DATED 19th DECEMBER

2013

GENERATOR GROUP LLP

and

WILLIAM HORDEN HOUGH ANDREWS AND JEREMY EDWARD NEEDHAM ANDREWS

and

BROADLAND DISTRICT COUNCIL

DEED OF PLANNING OBLIGATION

under Section 106 of the Town and Country Planning Act 1990 relating to land at Garden Farm, land to the south of Yarmouth Road and north of Lingwood Road, Blofield, Norwich

PARTIES:

- (1) **GENERATOR GROUP LLP** (Co Reg No OC362426) whose registered office is at Paxton House 30 Artillery Lane, London, E1 7LS ('the Developer')
- (2) WILLIAM HORDEN HOUGH ANDREWS of 8 St Dionis Road, Parsons Green, London, SW6 4TT and JEREMY EDWARD NEEDHAM ANDREWS of Park Farmhouse, Beech Lane, Stoke Trister, Wincanton, Somerset, BA9 9PQ ('the Landowners')
- (3) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road, Thorpe St Andrew, Norwich NR7 0DU ('the Council').

RECITALS

- The Landowners are the freehold owner of the Site comprising land under title No NK418750 and known as land at Garden Farm, Longwood Road, Norwich, NR13 4LL
- 2. The Developer has an interest in the Site by way of Promotion Agreement dated 1 August 2013
- 3. The Developer has appealed to the Secretary of State for Communities and Local Government under reference no APP/K2610/A/13/2201293 against the decision of the Council to refuse planning permission for the Development under the Council reference 20121587.
- 4. The Developer and the Landowners and the Council have entered into this Deed in order to secure the provision of affordable housing and open space in the event that Planning Permission is granted.

NOW THIS OBLIGATION WITNESSES as follows:

DEFINITIONS

1. In this Deed the following terms have the following meanings:

1990 Act

the Town and Country Planning Act 1990 as amended

Affordable Housing

housing of a kind which, having regard to its rent or other consideration, is available to meet the needs of those who cannot afford to rent or buy dwellings generally available on the open market and comprising at least 40% of the total number of Dwellings, the tenure of which is shown in the table at Paragraph 1 of Part 1 of Schedule One hereto

Affordable Dwelling

a Dwelling to be constructed on the Site as part of the Development provided as Affordable Housing in accordance with Part 1 of Schedule One hereto the construction of which shall be constructed to Design Standards and achieve a minimum of level 3 of the Code for Sustainable Homes and Lifetime Homes Standard

Affordable Rented Dwelling

a Dwelling which is to be let by an Approved Provider at a rent which is no more than 80% of the local market rent (including any service charges) or, in the event that there is a change in national policy and such rents can no longer lawfully be charged, such alternative rent levels as are agreed in writing by the Developer

and the Council reflecting any national policy and the Council policy which applies at that time

Approved Provider

an organisation which is a provider of social housing and registered in accordance with the provisions of Chapter 3 of the Housing and Regeneration Act 2008 or such other provider as is approved in writing by the Council

Chargee

either:

any mortgagee or chargee of the Approved Provider; or the successors in title to such mortgagees or chargees or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925

Design Standards

means the Homes and Communities Agency's 'Housing Quality Indicators' or should such standards be removed such other reasonably equivalent standard issued by the Homes and Communities Agency or such other successor body

Development

Up to 75 Residential Units, together with Associated Accesses, Public Open Space and a Community Facility (Outline)

Dwelling

a dwelling to be constructed on the Site as part of the Development

Eligibility Criteria

The criteria provided by the Council to be complied with by the Developer and the Approved Provider in seeking occupants for the Shared Equity Dwellings and in accordance with which the Council shall agree such occupants

Implementation

the carrying out on the Site pursuant to the Planning Permission of a material operation as defined in Section 56(4) of the 1990 Act other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, the erection of any temporary means of enclosure, or the temporary display of site notices or advertisements and 'Implement' and 'Implemented' shall be construed accordingly

Index Linked

Index linked from the date hereof until such time as any payment referred to in this Deed is made such index linking being equivalent to any increase or decrease in the Royal Institution of Chartered Surveyors Building Cost Information Service All In Tender Index (or in the event that the index shall have ceased to be published at the date of the relevant payment then the closest equivalent index as determined by the Council)

Informal Open Space

That part of the Open Space amounting to 650 square metres which is not specifically designated as Play Area LEAP

Locally Equipped Area of Play within the Play Area which shall be situated no closer than 10 metres to the boundary of any Dwelling constructed on the Site or any Dwelling adjacent to the Site

