

DATED 25<sup>th</sup> January 2006

BROADLAND DISTRICT COUNCIL

- AND -

WHERRY HOUSING ASSOCIATION LIMITED

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

Relating to the development of land at  
Burlingham Road, South Walsham, Norfolk

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FC/JKH-BDCCTR/19419 (Section 106 Agreement)

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THIS AGREEMENT is made the 25<sup>th</sup> day of January 2005

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the first part and

WHERRY HOUSING ASSOCIATION LIMITED ("the Owner") whose office is at Anglia House 6 St Andrews Business Park Thorpe St Andrew Norfolk NR7 0HR of the second part

1. INTERPRETATION AND DEFINITIONS

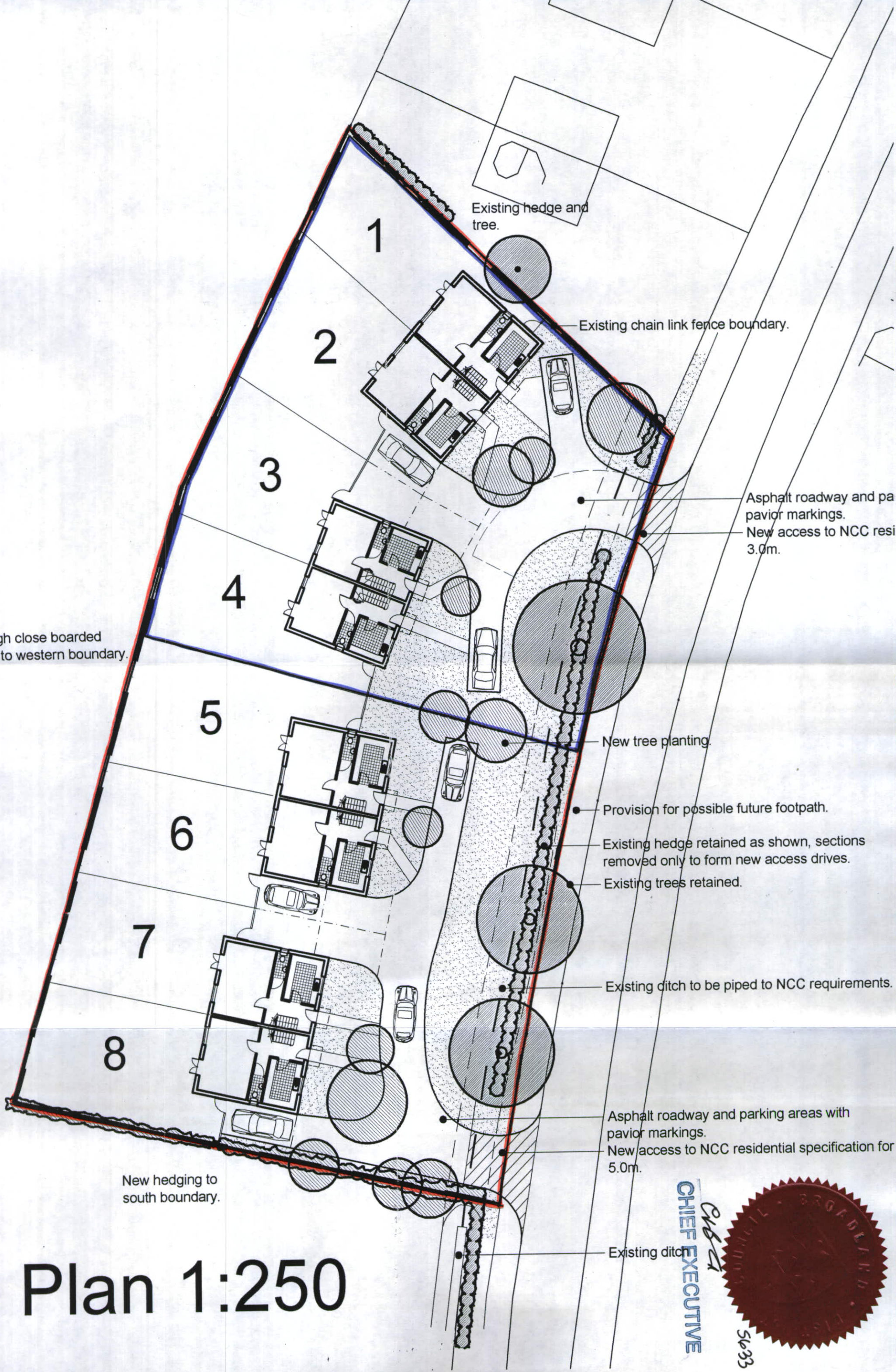
In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:-

