BROADLAND DISTRICT COUNCIL

and

NORFOLK COUNTY COUNCIL

and

LINGWOOD AND BURLINGHAM
PARISH COUNCIL

AGREEMENT under Section 106 of the Town and Country Planning Act 1990 relating to the former Lingwood School site Chapel Road Lingwood Norwich NR13 4NX THIS DEED OF AGREEMENT is made the 22 day of 2015

BETWEEN:

- (1) NORFOLK COUNTY COUNCIL of County Hall Martineau Lane Norwich Norfolk NR1 2DH ("the Applicant"); and
- (2) BROADLAND DISTRICT COUNCIL of Thorpe Lodge Yarmouth Road Thorpe St Andrew Norwich Norfolk NR7 0DU ("the Council")
- (3) LINGWOOD AND BURLINGHAM PARISH COUNCIL of Two Acres, Lodge Road, Lingwood, NR13 4TF ("the Parish Council")

"the Parties"

BACKGROUND

- A) For the purposes of the 1990 Act the Council is the Local Planning Authority for the area within which the Site is located.
- B) The Applicant is the freehold owner of the whole of the Site free from incumbrances that would prevent the Applicant entering into this Deed.
- C) The Applicant has submitted the Planning Application to the Council for determination.
- D) The Parties are entering into this Deed to create planning obligations within the meaning of the 1990 Act enforceable by the Council against the Applicant and its successors in title.
- E) The Parish Council has agreed to join in as a party to this Deed having regard to the provisions of Schedules 1 (part 3) and Schedule 5 to this Deed

OPERATIVE PROVISIONS

Definitions

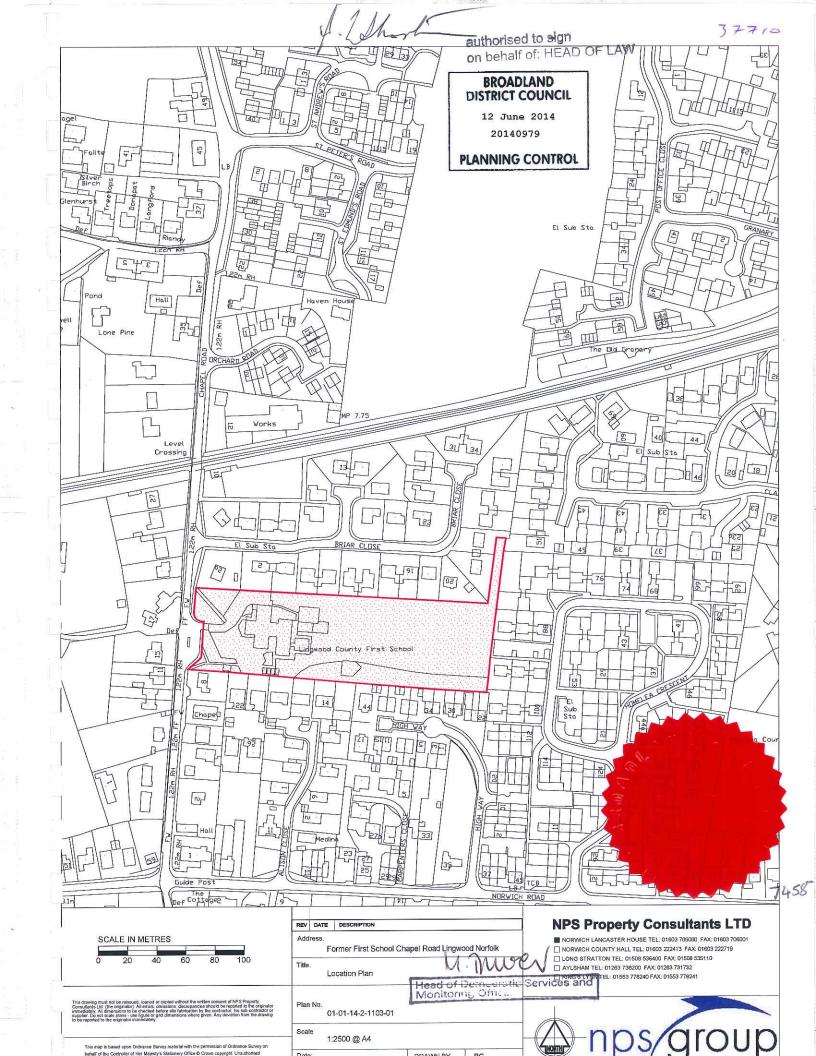
In this Deed, the following words and expressions have the following meaning:

"1990 Act"	means the Town and Country Planning Act 1990 (as amended);
Affordable Dwellings	the dwellings to be constructed on the Site as part of the Development as Affordable Housing such dwellings to be built to the Design & Quality Standards and "Affordable Dwelling" shall be construed accordingly;
"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;
"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 Deed
"Affordable Housing Scheme"	a detailed scheme submitted to and

	approved by the Council in respect of the provision of Affordable Housing on the Site which shall include: the requirements contained in paragraph 1.1 of Schedule 1 of this Deed (or such amended or replacement affordable housing scheme as the Council approves in writing from time to time)
"Affordable Housing Units"	individual units of accommodation constructed or provided as part of the Affordable Housing Scheme;
"Affordable Rental Units"	Affordable Housing Units to be constructed or provided as part of the Development pursuant to Affordable Housing Scheme and to be let by an AHP on a weekly or monthly tenancy basis at affordable rents (being not more than 80% of local open market rental prices inclusive of service charge) to be let by or on behalf of an AHP in accordance with the requirements of Schedule 1
"Code"	the "Code for Sustainable Homes" published by the Department for Communities and Local Government dated December 2006;
"Commencement Date"	means the date on which the Development commences by the carrying out on the Site pursuant to the Planning Permission of a material

the 1990 Act other than (for the purpos	
	ses
of this deed and for no other purpos	se)
operations consisting of site clearan	ce,
demolition work, archaeologi	cal
investigations, investigations for	the
purpose of assessing ground conditio	ns,
remedial work in respect of a	any
contamination or other adverse grou	ınd
conditions, diversion and laying	of
services, erection of any tempora	ary
means of enclosure, the tempora	ary
display of site notices or advertiseme	nts
and "Commence" or "Commenceme	nt"
shall be construed accordingly;	
"Development" means the residential development	ent
permitted by the Planning Permission;	
	333
, and the second	ınit
approved pursuant to the Plann	ing
Permission;	
"HCA Standards" the "Housing Quality Indicators" a	
5	(as
replaced or revised) specified by	98998
Homes and Communities Agency or	
successors or such other standards	
	the
Affordable Housing Provider	
"Inflation Provision" means the increase (if any) in	the
Department for Business Innovation a	and
Skills (BIS) Output Price Index for n	ew

"Local Lettings Policy Eligibility Cascade"	construction (2010) all new construction between September 2006 and the date upon which a payment of the Open Space Contribution is made pursuant to this Deed the order in which the Affordable Rental Units are to be allocated and which is set out under the title "Local Letting Policy Eligibility Cascade" at Schedule 2 to this
	Deed as amended from time to time
"Market Housing Unit"	means the individual Dwellings that are not Affordable Housing Units;
"Nursery Building and Land"	means an area of 0.08ha of land including that on which the nursery building is located to be transferred to the Parish Council in accordance with Schedule 1, clause 3 and the nursery building is coloured red on Plan 2 annexed to this Deed
"Occupation"	Occupation of a Dwelling for the purposes as authorised by the Planning Permission and excludes occupation for the purposes of construction, internal and external refurbishment, decoration, fitting-out, marketing or any other activity preparatory to the use of the Site for the purposes as authorised by the Planning Permission and the words "Occupy and Occupied" shall be construed accordingly;



PLAN 2

authorised to sign

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"Open Space Contribution"	means the sum calculated in accordance with the table set out in Schedule 3 to
	this Deed as increased by the Inflation Provision;
"Plan"	means the plan attached to this Deed;
"Plan 2"	Means the plan attached to this Deed showing the nursery building
"Planning Application"	means the application for outline planning permission for residential development of the Site submitted by the Applicant and in accordance with the plans and details submitted under reference 2014/0979;
"Planning Appeal"	means any appeal submitted by the Applicant in relation to a refusal to grant planning permission pursuant to the Planning Application;
"Planning Permission"	means the outline planning permission granted for the Development pursuant to the Planning Application or the Planning Appeal;
"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 Letting Policy Eligibility Cascade or where such persons have been exhausted any person as nominated by the Council on the Broadland housing register which the AHP owning or managing the Affordable Housing Units on the Site is entitled to house within its rules
"Reserved Matters"	an application for the approval of reserved matters pursuant to the Planning Permission
"Shared Equity Arrangement"	The arrangements to be put in place to ensure the Shared Equity Dwellings are provided by freehold disposal or lease at up to 75% (seventy five per cent) of Open Market Value which shall include arrangements enabling the lessee to staircase up to 100% of Open Market Value after five years and acquire the remaining legal and equitable interest
"Shared Equity Dwellings"	Affordable Housing Units to be constructed or provided as part of and in accordance with the Affordable Housing Scheme and to be let or sold in

