

Dated

11 February

2015

Broadland District Council

-and-

The Tall House Limited

**DEED OF PLANNING OBLIGATION
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING
ACT 1990**
relating to land north of Blofield Corner Road, Blofield, Norwich

THIS DEED is dated

11 February

2015

PARTIES:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge 1 Yarmouth Road Thorpe
St Andrew Norwich NR7 0DU (referred to as "the Council")
- (2) THE TALL HOUSE LIMITED Company registration number 07895700 of 14
Barn Hill, Stamford PE9 2AE(referred to as "the Owner")

together referred to as 'the Parties'

INTRODUCTION

- (A) The Council is a local planning authority for the area within which the Site is located
- (B) The Owner is the freehold owner of the Site and has applied for the Permission and the Council has resolved to grant the Permission provided the Parties enter into this Deed

DEFINITIONS

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

Act The Town and Country Planning Act 1990

Commencement The date on which a material operation as defined in
Section 56(4) of the Act is first carried out, except
operations consisting of:
site clearance
demolition
archaeological investigations
ground surveys
removal of contamination
erection of temporary fences

and 'Commence' and 'Commenced' will be construed accordingly

Development

The Development of the Site in accordance with the Permission for the erection of up to 36 dwellings with associated works to highways infrastructure and landscaping

Dwelling

A dwelling to be built on the Site as part of the Development

Nominated Officer

The Council's Head of Development Management or other officer of the Council notified to the Owner

Index Linked

Index linked from the date of this Agreement until the date any payment referred to in this Deed is made, such index linking being equivalent to any change in the Royal Institute of Chartered Surveyors Build Cost Information Service: All Construction TPI: All New Construction or if such index ceases to be published, another index notified to the Owner by the Nominated Officer)

Occupation

Occupation of the Site, or any part of it, for any purpose authorised by the Permission, but excluding occupation for the purposes of:

construction

internal and external refurbishment

decoration

fitting-out

marketing

and 'Occupy' and 'Occupied' will be construed

accordingly

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| Permission | The planning permission to be granted by the Council for residential development of the Site and allocated reference number 2014/0968 or another planning permission for the Development granted pursuant to section 73 or 96A of the Act as the Council (in its absolute discretion) and the Owner agrees in writing |
| Plan | The plan attached to this Deed at the First Schedule |
| Site | The land north of Blofield Corner Road, Blofield, Norwich and registered at H M Land Registry under title number NK435566 shown edged red on the Plan |
| Trigger | means the Commencement date and any trigger or threshold in this Deed linked to the taking of specified steps, payment of money, or linked to the prohibition of a specified action |

2. LEGAL BASIS

- 2.1 This Deed is made pursuant to Section 106 of the Act and Section 111 of the Local Government Act 1972 and all other enabling powers and the covenants and obligations contained in this Deed are planning obligations for the purposes of section 106 of the Act enforceable by the Council
- 2.2 Covenants given by more than one party can be enforced against them individually or jointly
- 2.3 A reference to an act of Parliament includes any later modification or re-enactment, including any statutory instruments made under that act, and reference to a gender or person includes all genders or classes of person

2.4 Any covenant in this Deed not to do something includes an obligation not to allow or permit it to be done

2.5 This Deed is governed by and interpreted in accordance with the law of England

3. COVENANTS

3.1 The Owner covenants with the Council for itself and its successors in title to observe and perform the obligations and stipulations contained in this Deed

3.2 The Council covenant with the Owner to comply with its obligations contained in this Deed

4. OTHER PROVISIONS

4.1 No person will be liable for any breach of this Deed if he no longer has an interest in the Site (unless the breach occurred before he disposed of his interest)

4.2 The Owner confirms that it is the owner of the Site with full power to enter into this Deed and that there is no person or body with an interest in the Site whose consent is necessary to make this Deed binding

4.3 This Deed will not bind anyone who acquires an interest in part of the Site for the purpose of the supply of utility services nor purchasers of an individual Open Market Dwelling provided that at the time of purchase of an individual Open Market Dwelling there are no subsisting breach of this Deed