"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"	semi-detached houses to be constructed or provided on the Site as part of the Development
"Affordable Rental Units "	four Affordable Housing Units to be constructed or provided on the Site as part of the Development shown in the position outlined in blue on the Plan annexed hereto and to be let for a rent upon either a weekly basis or monthly tenancy basis not exceeding housing



	corporation 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 dated 30 November 2004 for planning permission for eight semi-detached houses in accordance with the plans deposited with the Council bearing reference no 20041894
"Development"	the development permitted by the Planning Permission
"Director"	the Council's Strategic Director (Community Services) or other officers of the Council acting under his hand
"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
"Plan"	the plan annexed to this Agreement
"Planning Permission"	the planning permission dated 27 <sup>th</sup> May 2005 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





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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 Housing Corporation under Part 1 of the Housing Act 1996 (or any statutory re-enactment or modification thereof) as approved by the Council

"Shared Ownership Dwellings"

four Affordable Housing Units to be let on a Shared Ownership Lease

"Shared Ownership Lease"

a 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 lessee 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 rental premium to be charged on the remainder of the equitable interest not exceeding housing corporation target rents (or if such targets cease to be set such other measures of affordable rents as the relevant District Council shall reasonably determine)

"Site"

the land at Burlingham Road South Walsham shown for the purposes of identification only edged red on the Plan

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
- (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 and an application for title absolute has been submitted to Kingston upon Hull District Land Registry
- C. The Owner submitted the Application and the Council has granted the Planning Permission

## 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 the Planning Permission shall be quashed revoked or otherwise withdrawn
- 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 (Community Services) Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich
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The Owner	6 St Andrews Business Park Thorpe St Andrew 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 Owner shall on completion of this Agreement pay the Council's 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. PLANNING OBLIGATIONS



The Owner hereby covenants with the Council as follows:

- 11.1 To carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement

## 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 satisfaction of the Council and to complete the construction of the Affordable Housing Units by 30 June 2006
- 1.2 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units and Shared Ownership Dwellings
- 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 any other Registered Social Landlord
- 1.5 Paragraphs 1.2 1.3 and 1.4 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 Owner shall be required to dispose of such Units pursuant to a right to buy under Part 5 of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable



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 )

*CMB*  
**CHIEF EXECUTIVE**  
Head of Corporate Services  
and Monitoring Officer



5633

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



*A. J. Finner*

*Shewell*



## **APPENIX 1 LOCAL LETTINGS POLICY**

### **1. Nominations 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. Criteria for Selecting Nominations**

In the case of general needs accommodation the Council will attempt to make nominations in line with its current allocation priorities to need exercising the following criteria:

- 2.1 Allocations will be made to people living in South Walsham, working in South Walsham or with a need to move to South Walsham in order to give or receive support;
- 2.2 Priority will then be given to people living in, working in, or with a need to move to the following areas in order to give or receive support
  - Upton with Fishley
  - Lingwood and Burlingham
  - Hemblington
  - Woodbastwick
- 2.3 Priority will then be given to people living in, working in, or with a need to move to the following areas in order to give or receive support
  - Acle
  - Beighton
  - Strumpshaw
  - Blofield
  - Great and Little Plumstead
  - Brundall
  - Salhouse
- 2.4 Priority will then be given to people living in, working in or with a need to move to any other Parish within Broadland District for the purpose of giving or receiving support.



- 2.5 The Council will consult the Association in the event of considering changes to its relevant priorities. However it is accepted that the ability to maintain these priorities will be largely dependent on the type of Housing Association property that becomes available.
- 2.6 In the case of designated special needs accommodation (the designation of which will be agreed between the Council and the Association) the Council will seek to make nominations in line with its relevant allocation programme priorities. However it is accepted by the Associations that the Council is only obliged to ensure that the nominated household is an appropriate nomination for the type of property

### 3. Administrative Procedure for nominations

The administrative procedure for nominations shall be in accordance with the operational procedures of the Common Housing Register as amended from time to time or in accordance with such alternative procedures as the Council and the Association shall agree between them.