

DATED

14<sup>th</sup> June

2010

NORFOLK COUNTY COUNCIL

-AND-

BROADLAND DISTRICT COUNCIL

-AND-

GRAHAM JOHN FIELD

-AND-

WAYNE STANLEY BISS

-AND-

JAMES STANLEY BISS

-AND-

THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND

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

Relating to the development of land at  
Vauxhall Mallards Cricket Club Strumpshaw Road  
Brundall Norwich Norfolk

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Broadland District Council  
Thorpe Lodge  
Yarmouth Road  
Norwich  
NR7 0DU

THIS AGREEMENT is made the 14<sup>th</sup> day of June 2010

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 GRAHAM JOHN FIELD of 24 Castle Street Hertford Hertfordshire SG14 1HP ("the First Owner") of the third part and WAYNE STANLEY BISS of 28 School Road South Walsham Norwich NR13 6DZ ("the Second Owner") of the fourth part and JAMES STANLEY BISS of 20 Strumpshaw Road Brundall Norwich NR13 5PA ("the Third Owner") of the fifth part (the First, Second and Third Owners hereinafter called "the Owners") and THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND (incorporated in the Republic of Ireland) of Bristol & West Mortgages P.O. Box 27 One Temple Quay Bristol BS99 7AX ("the Mortgagee") of the sixth 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 Provider
"Affordable Housing Units"	forty per cent (40%) of the Residential Units
"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 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 Provider

"Application"

the application for outline planning permission for the Site for residential housing with associated parking, infrastructure and amenity space dated 6 November 2009 under reference no. 20091433

"Blue Land"

the land shown for identification purposes only hatched and edged blue on the Plan

"Brown Land"

the land shown for identification purposes only cross hatched and edged brown on the Plan

"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

"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

"Index Linked"

Index-linked from 10 March 2010 until such time that payment of any sum specified in this Agreement is made such index linking to be equivalent to any increase in such sums in proportion to the increase in the Royal Institution of Chartered Surveyors Building Cost Information Service All in Tender Index (or if such index ceases to be published such other index as the County Council shall reasonably determine)

"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

"Library Contribution"

the sum of £60 per Residential Unit such sum to be Index Linked

"Monitoring Fee"

the sum of nine hundred and twenty two pounds and fifty pence (£922.50)

"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

"Off-Site Open Space Contribution"

the sum calculated in accordance with the formula set out in Schedule 2 to this Agreement

	such sum to be subject to the Inflation Provision
"Plan"	the plan annexed to this Agreement
"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