Market Dwelling

a Dwelling which is not an Affordable Dwelling

Occupation

occupation of a building as a residential dwelling (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 interpreted accordingly

Open Space

an area of open space incorporating a LEAP for use by members of the public and to be provided within the Site, the detail of which is to be provided as part of the reserved matters application(s) but shall for the avoidance of doubt be at least 2,250 square metres in extent of which 650 square metres shall be designed for use as Informal Open Space and 1,600 square metres shall be designed for use as a Play Area and 400 square metres of the play area shall be provided and laid out for use as a LEAP

Planning Permission

planning permission granted on appeal (ref: APP/K2610/A/13/2201293)

Play Area

That part of the Open Space amounting to 1,600 square metres which is not specifically designated as Informal Open Space and which includes 400 square metres of the LEAP

Qualifying Occupier

a person who (a) is on the Council's housing waiting list or (b) is in need of separate or alternative accommodation and is unable to rent or buy housing generally available in the open market having regard to local incomes and the level of local housing rents and prices

RTA Purchaser

A former tenant of an Affordable Dwelling who purchases or takes a long lease of that Affordable Dwelling under the provisions of the Right to Acquire pursuant to Section 180 of the Housing and Regeneration Act 2008 or the Preserved Right to Buy created by Part V of the Housing Act 1985 or any other statutory right in force from time to time entitling tenants of Approved Providers to purchase their homes

Shared Equity Dwelling

an Affordable Dwelling which complies with the provisions set out in paragraph 6 of Part 1 of Schedule 1 and in which a purchaser buys 80% of the equity in the Dwelling by way of an assignable leasehold interest and has the option to staircase up to 100% and acquire the freehold after 5 years from the date of his purchase on the following basis:

- (i) the freehold of each Shared Equity Dwelling will be transferred to the Approved Provider for a consideration of £1 on completion of the first leasehold sale to a purchase; and
- (ii) no rent shall be charged under that lease; and

- (iii) any staircasing receipts shall be used by the Approved Provider for the provision of Affordable Housing in accordance with paragraph 2 of Part 1 of Schedule One hereto
- (iv) a Shared Equity Dwelling may only be sold to a person who (a) occupies that Shared Equity Dwelling as his only residence and (b) has a total household annual income of not more than £60,000 (or such other figure as is prescribed by the Homes and Communities Agency or a successor body carrying out the same functions)
 - (v) once a Shared Equity Dwelling has been staircased to 100% equity and the freehold has been acquired from the Approved Provider the provisions set out in (iv) shall not apply

Site

Garden Farm, land to the south of Yarmouth Road and north of Lingwood Road, Blofield edged red and hatched red on plan no 12–2127/002 attached hereto

GENERAL PROVISIONS



- 2.1 This Deed is made under Section 106 of the 1990 Act, Sections 111, 120 and s139 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers.
- 2.2 The obligations arising hereunder are planning obligations enforceable by the Council against the Landowners and the Developer and their successors in title and assigns.
- 2.3 The provisions of this Deed shall have immediate effect except for clause 7.1 which shall have effect upon Implementation.
- 2.4 This Deed shall cease to have effect if the Planning Permission is quashed, revoked or otherwise withdrawn before Implementation.
- 2.5 This Deed shall be registered as a charge in the Council's Register of Local Land Charges.
- 2.6 In the event that any provision of this Deed is satisfied or discharged the Council shall if so requested by the Landowners and/or the Developer procure that a note confirming such satisfaction or discharge is be registered on the Council's Register of Local Land Charges.
- 2.7 Nothing in this Deed 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 was not a party to this Deed
- 2.8 If any provision in this Deed is 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.

- 2.9 No waiver whether expressed or implied by the Council of any breach or default by the Landowners or the Developer in performing or observing any of the covenants in this Deed 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.
- No party shall be liable under this Deed for any breach of the covenants, restrictions or obligations contained in this Deed 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 subsisting breach occurring prior to the parting by such party with such party's interest in the Site or any part thereof in respect of which any such breach has taken place and except that an individual purchaser or lessee or his mortgagee shall not be liable in relation to any breach of this Deed which relates to the Open Space provisions set out in Schedule 1 Part 2 and Schedule 2 hereto which occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a contract for such purchase or lease.
- 2.11 No person shall derive any benefit or have any right entitlement or claim in relation to this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999
- 2.12 Any notice or written communication to be served or given by any person to any other under the terms of this Deed shall be deemed to have been validly served or given if delivered by hand or sent by registered or recorded delivery to the party upon whom it is to be served or to whom it is to be given at:
 - (i) its address given in this Deed or any other address as has been notified in writing from time to time for the purpose of this Deed; or
 - (ii) in the case of the Council to the Chief Executive.

