

DATED 25th SEPTEMBER 2013

BROADLAND DISTRICT COUNCIL

- and -

DAVID LOUIS FISHER & JUDITH MARY FISHER

-and-

WHERRY HOUSING ASSOCIATION LIMITED

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

relating to the development of land
at the rear of 35 – 51 The Warren,
Horsham St Faiths

THIS AGREEMENT is made the twenty fifth day of September 2013
BETWEEN:

1. BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk (the "Council")
2. DAVID LOUIS FISHER and JUDITH MARY FISHER of Willow House, Mill Street, Horsham St Faith, Norfolk ("the Owners")
3. WHERRY HOUSING ASSOCIATION LIMITED of Circle Anglia House, 1-3 Highbury Station Road, London, N1 1SE ("the Purchaser")

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 Owners are the freehold owners of the Site registered with the Land Registry under title numbers NK88764 and NK186268
- C. The Purchaser has submitted the Application to the Council and the parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement.
- D. The Purchaser has a beneficial interest in the Site pursuant to an agreement between the Owners and the Purchaser.

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 (provided in accordance with the requirements of Schedule 1 to this Agreement 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 any AHP

"Affordable Housing Provider ("AHP") either:
(i) a registered provider as defined by S.80 of the Housing and Regeneration Act 2008; or
(ii) another body whose object is or contains the provision and/or operation of affordable housing and which has

been approved by the Council for the provision and/or operation of affordable housing within the administrative area of Broadland or has otherwise been approved by the Council for the purposes of this Agreement

"Affordable Housing Scheme"	The scheme for the provision of the Affordable Housing Units set out in Schedule 1
"Affordable Housing Unit"	Dwellings to be provided as Affordable Housing in accordance with Schedule 1 and consisting of Affordable Rental Units and Affordable Housing Units shall be construed accordingly
"Affordable Rental Units "	Affordable Housing Units to be constructed or provided on the Site as part of the Development and to be let by an AHP to households who are eligible for Affordable Housing and let on a weekly or monthly tenancy such rent not to exceed 80% of the open market rental value (including service charges, where applicable)
"Application"	the application for full planning permission dated 27 June 2013 and bearing reference number 20130853 for the development of 11 Affordable Dwellings
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government dated December 2006
"Commencement of Development"	the date on which any Material Operation forming part of the Development begins to be carried out and "Commence Development" shall be construed accordingly
"Development"	the development of the Site permitted by the Planning Permission
"Director"	the Council's Chief Executive or other officers of the Council acting under his hand
"Dwelling"	any unit of residential occupation being a self-contained house maisonette bungalow or flat constructed as part of the Development and "Dwelling" shall be construed accordingly
"HCA Standards"	the "Housing Quality Indicators" and "Design & Quality Standards" specified by the Homes and Communities Agency

"Implementation"	the carrying out on the Site pursuant to the Planning Permission of a Material Operation and "Implement" and "Implemented" shall be construed accordingly
"Index Linked"	means that any sum payable under the terms of this Agreement which is expressed to be index linked shall be index linked from the date of this Agreement until such time that payment of any sum specified in this Agreement is made, such index linking to be equivalent to any increase or decrease in such sums in proportion to the increase or decrease in the Retail Price Index (All Items) published by the Office for National Statistics or if such index ceases to be published then such other index as the Council shall reasonably determine
"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 the Agreement as amended from time to time
"Material Operation"	<p>a material operation as defined in Section 56(4) of the Act save that for the purposes of this Agreement the following shall not constitute a material operation:-</p> <ul style="list-style-type: none"> (a) site clearance (b) demolition of existing buildings (c) archaeological investigation (d) assessment of contamination (e) remedial action in respect of contamination (f) the erection of fences or other means of enclosure for site security (g) the diversion and laying of services (h) the erection of a site compound or site office or temporary buildings or structures
"Occupation"	occupation of a building as a Dwelling Unit (but not including occupation by contractors or for construction or fitting out purposes or as a showroom or sales office) and "Occupy" and "Occupied" shall be construed accordingly
"Plan"	the plan annexed to this Agreement with drawing reference number CA-601-T03
"Planning Permission"	the full 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) 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 Common Housing Register that the Registered Provider owning or managing the Affordable Housing Units on the Site is entitled to house within its rules