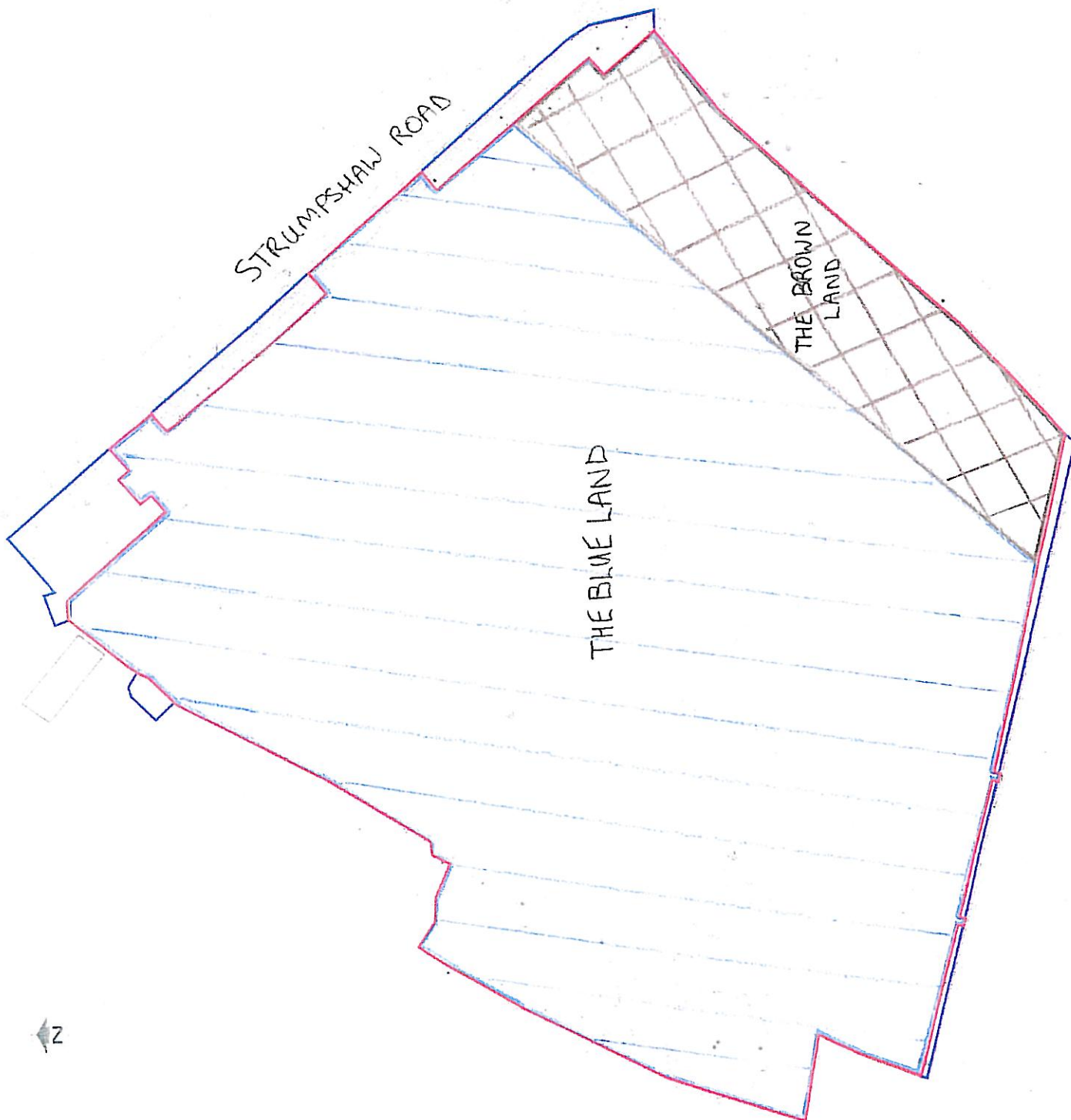


6355

*Chief*

CHIEF EXECUTIVE

BRICKLANDS ROAD 20091433



"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 Vauxhall Mallard Cricket Club,  
Strumpshaw Road, Brundall, Norwich, Norfolk  
which is shown for the purposes of identification



only edged red on the Plan and which includes  
the Blue Land and the Brown Land

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 First Owner and the Second Owner are the joint freehold owners of the Blue Land within the Site
- C. The Third Owner is the freehold owner of the Brown Land within the Site.



- D. The Brown Land is charged by way of legal mortgage dated 3 July 1998 in favour of the Mortgagee.
- E. The Second Owner and the Third Owner have submitted the Application
- F. 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 Owners hereunder are planning obligations for the purposes of the Act and enforceable by the Council and the County Council against the Owners and their respective 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
- 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 Owners 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 First Owner	24 Castle Street Hertford Hertfordshire SG14 1HP
The Second Owner & the Third Owner	c/o Mr K Coleman JB Planning Associates Chells Manor Chells Lane Stevenage Hertfordshire SG2 7AA
The County Council	Head of Law Norwich County Council County Hall Martineau Lane Norwich NR1 2DH
The Mortgagee	The Governor and Company of the Bank of Ireland of Bristol & West Mortgages P.O. Box 27 One Temple Quay Bristol BS99 7AX

- 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 Owners 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 Owners 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 Owners agree 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 First Owner and the Second Owner hereby warrant that they are the freehold owners of the Blue Land which is registered at the Land Registry under title number NK9279 and have full power to enter into this Agreement and save for the restrictive covenants referred to in the Charges Register of the said registered title as of 7 January 2010 that the Blue Land is free from all mortgages charges or other encumbrances 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
- 12.2 The Third Owner hereby warrants that he is the freehold owner of the Brown Land which is registered at the Land Registry under title number NK219461 subject to the Mortgagee's interest and has full power to enter into this Agreement and that save for the Mortgagee's interest the Brown Land is free from all mortgages charges or other emcumbrances