3. THIRD PARTIES

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Deed and no person who is not a party to this Deed shall be entitled in that person's own right to enforce any provisions of this Deed pursuant to the provisions of the said Act

4. COSTS

The Developer shall on completion of this Deed pay the Council's reasonable legal and administrative costs incurred in the preparation, negotiation and completion of this Deed.

5. JURISDICTION

This Deed shall be governed by and interpreted in accordance with the law of England.

6. DISPUTES

- 6.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Deed promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 6.2 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 Effective Dispute Resolution.
- 6.3 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 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 Institution of Chartered Surveyors who shall act as an expert and whose decision shall be final and binding upon the parties.

6.4 Nothing in clauses 6.1 and 6.2 shall apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings.

7. PLANNING OBLIGATIONS

7.1 The Landowners and the Developer hereby covenant jointly and severally with the Council to carry out and comply with the obligations, restrictions, stipulations and provisions on their part set out in the Schedules to this Deed.

8. TRANSFER OF LAND

8.1 The transfer of any land to the Council shall be subject to the provisions of Schedule Two hereto and shall include a provision that the said land may at the election of the Council be transferred to an alternative body or organisation properly able to hold and administer such land for the purposes for which it is transferred.

9. APPROVALS AND CONSENTS

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

10. NOTIFICATION

The Landowners and the Developer agree to notify the Council in writing within 28 days of:

- (i) the date of Implementation;
- (ii) the completion or Occupation of any Dwelling which acts as a trigger for the performance by the Landowners and the Developer of any obligation owed to the Council.

11. TITLE WARRANTY

The Landowners hereby warrant to the Council that they are the freehold owners of the Site which is registered at the Land Registry under title number NK418750 and have full power to enter in to this Deed and that the Site is free from all mortgages charges or other encumbrances other than those listed on the title at the date of this Deed and that there is no other person having any interest in the Site other than as notified in writing to the Council's Chief Executive prior to the date hereof.

12. LATE PAYMENTS

If any payment of any sum referred to in this Deed has not been paid within 28 days of becoming due there shall be paid in addition to the sum due interest thereon (at the rate of four per cent above the base rate of National Westminster Bank plc) until payment of the sum has been made.

IN WITNESS whereof the Landowners and the Developer and the Council have executed this Deed as a deed on the date first before written.

SCHEDULE ONE

PART 1

AFFORDABLE HOUSING

1. Affordable Housing Table

Percentage of the	Types of Affordable
Affordable Dwellings to be	Housing to be delivered
delivered	
37%	2 bed and 3 bed dwellings,
	4 bed, 8 person dwellings
63%	1 bed, 2 person; 2 bed, 4
	Affordable Dwellings to be delivered 37%

Dwellings	"	person; 3 bed, 6 person; 4
	2	bed, 8 person dwellings
Total	100%	100%

- 1.1 Not to Occupy or permit or allow the Occupation of any Dwellings until an affordable housing scheme has been submitted to and approved by the Council in writing ("the Approved Affordable Housing Scheme") which deals with:
 - (a) the mix of affordable housing tenures having regard to local housing needs as agreed between the Landowners and the Council;
 - (b) the location of each Affordable Dwelling on the Site;
 - (c) the timescale for the construction of the Affordable Dwellings:
 - (d) the identity of the Approved Provider;
 - (e) the type and size of each Affordable Dwelling;
 - (f) the process by which the Developer and Approved Provider will find suitable Occupiers for the Shared Equity Dwellings and
 - (g) any other information the Council reasonably requires to sufficiently enable it to approve the Affordable Housing Scheme
- 1.2 Not more than 19 Market Dwellings shall be Occupied unless and until an exchanged contract for the sale of all of the Affordable Housing constructed or to be constructed on the Site to an Approved Provider has been supplied to the Council.
- 1.3 Not more than 30 Market Dwellings shall be Occupied until the Affordable Dwellings have been completed and are ready for Occupation.
- 1.4 The Affordable Dwellings shall subject to the other provisions of this Part 1 not be Occupied otherwise than by Qualifying Occupiers.
- 1.5 The Affordable Rented Dwellings shall only be Occupied by persons nominated by the Council.