4.4 On completion the Owner will pay the Council's reasonable legal costs in connection with this Deed

4.5 No provisions of this Deed shall be enforceable under the Contracts (Rights of

Third Parties) Act 1999

- 4.6 If any provision of this Deed is held to be invalid, illegal or unenforceable it will not affect the remaining provisions
- 4.7 No waiver, express or implied, by the Council constitutes a continuing waiver, nor prevents the Council from enforcing any of the provisions in this Deed

5. DISPUTES

- 5.1 If any dispute is not resolved between the Parties, any of the Parties may refer it for determination by an expert. The expert will be appointed by agreement between the parties or, in default of agreement, by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's decision shall be final and binding
- 5.2 Nothing in this Clause will apply to the recovery of liquidated sums or prevent the parties from commencing or continuing court proceedings

6. INTEREST AND VAT

- 6.1 If any payment due to the Council is paid late interest will be added from the date payment is due to the date of payment at the rate of 4% above the base lending rate of the Bank of England from time to time
- 6.2 All payments under this Deed are exclusive of value added tax (VAT) and any VAT due must also be paid

7. NOTIFICATIONS

- 7.1 Any notice or written communication given under this Deed is validly given if hand delivered or sent by recorded delivery post to the address set out at the beginning of this Deed, unless written notification of another address has been

received

- 7.2 The Owner will notify the Nominated Officer in writing of the relevant
 - 7.2.1 anticipated Triggers seven days in advance of each anticipated date
 - 7.2.2 actual Triggers within seven days of each actual date
- 7.3 If the Owner disposes of his interest in all or part of the Site he will notify the Nominated Officer within 7 days of the name and address of the new owner and sufficient details to identify the Site or part of the Site save that this shall not apply in respect of the sale of individual Dwellings.