## 13. NOTIFICATION

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

## 14. MORTGAGEE

- 14.1 The Mortgagee acknowledges and declares that this Agreement has been entered into by the Third Owner with its consent and that the Brown Land shall be bound by the obligations contained in this Agreement and that the security of the Mortgagee over the Brown Land shall take effect subject to this Agreement PROVIDED THAT the Mortgagee shall have no liability under this Agreement unless it takes possession of the Site in which case the Mortgagee shall be bound by the obligations

## 15. PLANNING OBLIGATIONS

The Owners hereby jointly and severally covenant with the Council as follows:

- 15.1 prior to the occupation 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
- 15.2 prior to the occupation of the first of the Open Market Dwellings on the Site to also pay to the Council a sum of £140,490 based on the replacement of the existing sports facility
- 15.3 to carry out and comply with the obligations and restrictions set out in Schedule 1 to this Agreement
- 15.4 the 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 commencement of the Development on the Site

## 16. The Owners hereby jointly and severally covenant with the County Council as follows:

- 16.1 that prior to the occupation of any Residential Unit on the Site they shall pay to the County Council the Library Contribution as Index Linked

## 17. THE COUNCIL'S OBLIGATIONS

- 17.1 The Council agrees with the Owners that the Off-Site Open Space Contribution and the contribution for the replacement of the existing sports facility shall be applied towards the provision of new open space in the Parish of Brundall or towards the improvement and maintenance of existing open space in the Parish of Brundall



## SCHEDULE 1

### 1. AFFORDABLE HOUSING

- 1.1 Not to Commence Development on the Site pursuant to the Permission until a scheme for the provision and long-term management of the Affordable Housing Units has been submitted to and approved (such approval not to be unreasonably withheld or delayed) by the Strategic Director and Chief Planner (Community Services) of the Council ("the Affordable Housing Scheme") which Scheme for the avoidance of doubt shall deal with and include the timing of the Development and the location of the Affordable Housing within the Site 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 Not to occupy or allow to be occupied more than three 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 have been transferred to a Registered Provider
- 1.4 Not to use the Affordable Housing Units for any purpose other than for Affordable Housing
- 1.5 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 1.6 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

- 1.7 Paragraphs 1.4 1.5 and 1.6 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
- 1.8 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

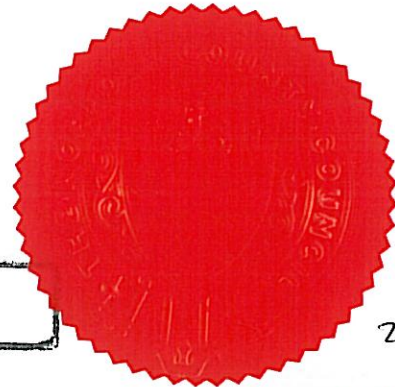
For each 1 bedroom dwelling comprised in the Development	£2,574
For each 2 bedroom dwelling comprised in the Development	£3,432
For each 3 bedroom dwelling comprised in the Development	£4,290
For each 4 bedroom dwelling comprised in the Development	£5,148
For each 5 or more bedroom dwelling comprised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

*asenu*

authorised to sign  
on behalf of: Head of Law



29714

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

*CHBC*

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



SIGNED AS A DEED by )  
GRAHAM JOHN FIELD )  
in the presence of:- )

*SECRETARY*  
*SECTINA PHOTIS*  
*24 CASTLE STREET, HERTFORD, SG14 1TP*  
*6355*

SIGNED AS A DEED by )  
WAYNE STANLEY BISS )  
in the presence of:- )

*WJB*

*BB*

*ROBERT HINNEY*  
*BRAMBLAND, BRAXTON ASH, NORWICH NR14 5EA*  
*MARKETING MANAGER*

SIGNED AS A DEED by )  
JAMES STANLEY BISS )  
in the presence of:- )

*JSB*

*DAVID LEECH*  
*50, MIDDLETON ROAD, GORLESTON, NORFOLK NR31 7AH*  
*GENERAL MANAGER*

EXECUTED AS A DEED )  
AND THE COMMON SEAL OF )  
THE GOVERNOR AND COMPANY OF )  
THE BANK OF IRELAND )  
Was affixed hereunto by order )  
of the Board of Directors )  
In the presence of:- )

*[Signature]*  
*[Signature]*

AUTHORISED OFFICIALS