- 2. Any transfer of any Shared Equity Dwelling to an Approved Provider shall include a requirement by the Approved Provider:
 - (i) not to use the staircasing receipts for any purpose other than the provision of Affordable Housing within the administrative area of the Council and
 - (ii) to pay to the Developer together with all accrued interest any part of the said staircasing receipts which has not been committed (by way of expenditure of the monies or by way of contract) to the said use within 10 years of the date of receipt of such payment.
- 3. The Council will have nomination rights for all the Affordable Rented Dwellings at all times and the nominations by the Council shall be in accordance with the Council's Housing Allocations Policy as amended from time to time or in accordance with alternative procedures it may determine
- 4. Up to one third (or such other amount as the Council shall reasonably require) of the Affordable Rented Dwellings (as chosen by the Council) shall be let on first Occupation in accordance with the local lettings policy set out below:
 - (i) first allocations shall be made to people living in the Parish of Blofield;
 - (ii) if there is no suitable person in paragraph 4(i) allocations will be made to people who work in the Parish of Blofield;
 - (iii) if there are no suitable persons in paragraphs 4(i) and 4(ii) allocations will be made to people who need to move to the Parish of Blofield to give/receive support to/from close family; and
 - (iv) if there are no suitable persons in paragraphs 4(i) to 4(iii) allocations shall be made to people who live within the administrative area of the Council.

- 5. Any transfer of the Affordable Housing or any part thereof to an Approved Provider shall be free from encumbrances and financial charges except:
 - (i) encumbrances and other matters contained or referred to in the Landowners' title; and
 - (ii) any requirements for reasonable contributions to shared services and facilities;
 - (iii) that the Approved Provider shall not dispose of its interest in the freehold of the Affordable Housing on the Site or any part thereof (except by way of mortgage) other than to another Approved Provider or to a purchaser pursuant to any statutory right to buy or staircasing to 100% of the equity.

6.

- (i) On the second and subsequent disposals of a Shared Equity Dwelling where the owner has not staircased to 100% of the equity the owner thereof shall notify the Approved Provider in writing of his intention to sell his interest in the said Dwelling. The Approved Provider shall be entitled within 28 days of receipt of such notice to nominate a person as a purchaser who complies with the Council's eligibility criteria and who is ready, willing and able to purchase the interest in the said Dwelling at a price equivalent to the percentage of the equity that is then owned of the open market value of the said Dwelling as if it were a Market Dwelling (such price to be agreed in writing with the Council) and who (a) intends to occupy the said Shared Equity Dwelling as his only residence and (b) has a total household annual income of not more than £60,000 (or such other figure as is prescribed by the Homes and Communities Agency or its successor body).
- (ii) If contracts for sale of the said Shared Equity Dwelling to the person nominated by the Approved Provider under paragraph 7(i) are not exchanged within 12 weeks of the Approved Provider's nomination or if no such nomination is made the owner of the said Shared Equity Dwelling shall be entitled to sell his interest in the said Shared Equity

Dwelling at a price equivalent to the percentage of the equity that he currently owns of the open market value of the said Shared Equity Dwelling as if it were a Market Dwelling (such price to be agreed in writing with the Council) to any person who (a) intends to occupy the said Dwelling as his only residence and (b) has a total household annual income of not more than £60,000 (or such other figure as is prescribed by the Homes and Communities Agency or its successor body).

- 7 The obligations and restrictions contained in this Schedule 1 Part 1 shall not bind:
- 7.1 a Chargee;
- 7.2 any RTA Purchaser;
- any statutory undertaker or other person who acquires any part of the land upon which the Dwellings are constructed or any interest in it for the purposes of the supply of electricity gas water drainage telecommunications or highways in connection with the development of the Dwellings; or
- any person or body deriving title through or from any person or body mentioned in paragraphs 6.1 to 6.3 inclusive or their respective successor in title.

SCHEDULE 1 PART 2

OPEN SPACE

Not more than 50 Dwellings on the Site shall be Occupied until the Open Space has been provided and laid out to the reasonable satisfaction of the Council (which for the avoidance of doubt shall mean levelling, fencing, draining, seeding, planting and providing with access) (in accordance with plans and details approved in writing by the Council before any Dwelling is Occupied) and shall include the provision of a LEAP up to the value of £35,000 Index Linked and the Landowners and the Developer have complied with paragraphs 2.1 and 2.2 below.