"Site" the land rear of 35 – 51, The Warren, Horsham St Faiths which is shown for the purposes of identification only edged red on the Plan

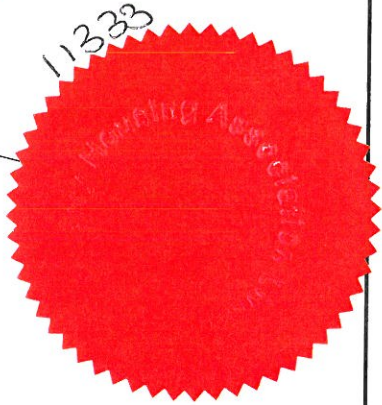
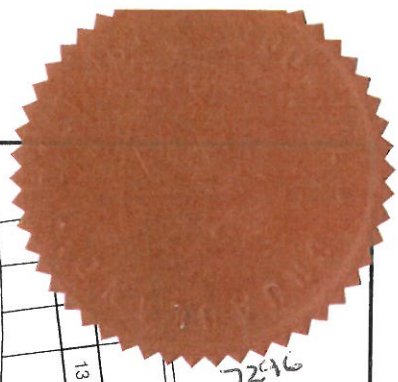
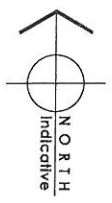
1.2 In this Agreement unless the context otherwise requires:

- a) references to any party shall include the successors in title and assigns of that party
- b) covenants given or made by any party which includes more than one person (whether natural or artificial) shall be deemed to be given or made jointly and severally
- c) references to clauses and schedules are references to clauses in and schedules to this Agreement
- d) 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
- e) headings in this Agreement shall not form part of or affect its construction

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 covenants, restrictions, requirements and obligations arising hereunder are planning obligations pursuant to Section 106 of the Act and are enforceable by the Council against the Owners and the Purchaser (subject to clause 13) and their respective successors in title and assigns

M. Murrel
 Head of Democratic Services and
 Monitoring Officer



[Signature]
 Authorised Signatory

[Signature]
 Authorised Signatory
 Drawing reference number 100041040
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J. M. Fin



The Design Partnership

The Design Partnership (Ely) Ltd.
 100 High Street, Chatteris
 Cambridgeshire PE16 6NN
 Tel: 01354 693111
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Job Title
 Proposed Affordable Housing Development at The Warren,
 Horsham St Faith for Circle Anglia
 Drawing Title
 TRANSFER PLAN
 Planning Application Boundary

Date June 13	Scale 1:1250 @ A4	Drwn GL	Dwg. No. CA-601-T03	Rev.
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- 2.3 No person or body shall be liable for any breach of the covenants restrictions or obligations contained in this Agreement occurring after they have parted with their interest in the Site or the part of the Site in respect of which the 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 are conditional upon the grant of the Planning Permission and the Commencement of Development
- 2.5 This Agreement shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn
- 2.6 This Agreement shall be registered as a charge in the Council's Register of Local Land Charges
- 2.7 In the event that this Agreement comes to an end the Council if so requested by the Owners 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 their functions as Local Planning Authority and Highway 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

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 Director Broadland District Council, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk, NR7 0DU
The Owners	Willow House, Mill Street, Horsham St Faith, Norfolk
The Purchaser	The Managing Director, Wherry Housing Association Limited, Anglia House, 6 Central Avenue, Norwich, Norfolk, NR7 0HR

- 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 Purchaser shall on completion of this Agreement pay the Council's reasonable legal and administrative costs incurred in the preparation negotiation and completion of this Agreement

7. Payment of Interest

- 7.1 The Purchaser 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. Title Warranty