	accordance with the Shared Equity
	Arrangements
"Shared Ownership Dwellings"	According the base
	Affordable Housing Units to be
	constructed or provided as part of and in
	accordance with the Affordable Housing
	Scheme and to be let on a Shared
	Ownership Lease
"Shared Ownership Lease"	a lease or sublease of a Shared
Ghared Gwhership Lease	Ownership Dwelling granted at a
	premium whereby up to a maximum of
	50% (fifty per cent) of the equity is
	granted on first purchase of the equitable
	interest in the Shared Ownership
	Dwelling and 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
	lessee to purchase the freehold of a
	Shared Ownership Dwelling and acquire
	up to 100% of the legal and equitable
	interest by instalments at some future
	date or dates and allows a rental
	premium to be charged on the remainder
	of the equitable interest not exceeding
	housing corporation target rents (being
	2.75% of the value of the equity retained
	by the Affordable Housing Provider, such
	rent not to be increased by more than the
	percentage increase in the Retail Price
	Index (or such other index as the Council
	may determine) plus 0.5% of the current

	annual rent from time to time
"Site"	means the land known as the former
	Lingwood School site at Chapel Road
	Lingwood Norwich registered at H M
	Land Registry under title number
	NK381669 and shown edged red on the
	Plan;

1.1 In this Deed unless the context otherwise requires:

- a) references to any party shall include the successors in title and assigns of that party
- 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 Deed
- 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 Deed shall not form part of or affect its construction
- 2 General Provisions Applicable to this Deed
- 2.1 The covenants given by the Applicant in this Deed are given under Section 106 of the 1990 Act and in so far as any provision contained herein is not a planning obligation it is made pursuant to section 111 of the Local Government Act 1972 and all other enabling powers.
- 2.2 The covenants, restrictions, requirements and obligations arising hereunder are planning obligations pursuant to Section 106 of the 1990 Act and are enforceable by the Council against the Applicant and its respective successors in title and assigns
- 2.3 The provisions of this Deed are conditional upon the grant of the Planning Permission and the Commencement of Development save as otherwise indicated in this Deed in which case those provisions shall come into effect immediately upon completion of this Deed
- 2.4 This Deed shall cease to have effect if the Planning Permission shall be quashed revoked or otherwise withdrawn before Commencement
- 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 this Deed or any provision of it comes to an end the Council if so requested by the Applicant will 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 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 were not a party to this Deed

3.2 Invalidity or Unenforceability of any of the Terms of this Deed

If any provision in this Deed 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 Applicant 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

3.4 Liability for Breach

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 with such person's interest in the Site or any part thereof in respect of which any such breach has taken place

- 4. Notices
- 4.1 Any notice document or other correspondence required to be served or given under the provisions of this Deed 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 Deed shall be as follows:-

The Council:

The Director, Broadland District Council, Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich, Norfolk, NR7 0DU

The Applicant:

County Hall Martineau Lane Norwich Norfolk

NR1 2DH

The Parish:

Two Acres, Lodge Road, Lingwood, NR13 4TF

4.2.1 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 Deed and no person who is not a party to this Deed (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 Deed pursuant to the provisions of the said Act
- 6 Costs
- 6.1 The Applicant shall on completion of this Deed pay the Council's reasonable legal costs incurred in the preparation negotiation and completion of this Deed
- 7 Payment of Interest
- 7.1 The Applicant 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 Deed 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 Deed 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 Deed, 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 Deed is to be governed by and interpreted in accordance with the law of England
- 10 Title Warranty
- 10.1 The Applicant hereby warrants to the Council that they are the freehold owners of the Site and have full power to enter in to this Deed 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 as notified in writing to the Council 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 Deed 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 Applicant hereby covenants with the Council to carry out and comply with the obligations and restrictions on its part set out in Schedules 1, 2 and 3 of this Deed and covenants with the Parish Council to carry out and comply with the obligations and restrictions on its part set out in Schedule 5 of this Deed.
- 12.2 The Council covenants with the Applicant to comply with the provisions of Schedule 2, 3 and 4 of this Deed
- 12.3 The Parish Council hereby covenants with the Council and the Applicant to comply with the provisions of Schedule 1 part 3 and Schedule 5 of this Deed
- 13 Transfer of Land
- 13.1 Where any provision of the Deed requires the transfer of land to the Parish Council the provisions of Schedule 5 shall apply to such transfer
- 14 Issue of Approvals
- 14.1 Where any approval, consent, agreement, expression of satisfaction or the like 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

15 Limitation of Liability

- 15.1 Save for the obligations contained in Schedule 1 in respect of the Affordable Housing which shall continue to be binding and enforceable against individual purchaser's owners occupiers lessees or their mortgagees of Affordable Housing Units subject to the provisions contained therein the covenants, restrictions and requirements contained in this Deed shall not be enforceable against:
- 15.1.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Planning Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease
- 15.1.2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site'

16 Notification

The Applicant agrees to notify the Council of the reaching of any of the occupation or completion thresholds relating to obligations contained in this Deed such notification to be given within 14 days of reaching such threshold.

The Applicant hereby covenants with the Council as follows:

1. AFFORDABLE HOUSING

- 1.1 To submit to the Council for approval the Affordable Housing Scheme at the same time as making an application for Reserved Matters. The Affordable Housing Scheme shall deal with and include: the percentage of Affordable Housing Units within the Site (in accordance with Policy 4 of JCS as amended); the location of the Affordable Housing Units within the Site; the number of bedrooms for each of the Affordable Housing Units within the Site; evidence that all Affordable Housing Units meet the minimum standards contained in the HCA Standards a timetable and programme for implementation and the mix of Affordable Rental Units, Shared Equity Dwellings and Shared Ownership Dwellings and save for any variations agreed in writing between the Applicant and the Council prior to Commencement upon approval the Affordable Housing Scheme shall be deemed to be incorporated into the provisions of this Deed
- 1.2 The Affordable Housing Units shall not be used except for the provision of Affordable Housing by a AHP
- 1.3 Save as otherwise provided in this Deed not to use or allow or permit the Affordable Housing Units to be Occupied other than by Qualifying Occupiers in accordance with the Affordable Housing Scheme.
- 1.4 Not to Commence the Development until a scheme for the provision and long term management of the Affordable Housing Units has been submitted to and approved by the Council (such approval not to be unreasonably withheld or delayed)
- 1.5 Not to Occupy or allow Occupation of more than 60% of the Market Housing Units until the Affordable Housing Units have been constructed so that they

- are ready for Occupation and have (as appropriate) been transferred to a AHP
- 1.6 any transfer referred to in 1.5 above shall be for a consideration at a level which ensures that no public subsidy is required to enable the transaction to be completed and to enable the Affordable Housing Units to be let or sold as the case may be at a cost low enough for eligible persons to afford
- 1.7 the transfer referred to in 1.5 above shall contain terms to secure any conditions and requirements of the approved Affordable Housing Scheme;
- 1.8 the transfer referred to in 1.5 above shall contain a requirement that any proceeds from the disposal of subsequent equity in Affordable Dwellings must be used for the provision or improvement of Affordable Housing within the administrative area of the Council where reasonably practicable.
- 1.9 The Affordable Housing Scheme must comply with the following requirements:-
- 1.9.1 All of the Affordable Housing Units to be let at affordable rents shall be let at a maximum of 80% of market rents
- 1.9.2 All other types and tenures of Affordable Housing shall be as agreed with the Council acting reasonably
- 1.9.3 The Affordable Housing Units will be occupied by persons nominated by the Council from its general needs housing list
- 1.10 Once approved the Affordable Housing Scheme will be complied with
- 1.11 The Affordable Housing Units will be constructed to the HCA Standards and to the regulatory level of the Code (unless the Council agrees otherwise in granting approval to the Affordable Housing Scheme)
- 1.12 Paragraphs 1.2 1.9 and 1.10 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 nor any

person deriving title under any of them respectively and shall cease to apply to any of the Affordable Housing Units where an Affordable Housing Unit is disposed of pursuant to a "statutory right to buy or acquire".