First Schedule

The Plan

LAND OFF BLOFIELD CORNER ROAD,
BLOFIELD HEATH, NORWICH NORFOLK
SCALE 1 TO 1000

BROADLAND
DISTRICT COUNCIL

10 June 2014
20140968

PLANNING CONTROL

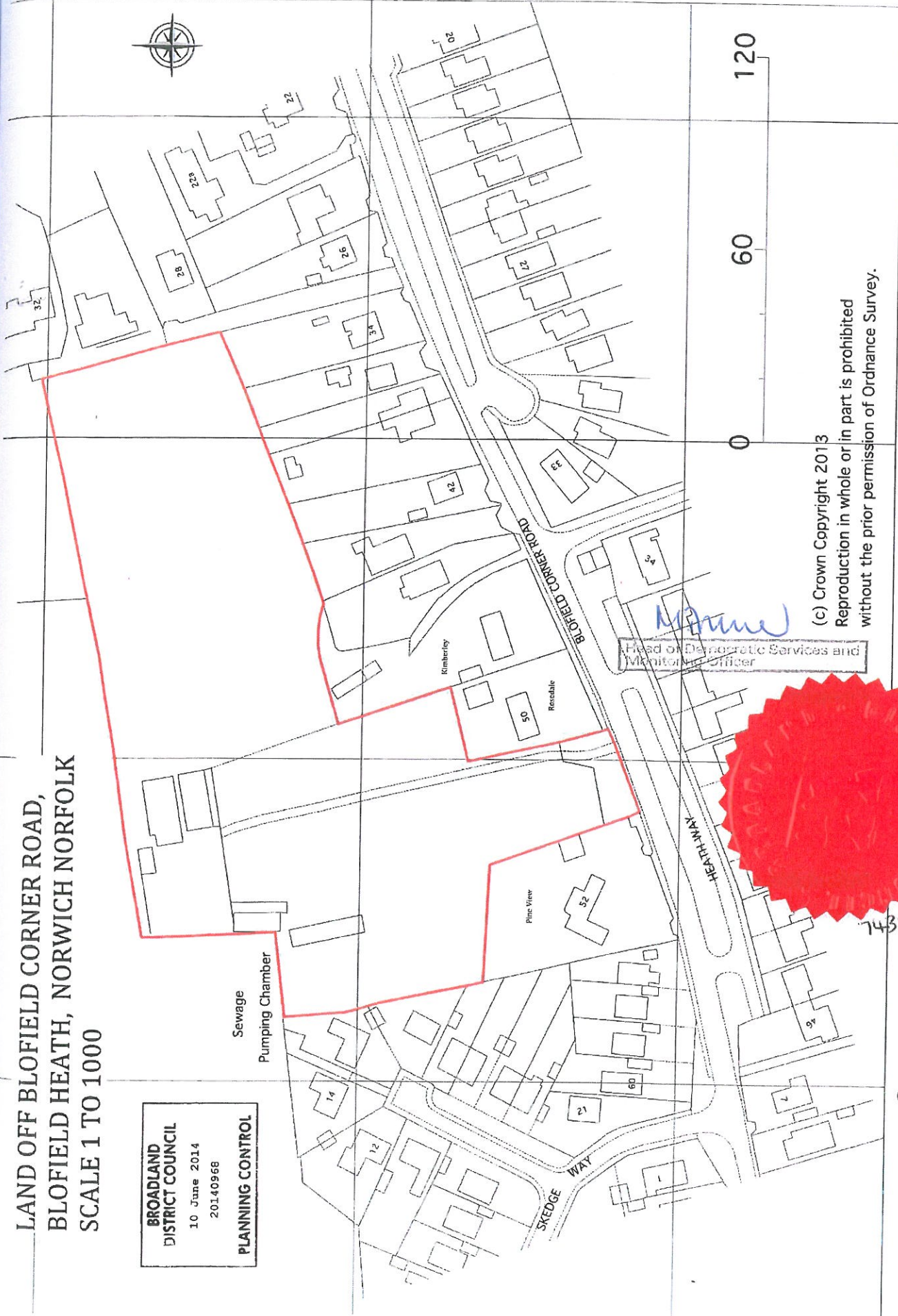
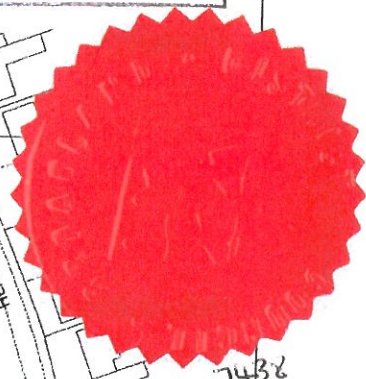
Sewage
Pumping Chamber

WEL

see.

[Signature]
Head of Democratic Services and
Monitoring Officer

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Second Schedule
Affordable Housing

In this Schedule (and elsewhere in this Deed where the context permits) the following words and expressions shall have the following meaning:

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| "Affordable Dwellings" | Means the Dwellings to be constructed on the Site as Affordable Housing and to be built to the Design & Quality Standards and "Affordable Dwelling" shall be construed accordingly |
| "Affordable Housing" | means the Intermediate Housing and Rented Housing to be provided to Eligible Households whose needs are not met by the market |
| "Affordable Housing Mix" | Means 75 per cent Rented Housing and 25 per cent Intermediate Housing (or such other percentages as the Council may agree in its absolute discretion) |
| "Affordable Housing Provision" | Means the provision of Affordable Dwellings on the Site equating to at least 33 per cent of the total number of Dwellings (or such other percentage as the Council may agree in its absolute discretion) in accordance with the Affordable Housing Mix |
| "Affordable Housing Scheme" | <p>A scheme for the construction and ongoing provision of the Affordable Dwellings in line with the Affordable Housing Provision and specifying:</p> <ul style="list-style-type: none">- The timescale and programme for implementation of the Affordable Housing Scheme and construction of the Affordable Dwellings- The identity of the Provider or details of how the |

Affordable Dwellings will be secured as Affordable Housing in perpetuity;

- such other information and requirements as the Council may require in connection with the provision of Affordable Housing for the Site and to enable approval of the Affordable Housing Scheme
- The number of Affordable Dwellings to be constructed;
- full details of the Affordable Housing Mix (such proposal to reflect the Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Council) in accordance with the Affordable Housing Provision;
- the location of each of the Affordable Dwellings within the Development
- The type and size of the Affordable Dwellings;