- 10.1 The Owners hereby warrant to the Council that they are the freehold owners of the Site and have full power to enter in to this Agreement and that the Site is free from all mortgages charges or other encumbrances and that there is no person having any interest in the Site other than the Purchaser and other than as notified in writing to the Council's Head of Law prior to the date hereof

11. Disputes

- 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 negotiation 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 for 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 Clauses 11.1 11.2 and 11.3 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

12. Covenants

- 12.1 The Owners and Purchaser hereby covenant with the Council to carry out and comply with the obligations and restrictions on its part set out in this Agreement and set out in Schedules 1 hereto which are expressed to be given to or to be for the benefit of the Council
- 12.2 The Council covenants to issue the Planning Permission as soon as reasonably practicable following completion of this agreement

13 Purchasers' Consent

- 13.1 The Purchaser acknowledges and declares that this Agreement has been entered into by the Owners with its consent and that the Site shall be bound by the obligations contained in this Deed and that the Purchaser's interest in the Site shall take effect subject to this Agreement PROVIDED THAT the Purchaser shall otherwise have no liability under this Deed unless it acquires the Site or any part of the Site or exercises any right of sale in which case it too will be bound by the obligations as if it were a person deriving title from the Owners.
- 13.2 The Purchaser shall not be personally liable for any breach of the obligations in this Deed other than under clause 6.1 and clause 7.1 unless committed or continuing at a time when the Purchaser has acquired the Site or any part of the Site.

14. Issue of Approvals

- 14.1 Where any approval, consent, agreement or the like is required to be given by the Council pursuant to the terms of this Agreement it shall be in writing and shall not be unreasonably withheld or delayed

15. Statutory Undertakers and Consortium Consent

- 15.1 The obligations and restrictions in this Agreement shall not be enforceable against any statutory undertaker which acquires any part of the Site for the purposes of its statutory undertaking or function
- 15.2 The Developer hereby consents to the Site being bound by the provisions of this Agreement provided that the Developer shall have no liability under this Agreement unless and until it shall have acquired a legal interest in the Site whether pursuant to the option agreements referred to at recital D or otherwise

17. Notification

- 17.1 The Purchaser agrees to notify the District Council of the reaching of any of the occupation or completion thresholds relating to obligations contained in this Agreement such notification to be given within 14 days of reaching such threshold

SCHEDULE 1 Affordable Housing

The Owners and Purchaser covenant with the Council

- 1 Not to construct or procure the construction of the Affordable Housing Units otherwise than in accordance with the Planning Permission and the Code and to HCA standards
- 2 Not to use allow or permit the Affordable Housing Units to be occupied for any purpose other than as Affordable Rental Units
- 3 The Affordable Housing Units shall not be occupied other than by Qualifying Occupiers
- 4 All of the Affordable Housing Units will be subject to the Local Lettings Policy
- 5 The Owner shall not dispose of its freehold interest in the Affordable Housing Units other than to an AHP
- 6 Paragraphs 2 and 3 and 4 and 5 above shall not be binding upon:
 - (a) any mortgagee in possession of the Affordable Housing Units or part thereof or successors in title to the mortgagee in possession nor
 - (b) any receiver or manager (including an administrative receiver) for such mortgagee
 - (c) any individual owner or occupier or their mortgagee or chargee of the Affordable Housing Units who has purchased the Affordable Housing Unit pursuant to a right to buy claim under Part V of the Housing Act 1985 or Section 16 of the Housing Act 1996 or any similar or substitute right applicable
7. The Owners covenant with the Council that it will use reasonable endeavours to ensure that the AHP recycles any recyclable grant or proceeds from the disposal of the Affordable Housing Units in line with the requirements of the Homes and Communities Agency's Capital Funding Guide and that these sums will be reinvested within the administrative area of the Council.
8. Affordable Housing Scheme

