereby acknowledge the terms of this Agreement and agree not to develop pursuant to the Permission any part of the Land in which they have an interest otherwise than in accordance with the terms of this Agreement

6. THE OBLIGATIONS

6.1 Not to use the Land for any purpose other than residential curtilage in association with the use of 1 St. Lawrence Cottages Burlingham Road South Walsham as a private dwellinghouse and in the event that the Land is no longer required as part of the residential curtilage of 1 St. Lawrence Cottages it shall revert to its previous use as public open space

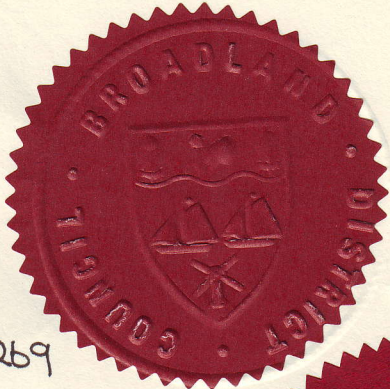
7. PREVIOUS SECTION 106 AGREEMENT

7.1 The provisions of Clause 1 and Paragraph 1 of the Schedule of a Section 106

Agreement dated fourth of April 1994 made between the Council and the Owner
are varied to the extent that they are inconsistent with the provisions of this
Agreement for so long as the Land is used as residential curtilage in association
with 1 St. Lawrence Cottages

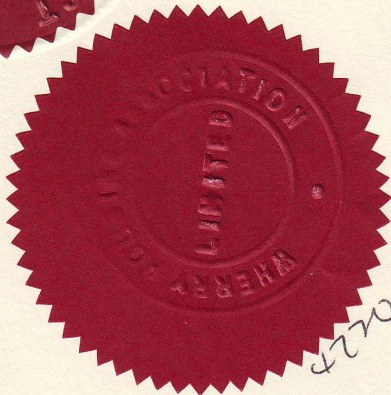
IN WITNESS whereof this Agreement has been executed and delivered as a Deed on
the date first written above

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



Head of Corporate Services & Monitoring Officer 5269

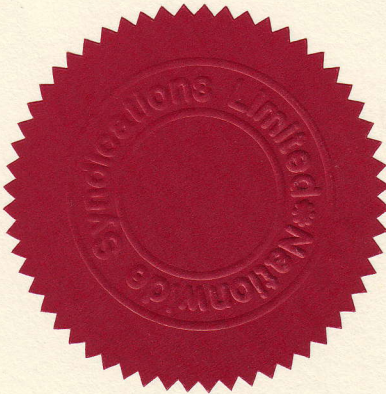
THE COMMON SEAL of)
WHERRY HOUSING ASSOCIATION)
LIMITED was hereunto affixed in)
the presence of)



Member

Secretary

THE COMMON SEAL of)
NATIONWIDE SYNDICATIONS LIMITED was hereunto)
affixed in the presence of)



Secretary