AND where the parties agreed any amendment or alteration to the Affordable Housing Mix or the Affordable Housing Provision

"Affordable Rented Dwellings"

Means Dwellings to be let by a Registered Provider with an appropriate agreement with the Homes & Communities Agency for the provision of affordable rents being controls that limit the rent to no more than 80 per cent of local market rents including any service charges as approved by the Council

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| "Approved Affordable Housing Scheme" | Means the Affordable Housing Scheme submitted by the Owner and approved by the Council |
| "Design & Quality Standards" | Means the Design and Quality Standards as specified by the Homes and Communities Agency or its successor or such other construction standards as the Council may reasonably determine |
| "Eligible Household" | A person or persons in need of accommodation who are unable to rent or buy on the open market nominated by the Council and determined in accordance with the Council's Allocation Policy or as otherwise approved by the Council |
| "Intermediate Rented Dwellings" | Dwellings at prices and rents above those of Social Rented Dwellings but below market price or rents and at prices or rents (which shall in any event be no more than 80 per cent of local market rents including any service charges) that Eligible Persons can afford as determined by the Council acting reasonably including shared equity products (e.g. HomeBuy), other low cost homes for sale and intermediate rent but not including Affordable Rented Dwellings or low cost market housing and which if the Council so elects shall include provision for the relevant Affordable Dwelling to remain as Affordable Housing for future Eligible Households and either on those restrictions being lifted or additional shares or equity in the Affordable Dwelling being acquired, for the Public Subsidy and any monies paid by an Eligible Household to be recycled for alternative Affordable Housing provision such provisions to be approved by the Council |

- "Intermediate Housing" Means one or more of Intermediate Rented Dwellings Shared Equity Dwellings and Shared Ownership Dwellings agreed with the Council
- "Open Market Dwelling" Means a Dwelling which is not an Affordable Dwelling
- "Provider" Means either:
- (i) a "Registered Provider" as defined in the Housing and Regeneration Act 2008; or
 - (ii) another organisation that owns the Affordable Dwellings and has been approved in writing by the Council
- "Practically Complete" means the point at which a Dwelling has been completed to Design & Quality Standards (if an Affordable Dwelling) is capable of occupation and a certificate of practical completion has been issued
- "Public Subsidy" funding provided by the Council or the Homes and Communities Agency or any other public body or any successor body towards the provision of the Affordable Housing
- "Recycling Obligation" Means an obligation to use any monies paid in relation to the acquisition of any share or interest in an Affordable Dwelling by an Eligible Household towards alternative Affordable Housing provision within the Council's administrative area or such other area as the Council may agree

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| "Rented Housing" | Means one or more of Affordable Rented Dwellings Social Rented Dwellings and Intermediate Rented Dwellings |
| "Shared Equity Dwellings" | Dwellings purchased on a shared equity basis whereby not more than 75 per cent of the equity is sold to the purchaser with power to increase their percentage of ownership up to 100% after five years of acquisition upon a payment equating to the additional equity being purchased payable to the Council (or such other body as the Council may elect), such payment to be based on the actual market value as at the date of acquisition by the purchaser such a scheme to be secured by a mechanism agreed with and approved by the Council (or such other body as the Council may elect) and in a form approved by the Council (or by such other body as the Council may elect) |
| "Shared Ownership Dwellings" | Dwellings purchased on a Shared Ownership Lease |
| "Shared Ownership Lease" | Means a lease in a form approved by the Homes and Communities Agency or where there is no such form in a form approved by the Council such lease to provide for the following: - not more than 50% and not less than 25% of the equity (or such other percentages the Council may agree) shall be initially sold to the purchaser by the Provider - power to the purchaser to increase their ownership up to 100% if they so wish |

- an annual rent not exceeding 2.75% of the value of the equity retained by the Provider OR an initial rent not exceeding 2.75% of the value of the equity retained by the Provider subject to annual increases not exceeding 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 shall reasonably determine)