PLOT NUMBER	DWELLING TYPE	TENURE
1	1-bedroom 2-Person Flat	Affordable Rent
2	1-bedroom 2-Person Flat	Affordable Rent
3	1-bedroom 2-Person Flat	Affordable Rent
4	1-bedroom 2-Person Flat	Affordable Rent
5	2-Bedroom 4-Person House	Affordable Rent
6	2-Bedroom 4-Person House	Affordable Rent
7	2-Bedroom 4-Person House	Affordable Rent

8	3-bedroom 5-Person House	Affordable Rent
9	2-Bedroom 4-Person Bungalow	Affordable Rent
10	2-Bedroom 4-Person Bungalow	Affordable Rent
11	2-Bedroom 4-Person Bungalow	Affordable Rent

APPENDIX 1

Local Lettings Policy for Land at The Warren, Horsham St Faiths

Local Lettings Policy - Based on the parish of Horsham and Newton St Faiths

1. Allocations will be made to applicants on the Common Housing Register managed and maintained by Broadland District Council on the following priority basis:

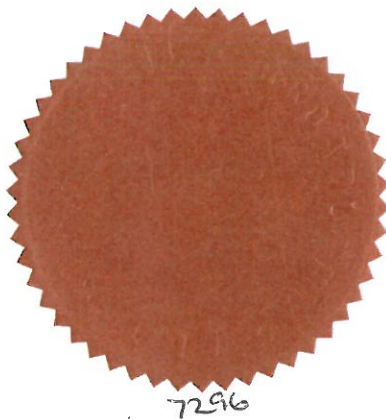
- 1.1 Residents of Horsham St Faiths and Newton St Faiths who have lived in the Parish for a total of at least 3 of the last 10 years.
- 1.2 Former residents of Horsham St Faiths and Newton St Faiths who have had their main home in the Parish for 3 of the last 10 years.
- 1.3 Households who need to move to the parish of Horsham St Faiths and Newton St Faiths to give/receive support from family/relatives.
- 1.4 Residents of the adjacent parishes of Hainford, Horsford, and Spixworth who have lived in these parishes for the last three years.
- 1.5 People working in the parish of Horsham St Faiths and Newton St Faiths who have done so for a year or more.
- 1.6 Residents of Horsham St Faiths and Newton St Faiths who have lived in the parish for less than three years.
- 1.7 Residents of the adjacent parishes of Hainford, Horsford, and Spixworth, who have lived in these parishes for less than 3 years.
- 1.8 Residents of the adjacent parishes of Frettenham, Hellesdon, Old Catton and Stratton Strawless who have lived in these parishes for the last three years.
- 1.9 Residents of the adjacent parishes of Frettenham, Hellesdon, Old Catton and Stratton Strawless who have lived in these parishes for less than 3 years.
- 1.10 Residents of Broadland District
- 1.11 Any other person

2. Administrative Procedure for Nominations

- 2.1 To grant to the Council nomination rights to 100% of the Affordable Housing Units.
- 2.2 The administrative procedure for nominations shall be in accordance with the Council's Housing (Options) Allocations Policy, as amended from time to time, or in accordance with alternative procedures as the Council and the Owner shall agree between them.

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. M. M.
DEMOCRATIC
Head of ~~Corporate~~ Services
and Monitoring Officer

SIGNED as a DEED by)
DAVID LOUIS FISHER)
in the presence of:)

[Handwritten signature]

Name: *HUGH PETER LANSDELL*

Signature: *[Handwritten signature]*

Address:

Hugh P. Lansdell
Solicitor
Hansells Solicitors
1 Norwich Road
Aylsham
NR11 6BN

SIGNED as a DEED by)
JUDITH MARY FISHER)
in the presence of:)

J. M. Fisher

Name: *HUGH PETER LANSDELL*

Signature: *[Handwritten signature]*

Address:

Hugh P. Lansdell
Solicitor
Hansells Solicitors
1 Norwich Road
Aylsham
NR11 6BN

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



Authorised Signatory

Authorised Signatory