

DATED 9th October 2015

BROADLAND DISTRICT COUNCIL

- and -

NORFOLK HOMES LIMITED

DEED OF VARIATION

of an Agreement under Section 106 of the
Town and Country Planning Act 1990

In respect of land off Wyngates,
Blofield, Norwich, Norfolk

Victoria McNeill, Practice Director
Nplaw
Norfolk County Council
County Hall
Martineau Lane
Norwich
NR1 6DH

THIS DEED OF VARIATION is made the 9th day of October 2015

BETWEEN:-

(1) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge, Yarmouth Road,
Thorpe St Andrew, Norwich, Norfolk, NR7 ODU (the "Council")

(2) **NORFOLK HOMES LIMITED** (Co Reg No. 1910791) whose registered office
is at 42 Cambridge Road South, London W4 3DA (the "Owners")

together "the Parties"

WHEREAS:-

- (1) This Deed is supplemental to a Deed dated 17th October 2013 and made under Section 106 of the Town and Country Planning Act 1990 (as amended) ("the Original Agreement") and made between inter alia the Council (1) and the Owners (2) containing planning obligations enforceable by the Council.
- (2) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) ("the Act") for the area within which the Site is located.
- (3) The Owners are the freehold owners of Site which is registered at the Land Registry under title number NK168396.
- (4) The "Site" is defined in the Original Agreement.
- (5) The Council and the Owners desire to substitute a new "Mortgagee in Possession" provision in the Original Agreement and to re-define the energy specification standard to which the affordable rented dwellings have to be built.
- (6) The Council and the Owners have agreed to enter into this Deed in order to give effect to their desire.
- (7) Terms used in this Deed have the meaning ascribed to them in the Original Agreement save as expressly amended herein.

NOW THIS DEED WITNESSES as follows:

1. This Deed is supplemental to the Original Agreement
2. The Original Agreement shall remain in full force and effect except as varied by this Deed and shall henceforth be fully applicable to the Development and binding on the Site as varied by this Deed with effect from the date of this Deed.
3. From and including the date of this Deed the Parties hereto agree to vary the Original Agreement as follows:
 - (i) In the Definitions contained in the Original Agreement
 - (a) The definition of "Affordable Rented Dwelling", after the word "Standard" the following words shall be added "or equivalent standard acceptable to the Approved Provider and Council."
 - (b) A new definition of "Eligible Household" shall be inserted as follows:-

"Eligible Household" A person or persons in need of accommodation who are unable to rent or buy on the open market determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council
- (ii) Clause 12 of the Original Agreement shall be renumbered 12.1 and the following new sub-clause 12.2 shall be inserted
 - "12.2 The Affordable Housing provisions in Part 1 of the schedule in this Agreement shall not be binding upon:
 - 12.2.1 a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire; or
 - 12.2.1 a person who has staircased under a Shared Ownership Lease to acquire 100% of the leasehold interest or by a person who has acquired 100% of a Shared Equity Dwelling; or
 - 12.2.3 a mortgagee exercising its power of sale in respect of any Affordable Dwelling or any receiver or administrator of that mortgagee PROVIDED THAT :
 - a) in relation to a mortgagee of Registered Provider owned land, the restrictions and obligations contained in Sections 144 to 159 of the Housing and Regeneration Act 2008 have been complied with and copies of all notices served and any proposals received together with updates as to progress have been supplied to the Council

b) (where no proposals are agreed under a) above or where the provisions do not apply or have lapsed) the Council has first been given the option to purchase the relevant Affordable Dwellings, or nominate another Provider or Eligible Household to purchase the relevant Affordable Dwelling or Dwellings exercisable within a period of two calendar months commencing on the date upon which the option is first communicated in writing to the Council ("Mortgagee Notice Period"). If the Council (or its nominated Provider or Eligible Household) elects to acquire the relevant Affordable Dwellings to allow one calendar month following expiry of the Mortgagee Notice Period to complete the purchase PROVIDED THAT a mortgagee shall not be required to act in a way which is detrimental to its security or contrary to the terms of any charge

c) if, having used reasonable endeavours, the relevant Affordable Dwellings are not transferred in accordance with b) above then the Affordable Housing Mortgagee shall be entitled to dispose of the Affordable Dwellings free of the restrictions set out in this Agreement PROVIDED THAT the parties may agree in writing to extend the period for transfer ; or

12.2.4 any person or body deriving title under any person or body referred to in paragraphs 12.2.1 to 12.4 (inclusive) above"

(iii) Clause 2.10 of the Original Agreement shall be deleted and substituted with the following wording:

2.10.1 No party shall be liable under this Agreement for any breach of the covenants, restrictions or obligations contained in this Agreement after that party has parted with its interest in the Site or the part of the Site in respect of which such breach occurs provided that liability will still remain for any 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

2.10.2 This Agreement shall not be enforceable against:

a) Statutory undertakers in respect of any interest in the Site that they hold pursuant to their statutory undertaking to include but not limited to electricity sub-stations, gas governor/pressure stations, easements and wayleaves, open spaces and community areas; or

(b) An individual purchaser or lessee of any Dwelling or any mortgagee thereof in relation to any breach of this Agreement 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 and the reservation of any rights or inclusion of any covenants or restrictions over the Site in any transfer or lease shall not constitute any title or interest in the Site for the purpose of this clause and this further proviso shall also apply to any Affordable Housing Units transferred to an affordable housing provider.

4. The obligations and provisions contained in the Original Agreement as varied by this Deed shall apply to and continue to bind any Development carried out under the Planning Permission (since granted upon the appeal by the Inspector).
5. No party shall be liable for any breach of a covenant, restriction or obligation contained in this Deed after parting with all of its interest in the Site, except in respect of any breach subsisting prior to parting with such interest.
6. The Owners covenant that they are the freehold owners of the Site and have full power to enter into this Deed and that the Site is free from 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's solicitors prior to the date hereof
7. The Owners hereby agree to pay on or before the date of this Deed the Council's legal costs in connection with this Deed
8. This Deed is a Local Land Charge and shall be registered as such.
9. On the written request of the Owners at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge.
10. Subject to the provisions of Clause 6 of the Original Agreement this Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).
11. Execution as a Deed

This instrument:

11.1 is executed as a Deed and by its execution the parties authorise their solicitors to deliver it for them when it is dated;

11.2 is not delivered until dated;

11.3 was delivered when it was dated.

IN WITNESS whereof the parties hereto have executed this document as a Deed on
the day and year first before written.

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

Handwritten signature in blue ink

Head of Democratic Services
and Monitoring Officer



7516

THE COMMON SEAL OF
NORFOLK HOMES LIMITED
was affixed

in the presence of: *J.M. Holladay,*

*J.M. HOLLADAY
14 BREEZE AVENUE
NR11 6WF*

Director

Handwritten signature in blue ink

Secretary