"Social Rented Dwellings"

Dwellings owned or managed by a Provider let at rents not exceeding the Target Rent

"Target Rent"

The rent for Social Rented Dwellings as determined by the national rent regime published by the Homes and Communities Agency or any subsequent replacement or where there is no such replacement at a rent determined by the Council

The Owner hereby covenants with the Council as follows:

- 1.1 Not to Commence the Development unless and until the Affordable Housing Scheme has been submitted to and has been approved by the Council in writing.
- 1.2 Not to Occupy the first Open Market Dwelling unless and until an exchanged unconditional contract for the sale of the Affordable Dwellings to a Provider has been supplied to the Council unless otherwise agreed in writing with the Council.
- 1.3 Not to construct the Affordable Dwellings otherwise than in accordance with the Approved Affordable Housing Scheme and the timescales set out therein.

- 1.4 Not to Occupy or allow Occupation of more than 30% of the Open Market Dwellings or Practically Complete 40% of the Open Market Dwellings unless and until all of the Affordable Dwellings to be provided under the Approved Affordable Housing Scheme are Practically Complete and have been transferred to the approved Provider in accordance with and subject to the following terms:
- a) for a consideration at a level which ensures that no Public Subsidy is required to enable the transaction to be completed;
 - b) free from all financial charges, adverse rights, restrictions or other encumbrances which would interfere with the use of the Affordable Dwellings as Affordable Housing;
 - c) with the benefit of all necessary easements, rights and utilities; and
 - d) any other terms to secure any conditions and requirements of the Approved Affordable Housing Scheme including a restriction to secure compliance with the Recycling Obligation.
- 1.5 Up to one third of the Rented Housing units (as chosen by the Council) will be let on first occupation in accordance with the local lettings policy set out in the Third Schedule
- 1.6 Not to use or allow the Affordable Dwellings to be used for any purpose other than Affordable Housing in accordance with the Approved Affordable Housing Scheme other than:
- 1.6.1 by a person acquiring an interest in an Affordable Dwelling under a statutory right to buy or acquire PROVIDED THAT the Recycling Obligation has been complied with;
 - 1.6.2 by 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 PROVIDED THAT the Recycling Obligation has been complied with;

1.6.3 by a mortgagee exercising it's power of sale in respect of any Affordable Dwellings or any receiver or administrator of that mortgagee or any mortgagee of a Shared Ownership Dwelling lawfully exercising any mortgagee protection provisions within the Shared Ownership Lease ("Affordable Housing Mortgagee") PROVIDED THAT it is has first complied with the following:

- a) in relation to a mortgagee of Registered Provider Affordable Dwellings the restrictions and obligations contained in Sections 144 to 159 of the Housing and Regeneration Act 2008 and provided copies of all notices served and any proposals received together with updates as to progress to the Council
- b) where the proposals are agreed under clause a) above or where the provisions do not apply or have lapsed to give the Council the option to purchase the relevant Affordable Dwellings or nominate another Provider to purchase the relevant Affordable Dwellings exercisable within a period of two calendar months commencing on the date upon which the option is first communicated to the Council in writing "Mortgagee Notice Period") and if the Council (or it's nominated Provider) elects to acquire the relevant Affordable Dwellings to allow up to two calendar months following expiry of the Mortgage Notice Period to complete the purchase
- c) if, having used reasonable endeavors, 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 Deed PROVIDED THAT the parties may agree to extend the period for transfer

Third Schedule

AFFORDABLE HOUSING

LOCAL LETTING POLICY: LOCAL CONNECTION ELIGIBILITY CRITERIA

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 (i) allocations will be made to people who work in the Parish of Blofield;
- (iii) if there are no suitable persons in paragraphs (i) and (ii) allocations will be made to people who need to move to the Parish of Blofield to give/receive support to/from close family.

Administrative Procedure for Nominations

- To grant to the Council nomination rights to 100% of the Affordable Rented Dwellings.
- The administrative procedure for nominations shall be in accordance with the Council's allocations policy, as amended from time to time or in accordance with alternative procedures as the Council and the Owner shall agree between them.

