

DATED

9TH MAY

2012

BROADLAND DISTRICT COUNCIL

- AND -

NORFOLK COUNTY COUNCIL

-AND-

SARA ELIZABETH CATOR

-AND-

SVENSKA HANDELSBANKEN AB (PUBL)

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

Relating to the development of land at
Former Garage Site, Mill Road, Salhouse, Norwich, NR13 6QA

Broadland District Council
Thorpe Lodge
Yarmouth Road
Norwich
NR7 0DU

THIS AGREEMENT is made the 9TH day of MAY 2012

BETWEEN:

BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council") of the first part and NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich Norfolk NR1 2DH ("the County Council") of the second part and SARA ELIZABETH CATOR of Broad Farm, Upper Street, Salhouse, Norwich, NR13 6HE ("the Owner") of the third part and Svenska Handelsbanken AB (PUBL) of registered office 3 Thomas More Square, London E1W 1WY ("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
"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 Units"	those units (together with the associated parking area) labelled as Plots 1, 2, 3a and 3b on drawing number 1013/31B ("Scheme 2 Site Plan") submitted as part of the Application
"Affordable Housing Scheme"	a detailed scheme in respect of the Affordable Housing Units submitted to and approved by the Council pursuant to the First Schedule
"Application"	the application for full planning permission

	submitted to the Council and given reference number 20101590 for the redevelopment of the Site to provide 10 houses 2 flats and 3 bungalows
"Commencement Date"	the initiation of the Development by the carrying out on the Site pursuant to the Planning Permission of a material operation within the meaning of Section 56 (4) of the Act (but not operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, erection of any temporary means of enclosure, the temporary display of site notices or advertisements) and "Commence" and "Commencement" shall be interpreted in accordance with this definition
"Development"	the development permitted by the Planning Permission
"Index-Linked"	index-linked from the date of the Planning Permission until such time that payment of any sum specified in this Agreement is due such index linking to be equivalent to any increase in such sums in proportion to the increase in the 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 or County Council (as appropriate) shall reasonably determine
"Monitoring Fee"	the sum of £638.00
"Occupation and Occupied"	occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in

PLAN 1

ACCOMMODATION SCHEDULE:

- PLOT 1: 5 Person, 3 Bedroom House
- PLOT 2: 5 Person, 3 Bedroom House
- PLOT 3A: 2 Person, 1 Bedroom Flat
- PLOT 3B: 2 Person, 1 Bedroom Flat
- PLOT 4: 5 Person, 3 Bedroom House
- PLOT 5: 6 Person, 3 Bedroom House
- PLOT 6: 5 Person, 3 Bedroom House
- PLOT 7: 5 Person, 3 Bedroom House
- PLOT 8: 7 Person, 4 Bedroom House
- PLOT 9: 3 Person, 2 Bedroom Bungalow
- PLOT 10: 3 Person, 2 Bedroom Bungalow
- PLOT 11: 3 Person, 2 Bedroom Bungalow
- PLOT 12: 8 Person, 4 Bedroom House
- PLOT 13: 8 Person, 4 Bedroom House
- PLOT 14: 8 Person, 4 Bedroom House

85m2

on behalf of:

Sara Carter

DM

S. Carter

Head of Democratic Services and Monitoring Officer

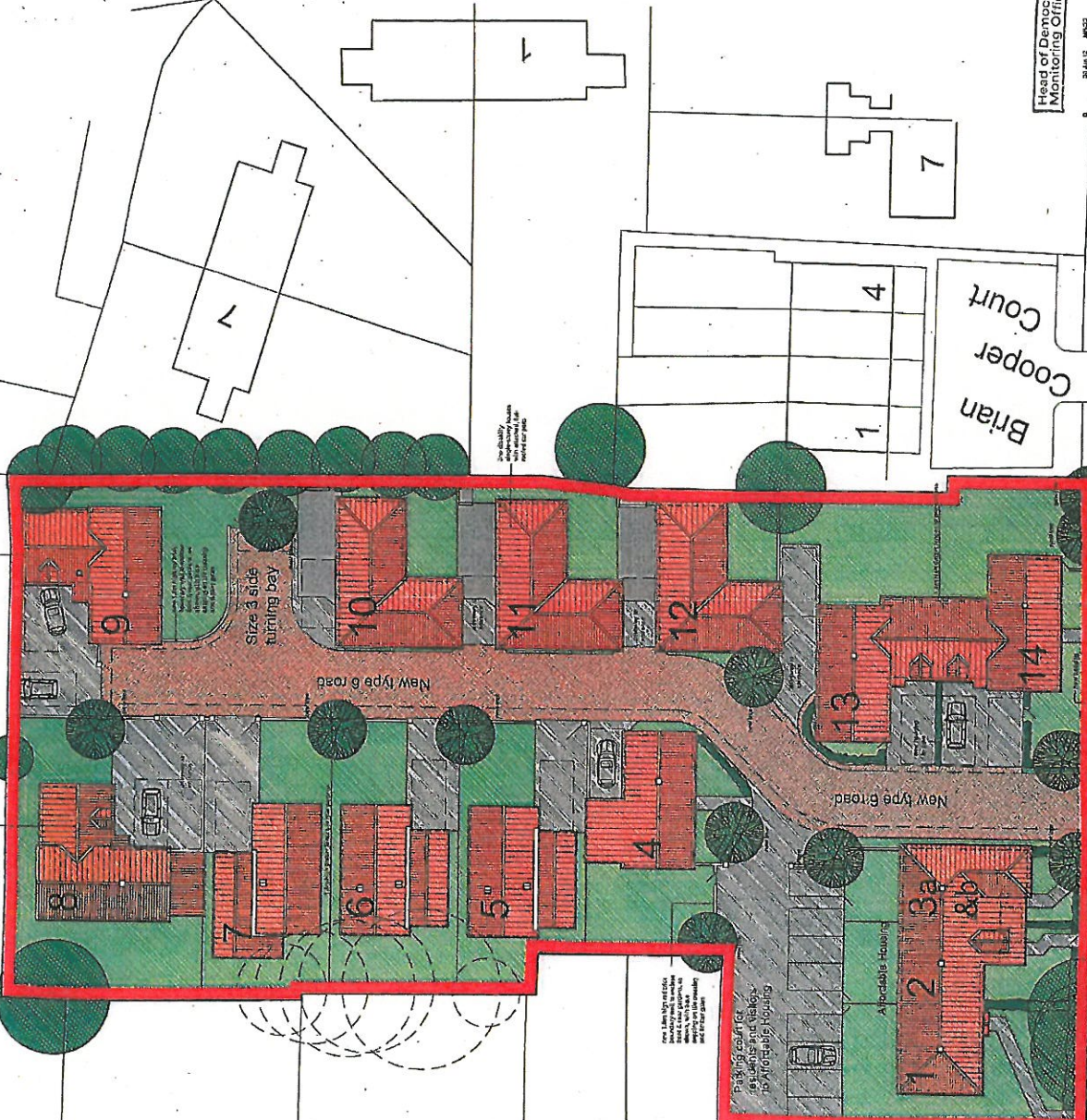
6513

NAME	PROJECT NAME	DATE	DATE
1013	1013	1013	31B

Planning

Mill Road

Acorns



Examine

85223



5. 11. 19

M. Muneel
Head of Democratic Services and Monitoring Officer

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construction, fitting out or decoration or
occupation for marketing or display or
occupation in relation to security operations

"Open Market Dwellings" those Residential Units to be constructed on the Site pursuant to the Development which are not Affordable Housing Units

"Open Space Contribution" the sum of £62,477.34 for off-site open space
"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 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 1996 and 2004 and the Homelessness Act 2002) and 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.

"Registered Provider" a provider of social housing registered in the register kept by the Regulator as provided for in Chapter 3 of the Housing and Regeneration Act 2008

"Regulator" the Tenant Services Authority or such other body as shall from time to time be a Regulator

of Social Housing within the meaning of Section 81 of the Housing and Regeneration Act 2008 or such other body with statutory force charged with regulating Registered Providers

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

"Site" the land against which this Agreement may be enforced as shown (for the purposes of identification only) edged red on Plan 1.

"the Walking and Cycling Contribution" Means the sum of £5,000 towards the cost of upgrading the public right of way between Mill Road and Station Road

In this Agreement unless the context otherwise requires:

- (i) references to any party shall include the successors in title and assigns and/or successors in function (as appropriate) 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

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 County Council is a local planning authority within the meaning of the Act and the Highway Authority for the area within which the Site is situated
- B. The Owner is the freehold owner of the Site pursuant to land registry title number NK370740
- C. The Mortgagee has a charge registered against the Site pursuant to HM Land Registry title number NK370740
- C. The Owner has submitted the Application
- D. The Council is minded 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, Section 2 of the Local Government Act 2000 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 or the County Council (as appropriate) against the Owner
- 2.3 No person shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after they have 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 the part thereof in respect of which any such breach has taken place
- 2.4 This Agreement is conditional upon:

2.4.1 the grant of the Planning Permission; and

2.4.2 Commencement

2.5 This Agreement shall cease to have effect if:

2.5.1 the Planning Permission shall be quashed revoked or otherwise withdrawn;
or

2.5.2 the Planning Permission shall expire prior to the Commencement Date

2.6 Save for the provisions contained in the Schedule (which shall be binding on the owners and occupiers of the Affordable Housing Units) the terms of this Agreement shall not be binding on:

2.6.1 statutory undertakers; and

2.6.2 the owners and occupiers of individual Residential Units

2.7 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 and 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 and 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 and 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	Head of Planning, Broadland District Council Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU
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The County Council	Director Environment, Transport and Development, Norfolk County Council, Martineau Lane, Norwich, Norfolk. NR1 2DH
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The Owner	Sara Elizabeth Cator of Broad Farm, Salhouse, Norfolk, NR13 6HE
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The Mortgagee

3 Thomas More Square, London E1W
1WY and also 49 Colegate, Norwich,
Norfolk NR3 1DD

- 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 or function 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 reasonable and proper legal and administrative costs incurred in the preparation negotiation and completion of this Agreement of up to £750.00 and £500.00 respectively

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

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 she is the freehold owner of the Site which is registered at the Land Registry under title number NK370740 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 legal charge in favour of the Mortgagee

13. NOTIFICATION

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

14. PLANNING OBLIGATIONS

- 14.1 The Owner hereby covenants with the Council as follows:

14.1.1 prior to the first Occupation of any Residential Unit on the Site to pay to the Council the Open Space Contribution (Index-Linked)

14.1.2 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 on or prior to the Commencement Date

14.1.3 as set out in the Schedule.

14.2 The Owner covenants with the County Council to pay the County Council the Walking and Cycling Contribution (Index-Linked) prior to the Commencement Date

15. THE COUNCIL'S OBLIGATIONS

- 15.1 The Council agrees with the Owner that the Open Space Contribution shall be applied towards the provision of new open space in the Parish of Salhouse or towards the improvement and maintenance of existing open space in the Parish of Salhouse

- 15.2 The Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the Council may agree
- 15.3 The Council hereby covenants with the Owner that it will repay to the Owner such amount of any payment made by the Owner to the Council under this Agreement which has not been expended in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within eight years of the date of receipt by the Council of such payment
- 15.4 The Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner to the Council under this Agreement

16. COUNTY COUNCIL OBLIGATIONS

- 16.1 The County Council agrees with the Owner that the Walking and Cycling Contribution shall be applied towards the cost of upgrading the public right of way between Mill Road and Station Road marked in red on Plan 2 and for no other purpose
- 16.2 The County Council hereby covenants with the Owner to use all sums received from the Owner under the terms of this Agreement for the purposes specified in this Agreement for which they are to be paid or for such other purposes for the benefit of the Development as the Owner and the County Council may agree
- 16.3 The County Council hereby covenants with the Owner that it will repay to the Owner such amount of any payment made by the Owner to the County Council under this Agreement which has not been expended in accordance with the provisions of this Agreement (and money shall be deemed to be expended if the County Council has properly entered into a contract for the expenditure of the money for the purpose for which it is paid which is reasonably likely to result in the fulfilment of that purpose) within ten years of the date of receipt by the County Council of such payment

- 16.3 The County Council shall provide to the Owner such evidence as the Owner shall reasonably require in order to confirm the expenditure of the sums paid by the Owner to the County Council under this Agreement

MORTGAGEE CONSENT

- 17 The Mortgagee consents to the Owner entering into this Agreement and acknowledges that this Agreement binds its interest in the Site provided that the Mortgagee shall not be liable for any breach of this Agreement unless it shall enter into the Site as mortgagee in possession

THE SCHEDULE

AFFORDABLE HOUSING

Prior to the Commencement Date there shall be submitted to the Council (through its Head of Planning or such other officer of the Council as shall be notified to the parties hereto) for approval (such approval not to be unreasonably withheld or delayed) the Affordable Housing Scheme such scheme to comply with the following criteria and on approval be deemed to be incorporated in the provisions of this Agreement and for the avoidance of doubt the Council shall be under no obligation whatsoever to approve the Affordable Housing Scheme unless the said criteria are complied with:

1. The Affordable Housing Scheme shall specify how the occupation of the Affordable Housing Units is to be controlled and the Council shall not be obliged to approve an Affordable Housing Scheme (but may at their discretion do so) unless it is satisfied that the proposed Affordable Housing Scheme shows such control to be exercised by a Registered Provider which is to be:
 - a. the freehold owner of the Affordable Housing Units; or
 - b. the leasehold owner of the Affordable Housing Units under a lease which allows it to both rent and sub-lease and Affordable Housing Unit on terms set by the Registered Provider

and the Council shall be under no obligation to approve such scheme (but may at their discretion do so) unless it includes a draft of a contract with a Registered Provider demonstrating this

2. The Affordable Housing Scheme shall identify the Registered Provider to take control of the Affordable Housing Units which Registered Provider shall be subject to the approval of the Council (such approval not to be unreasonably withheld or delayed).
3. The Affordable Housing Scheme shall set out a timetable for its implementation which shall ensure that the Affordable Housing Units are provided, ready for Occupation in the control of a Registered Provider as set out in the Affordable Housing Scheme before more than six of the Open Market Dwellings are Occupied

4. Once approved not carry out the Development except in accordance with the approved Affordable Housing Scheme unless otherwise permitted to do so by the Council
5. For the avoidance of doubt the Council shall be obliged to consider as many Affordable Housing Schemes as may be put before them and to consider any proposed amendments or alterations to any such schemes whether submitted before or after approval
6. Once ready to be Occupied not to suffer or permit the Occupation of any of the Affordable Housing Units except in accordance with the approved Affordable Housing Scheme
7. 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 Homes and Communities Agency Design and Quality Standards at the time of building
8. Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Housing Units
9. The Affordable Housing Units shall not be Occupied other than by Qualifying Occupiers
10. The Registered Provider shall not dispose of its interest in the freehold or leasehold of the Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Provider
11. Where Affordable Housing Units have been transferred to a Registered Provider as part of the Affordable Housing Scheme paragraphs 8, 9 and 10 above shall not be binding upon:
 - 11.1 any mortgagee exercising its power of sale in respect of the Affordable Housing Units or part thereof;

11.2 any receiver or manager (including an administrative receiver) for such mortgagee;

11.3 any of the Affordable Housing Units where the Registered Provider shall be required to dispose of such Affordable Housing Units pursuant to a statutory right to buy;

11.4 any successor in title to the persons referred to in 11.1 to 11.3.

12. That where Affordable Housing Units are to be transferred to a Registered Provider as part of the Affordable Housing Scheme such transfer shall be free from encumbrances (save for matters of title and save for exceptions and reservations of rights and easements, covenants and other provisions which are standard in relation to the sale of individual Residential Units which are part of a residential estate or are compatible with the rights and easements, covenants and other provisions relating to the Open Market Dwellings) and shall contain (inter alia) 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

13. Any mortgagee claiming the protection granted by Paragraph 11 above must first:

13.1 comply with the restrictions and obligations contained in Sections 144 to 159 of the Housing and Regeneration Act 2008;

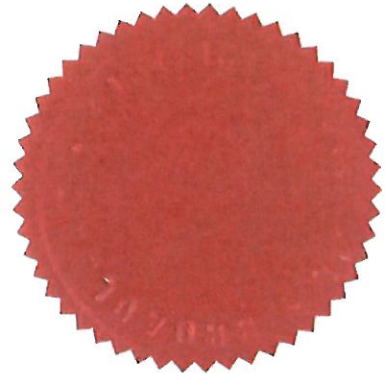
13.2 provide the Council forthwith with copies of any notice served on the the Regulator pursuant to Sections 144 to 159 of the Housing and Regeneration Act 2008;

13.3 provide the Council with copies of any proposals that the mortgagee receives from the Regulator under section 152 of the Housing and Regeneration Act 2008 (or where any part of those proposals are of a confidential nature such details of the proposals as are appropriate in all the circumstances) and provide the Council with further details of progress reached towards implementing such agreed proposals from time to time.

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



6870

THE COMMON SEAL of
THE NORFOLK COUNTY COUNCIL
Was hereunto affixed
In the presence of:-

C. Shunne
authorised to sign
on behalf of:

HEAD OF LAW



32458

Executed as a Deed by

SARA ELIZABETH CATOR

Sara Cator

in the presence of:

Grace A. Turner
Witness name: GRACE A TURNER
Address: 3 SOUTH WALSHAM ROAD, A
Occupation: SECRETARY

EXECUTED AS A DEED on behalf of
SVENSKA HANDELSBANKEN AB (PUBL) a public banking company
Incorporated in Sweden by:-

Iain Hall
and *Simon Harper*

S. Harper

being persons who, in accordance with the laws
of that territory, are acting under the authority
of the Company.