OPEN SPACE CONTRIBUTION

Not to Occupy or allow Occupation of more than 60% of the Market Housing Units unless and until the Open Space Contribution has been paid to the Council

3. TRANSFER OF THE NURSEY BUILDING AND LAND

- 3.1 To submit to the Council at the same time as making a reserved matters application a plan which shows the location of 0.08ha area of Nursery Building and Land to be transferred to the Parish Council in accordance with Clause 3.2 below (agreement from the Council not to be unreasonably withheld or delayed)
- 3.2 Not to Occupy or allow to be Occupied any Dwelling unless and until the Nursery Building and Land has been offered for transfer and then has been transferred to the Parish Council (which offer and transfer the Parish Council shall accept) for a consideration of one pound (£1.00) in accordance with the terms and conditions in Schedule 5
- 3.3 to maintain the Nursery Building and Land to a standard suitable for use by members of the public as approved by the Council until such time as the Nursery Building and Land has been transferred in accordance with the provisions contained herein

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 Rental Units (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 Lingwood;
- (ii) if there is no suitable person in paragraph (i) allocations will be made to people who work in the Parish of Lingwood;
- (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 Lingwood to give/receive support to/from close family.

Administrative Procedure for Nominations

- To grant to the Council nomination rights to 100% of the Affordable Rental Units.
- 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 Applicant shall agree between them.

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

Open Space Contribution Table	
For each 1 bedroom dwelling comprised in the Development	£2,378
For each 2 bedroom dwelling comprised in the Development	£3,176
For each 3 bedroom dwelling comprised in the Development	£3,963
For each 4 bedroom dwelling comprised in the Development	£4,756
For each 5 or more bedroom dwelling comprised in the	£5,549
Development	

The Council hereby covenants with the Applicant as follows:

- To hold the Open Space Contribution when paid in an interest bearing account and apply it and any interest accrued towards the provision of additional open space and recreational facilities in the parish of Lingwood
- 2. In the event that the Open Space Contribution has not been committed (by way of contract or expenditure of the monies) within five years of receipt of the payment to refund any unspent balance of the Open Space Contribution to the payer together with any interest accrued
- 3. Upon receipt of a written request to provide evidence of expenditure of the Open Space Contribution within 14 days
- 4. To use the proceeds of any payment made to the Council in relation to the acquisition of any share or interest in an Affordable Dwelling for the provision or improvement of Affordable Housing within the administrative area of the Council.

Terms and Conditions of Land Transfers

- 1. Completion of the transfer of the Nursery Building and Land required by this Deed to the Parish Council shall take place on such date as shall be agreed in writing between the Applicant, the Council and Parish Council or in default of such agreement being reached within a period of 28 days from the date of the offer to transfer the Nursery Building and Land as shall be specified in a notice in writing given by the Council and Parish Council to the Applicant or by the Applicant to the Council and Parish Council
- 2. The land shall be transferred with full title guarantee and with vacant possession free from all adverse rights, easements restrictions or other encumbrances which would interfere with its use as a community building and from any financial charges.
- 3. The transfer shall contain all such rights and easements whatsoever (including without prejudice to the generality of the foregoing the provision of all rights of access of services and service installations thereto) as are required to facilitate the use of the land transferred for the purpose it is being transferred subject to the entries on the registered Title No NK381669 (as applicable) as at 11 September 2014 at 11:47:23
- 4. The standard conditions of sale (4th edition) shall apply to any transfer required by 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
- All costs incurred in connection with the transfer of land including but not limited to legal fees and Land Registry disbursements shall be paid by the Applicant

EXECUTED as a deed by the parties and delivered on the date set out above.

THE COMMON SEAL of BROADLAND DISTRICT COUNCIL Was hereunto affixed in the presence of: - Head of Corporate Services and Monitoring Officer THE COMMON SEAL of NORFOLK COUNTY COUNCIL was hereunto affixed in the presence of Head of Law authorised to sign on behalf of: HEAD OF LAW SIGNED as a Deed by two members Of LINGWOOD AND BURLINGHAM PARISH COUNCIL As their Deed in the presence of: POST BEFICE CLOSE TINGMOOD Authorised Signatory RETIRED