Note: If there are no suitable persons in paragraph 4(i) and/or 4(ii) and/or 4(iii) above, allocations will be made to households living in the Broadland district in accordance with the Council's policies relating to housing allocation

Fourth Schedule

Open Space

In this Schedule the following expressions have the following meanings:

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| Approved Open Space Scheme | A scheme for the provision of the Open Space and or payment of the Open Space Contribution comprising as applicable plans and details of: a) the layout, location and design of the Open Space including details of proposed equipment (including equipped children's play space), landscaping, drainage features, access arrangements, street furniture and fencing and b) the ongoing management and maintenance of the open space until the Open Space is transferred to the Nominated Body to a standard suitable for use by members of the public c) the value of the Open Space Contribution and approved by the Council / Nominated Officer and 'the Scheme' shall be construed accordingly |
| Management Company | A company set up to manage and maintain the Open Space |
| Nominated Body | One of the following as determined by the Nominated Officer: a) The Council b) the town or parish council for the area within which the Site is located c) another body specified by the Nominated Officer d) the Management Company |
| Open Space | means areas of equipped children's space, formal recreational space and informal open space calculated in accordance with Council's standards in place at the time Approved Open Space Scheme is approved either within the Site in accordance with the Approved Open Space Scheme and used as public open space or which can be provided offsite using the Open Space Contribution |
| "Open Space Contribution" | A financial contribution to be used for repairing and maintaining the Open Space and where the Open Space is provided offsite this contribution shall also cover the cost of acquisition and provision of Open Space in the Norwich Policy Area calculated in |

| | |
|----------------|--|
| | <p>accordance with the formula in place at the time the Approved Open Space Scheme is approved and in accordance with the emerging Development Management DPD and prospective Policy RL1 and EN3</p> <p>PROVIDED THAT the amount of the Open Space Contribution shall be determined by the final housing mix and the amount of Open Space provided on the Site</p> |
| Standard Terms | <p>a) The Open Space only to be used as public open space</p> <p>b) The consideration to be £1</p> <p>c) The transfer to be of the Unencumbered freehold estate with full title guarantee</p> <p>d) To pay the Nominated Body's reasonable legal fees in connection with the transfer</p> |
| Unencumbered | <p>Is free from financial charges, adverse rights, easements, restrictions or other encumbrances which would interfere with the use of or result in any additional cost or liability not normally associated with the use of the Open Space as public open space</p> |

The Owner covenants with the Council as follows:

1. Not to Commence the Development until the Approved Open Space Scheme is approved provided that the Owner shall be entitled to propose all of the Open Space provision offsite through payment of the Open Space Contribution.
- 2.1 Not to occupy more than 90% of the Dwellings until the Open Space on the Site (if any) has been laid out in accordance with the Approved Open Space Scheme and is available for use.
- 2.2 Not to occupy more than 90% of the Dwellings until the Open Space on the Site (if any) has been transferred to the Nominated Body on the Standard Terms and the maintenance element of the Open Space Contribution has been paid to the Nominated Body
3. To maintain and manage Open Space on the Site (if any) to the satisfaction of the Nominated Officer and in accordance with the Approved Open Space Scheme until the Open Space has been transferred to the Nominated Body

4. OPEN SPACE CONTRIBUTION

Not to Occupy or allow Occupation of any Dwelling on the Site unless and until the Open Space Contribution has been paid to the Council.

Fifth Schedule
Council's Covenants

The Council covenants with the Owner as follows:

1. The Council shall within 28 days of receipt of a written request confirm the Nominated Body.
2. In the event of failure by the Council to nominate the Nominated Body in accordance with paragraph 1 above the Nominated Body shall be the Management Company.

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:

Authorised Signatory:

M. Muel

Head of Democratic Services and
Monitoring Officer



EXECUTED AS A DEED

By THE TALL HOUSE LIMITED

Acting by two Directors

Director:

S. Leavers-Lewis

Director:

E. Weavers-Wright