- The Landowners and the Developer shall following the maintenance of the Open Space for one year (including where necessary replacement of plants and trees) after its laying out of the Open Space in accordance with paragraph 1 above either (at their absolute discretion):
- 2.1 retain the Open Space in perpetuity for the benefit of members of the public and shall (subject to essential maintenance and emergency) keep the Open Space available for members of the public at all times for use for recreation activities and maintain the Open Space to the reasonable satisfaction of the Council; or
- 2.2 offer to transfer the Open Space to the Council or (at the Council's direction if they do not wish to receive such a transfer) to the Blofield Parish Council (who may at its discretion accept or reject the offer) on the terms that:
- (a) On the completion of the transfer the Landowners and the Developer shall either:
 (i) pay to the Council a capital payment for the maintenance of the informal Open Space of 650 square metres calculated on the basis of maintenance for 10 years amounting to £3,705 Index Linked and pay to the Council a capital payment for the maintenance of the Play Area of 1,600 square metres square metres calculated on the basis of maintenance for 20 years amounting to £20,225.26 Index Linked
- or (ii) assign to the Council a contract with a contractor wholly owned by a local authority (in a form reasonably acceptable to the Council and capable of further assignment by the Council to the Blofield Parish Council) between the Landowners and the Developer and a contractor providing for the maintenance by the said contractor of the Open Space to a standard suitable for its use as public open space for a period of 10 years for the informal open space and 20 years for the play space and either (a) provide evidence that the Landowners and the Developer have paid the contract sum for the whole of the contract period to the contractor or (b) pay that contract sum to the Council; and
- (b) the Council (or Blofield Parish Council as the case may be) covenants on behalf of itself and its successors in title with the Landowners and the Developer and its successors in title for the benefit of the remainder of the Site that the Open Space shall

be used only as open space or for community purposes and for no other purpose and that no buildings or structures shall be erected on the Open Space except such as are reasonably required to facilitate the use of the Open Space as open space or for community purposes.

- If the Landowners and the Developer elect to offer the land to the Council and the Council do not require it to be transferred directly to Blofield Parish Council, the Landowners and the Developer and the Council shall complete the transfer referred to in paragraph 2.2 above within 56 days of the receipt by the Council of the said offer.
- The Landowners and the Developer shall maintain to the reasonable satisfaction of the Council the Open Space until any transfer in accordance with paragraph 3 above.
- Following transfer to the Council or Blofield Parish Council in accordance with paragraph 3 above, if any buildings are erected on the Open Space the Council shall forthwith repay the Developer any part of the sum referred to in paragraph 2.2 which has not at the commencement of construction of the said building or buildings been used for the purpose of maintaining the Open Space together with all accrued interest where such payment shall be a fair reflection of the reduction in open space maintenance costs attributed to the reduction of the said open space area as a result of the construction of the said building or buildings for the remainder of the 10 year maintenance period.
- Any transfer of the Open Space to the Council or Blofield Parish Council shall comply with the provisions set out in Schedule 2 hereto

SCHEDULE TWO

TERMS AND CONDITIONS OF LAND TRANSFER IN RESPECT OF THE OPEN SPACE

- 1. The land shall be transferred for the sum of £1.00 subject to such encumbrances as affect the land at the date hereof.
- 2. The land shall be transferred with vacant possession, for an estate in fee simple in possession and with full title guarantee.
- 3. The transfer shall contain all such rights and easements as are necessary for the proper enjoyment of the land for its authorised use and subject to the ability of the Landowners and the Developer to grant the same without prejudicing their ability to develop their retained land in accordance with the Planning Permission.
- 4. The standard conditions of sale (5th edition) shall apply to any transfer made pursuant to this Deed so far as they are applicable to a sale by private treaty and are not varied by or inconsistent with the express terms of this Deed.
- 5. The Developer shall bear the reasonably and properly incurred costs and disbursements of the Council and Blofield Parish Council (as appropriate) in dealing with the completion of the transfers referred to in this Schedule Two.

EXECUTED as a DEED by	
	, AA
WILLIAM HORDEN HOUGH ANDREWS)(
in the presence of:)
Witness: Witness name: Witness Address:	NS MCCONNELL PLAT 1, 66 KILLIESER AVENUL LONDON SLIZ 4NT
Witness occupation:	CHARTERED SURVEYOR
EXECUTED as a DEED by JEREMY EDWARD NEEDHAM ANDREWS in the presence of:	
Witness:	(tode Bourboon
Witness name:	CARLA DE BOLLICEON
Witness Address:	203 ORCHARD WAY
	BEGKENHAM BR3 JES
Witness occupation:	LECOAL SECRETARY
EXECUTED as a DEED by GENERATOR GROUP LLP in the presence of:)	
Director	Jun Zam

Director / Secretary

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

7328

Head of Democratic Services and Monitoring Officer